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PREM 19/2663

PART 42

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Confidential Filing

The Community Budget

Developments in the European Community

EUROPEAN POLICY

Part 1: May 1979
Part 42: June 1989

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
4-6-89							
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PART 42 ENDS

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PART 42 ends:-

PM to FCO 29.9.89

PART 43 begins:-

MS/FCO to MS/HEALTH 2.10.89

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
OD(E)(89)12	2 June 1989
OD(E)(89)11	5 June 1989
ODE(89)(17)	17 July 1989
OD(E)(89)(16)	17 July 1989

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed [signature] Date 6 AUG 2016

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

Command 801
European Communities No.34 (1989)
Developments in the European Community
January-June 1989
Published by Her majesty's Stationery Office

Signed Date 6 AUG 2016

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10 DOWNING STREET

LONDON SW1A 2AA

29 September 1989

From the Private Secretary

Dear Bob,

EC SINGLE MARKET IN PHARMACEUTICALS AND VETERINARY MEDICINES PRODUCTS

The Prime Minister has seen the Minister of Health's letter to the Foreign Secretary of 22 September and the Minister of Agriculture's letter of 26 September. She is content with the proposals for pharmaceuticals and veterinary medicines products, but she assumes that the position will be closely monitored and reported to Ministers as discussions proceed in Brussels.

In relation to human medicines, the Prime Minister is aware that a large volume is now imported into the United Kingdom, which she understands to be identical to products available in this country. This trade apparently reflects price differentials, but she understands that most of the savings accrue to the importers and pharmacists with little benefit accruing to the NHS. She therefore wonders whether there are any proposals in hand to bring EC pricing policies into line and to ensure that benefit from lower prices accrue to the NHS and to consumers. She would be grateful if the Minister of Health could prepare a note on this point.

I am copying this letter to the Private Secretaries to Members of OD(E), Andy McKeon (Department of Health), Stephen Williams (Welsh Office), David Crawley (Scottish Office), Stephen Leach (Northern Ireland Office) and Trevor Woolley (Cabinet Office).

Yours,

Paul

PAUL GRAY

R. N. Pierce, Esq.,
Foreign and Commonwealth Office.

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dti

the department for Enterprise

The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

Charles Powell Esq
PS/Prime Minister
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Our ref PE3ABQ
Your ref
Date 28 September 1989

Dear Charles,

EUROPEAN COMPANY STATUTE (ECS)

Ben Slocock's letter of 24 July on this subject, in response to yours of 18 July, indicated our intention to have a paper discussed by OD(E) and submitted to the Prime Minister in time for a line to be agreed for the September Internal Market Council. In the event, the Commission's new draft of the ECS did not appear until this month, and it has not featured on the agenda for the September or the October IMC. My Secretary of State has agreed that because of this, and the crucial importance of the legal base, OD(E) should defer discussion early November, by which time we should be in a better position to appraise the likely legal base.

I am therefore sending this letter as an interim report on the situation. First I explain the problems with the legal base, and then go on to set out the line which my Secretary of State proposes officials should take in working group meetings pending ministerial consideration of the overall strategy.

Legal base

The Commission's proposals, which we received earlier this month, are based on Articles 54 and 100a of the Treaty of Rome, which require only qualified majority voting. There are good legal arguments that these bases are inadequate and that the proposal should be based on Article 235 which requires unanimity. However, this does not mean that we are likely to succeed in challenging the base in the European Court of Justice (ECJ), since one must take into account the past lack of success in legal challenges and the ECJ's tendency to support the Commission even against the unanimous view of the Council.
The legal base thus determines whether or not we will have a veto on the proposal, which will clearly be crucial. If we are confident that the proposal needs to be decided

Recycled Paper

unanimously, we can afford to take a hard line, and refuse to agree unless the worker participation provisions are removed (in which case the proposal would be likely to be dropped) or watered down considerably. If, however, as seems more likely, we are unable to rule out the possibility that the proposal will be adopted by qualified majority, then we may have to concentrate on seeking to weaken the existing proposal or proposing new compromises.

We expect to seek the opinion of the Council Legal Services at the first working group meeting, and we should then be in a better position to assess the chances of success. My Secretary of State will then discuss with OD(E) colleagues, with a view to reporting to the Prime Minister in time for the first Council level discussion, which may be in November.

Interim line to take

In the meantime, our objective is to take a tough line, but to seek to avoid closing off any future options. Council Working Group meetings start in early October, and we propose to put on a general reserve and to object to the legal base. We shall be prepared to make a number of constructive-seeming points about the content of the proposal other than worker participation and tax.

We should wish to avoid discussing the worker particiaption provisions in any detail. If we are put in a position where we have to say something on worker participation, we should propose to say something along the following lines:

(a) The worker participation provisions are unacceptable to the UK. We are all in favour of employees being involved in the running of companies, but this must be up to the company itself to work out. It would be counter-productive to impose a standardised legal straitjacket.

(b) The proposals do not really harmonise worker participation. The provisions contain alternatives apparently tailored for France, Germany and for the Netherlands, so that each can retain its existing system. In these circumstances, it is unreasonable that it should not be possible for the UK to retain its existing voluntary approach.

dti

the department for Enterprise

I am sending copies of this letter to the private secretaries to the Foreign and Commonwealth Secretary and other members of OD(E), and to Trevor Woolley (Cabinet Office).

Yours ever,

Neil Thornton.

NEIL THORNTON
Private Secretary

the Enterprise initiative

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bc: PC

10 DOWNING STREET

LONDON SW1A 2AA

28 September 1989

From the Private Secretary

EUROPEAN COMMUNITY; SOCIAL CHARTER

The Prime Minister noted with interest the Employment Secretary's report to Cabinet this morning on the Commission's new draft Social Charter. In some ways it is helpful that it remains an 'extreme' bid. That should make it easier to gather opposition to it, as well as support for an eventual, more reasonable Presidency compromise. She assumes that the French are most unlikely to come forward with a compromise until after several rounds of hard slogging on the Commission text, and when they are convinced that agreement at Strasbourg can only be achieved on something much more general, declaratory and non-binding than the Commission text.

The Prime Minister thinks that meanwhile we should proceed by:

- continuing to explain clearly and publicly the specific reasons why we are opposed to the Commission draft. Our opposition needs to focus very much on what the Commission are proposing, rather than damning the idea of any sort of declaration on social matters, since we may eventually want to agree to a much weaker text and will not want that to appear a defeat. The Prime Minister intends to say something on the subject of the Commission proposals in her own speech to the Party Conference.

- trying to quantify the costs - financial and social - of the Commission's Charter. This would provide useful extra ammunition for our case against it.

- drafting the sort of text which we could at the end of the day accept. We need to decide for ourselves what can be in and what must be out. In her view, such a text should draw heavily on the Council of Europe's own Social Charter.

The Prime Minister would be grateful if the necessary work could be put in hand (where it is not already being undertaken).

I am copying this letter to Richard Gozney (Foreign and Commonwealth Office), to John Gieve (HM Treasury) and to David Hadley (Cabinet Office).

(C. D. POWELL)

Clive Norris, Esq.,
Department of Employment.

PRIME MINISTER

EC SINGLE MARKET IN MEDICINAL PRODUCTS

You will want to be aware of the attached papers covering the position on future EC arrangements for licensing medicines, both for human and for veterinary use.

The papers attached are:

Flag A - Policy Unit note covering both aspects;

Flag B - note from David Mellor on the human medicines aspect;

Flag C - note from John Gummer on veterinary medicinal products.

The key point at issue is Community competence. The Policy Unit note at Flag A summarises the position and recommends that you accept the approaches proposed. These involve:

- for human medicines, accepting the principle of some degree of greater Community competence, but without commitment to any particular scheme;

- for veterinary products, a more questioning approach seeking further information on the Commission's ideas.

The Policy Unit note also suggests that you should use the opportunity to ask David Mellor for more information on plans to introduce a more common pricing policy between different European countries for medicinal products.

Content to proceed as the Policy Unit recommend? Yes m[illegible]

PAUL GRAY

28 September 1989

A:ECSINGLE.EAM

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PRIME MINISTER 27 September 1989

EC SINGLE MARKET AND PHARMACEUTICALS

Introduction

David Mellor and John Gummer have written to John Major enclosing their proposed replies to the Commission's memorandum on ways of achieving a single market in medicinal products after 1992. The fact that these issues are being put to Ministers reflects heightened sensitivity in Whitehall about Community competence following your initiative earlier this year.

Although there are different considerations affecting human and veterinary medicines, in both cases the dilemma is the same:

- progress towards a single market demands harmonisation of the licensing arrangements for medicines;

- such harmonisation involves a loss of national competence. This could result in decisions being based on less objective scientific criteria than we would use nationally. It could also tempt the Commission to try to extend Community competence further than we would wish, for example into the fields of public and animal health.

Human medicines

For human medicines, there are currently no binding decisions taken in Brussels against the views of any member state. There are discussions in a Committee of experts from member states (CPMP), but the views of this Committee are non-binding. This often leads to objections and delays.

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Harmonisation of licensing could therefore be an effective tool in bringing new scientifically tested medicines to the market sooner to benefit patients throughout the Community.

While all countries agree that the current system of national recognition is inadequate in the context of a single market, we are at odds on the best way forward.

The Department of Health paper favours a new European agency - as do the UK pharmaceutical companies - to be initially responsible for issuing binding licensing decisions on new high-technology medicines. While representing a small proportion of the total workload, this is the area where existing delays are the longest.

By contrast most other member states are nervous of a central agency and would prefer to strengthen the existing CPMP system.

The new agency would clearly add to the Brussels bureaucracy. Yet the Department of Health doubt whether the existing CPMP machinery could be made to function effectively as a source of binding decisions (see para 8 of the enclosure to David Mellor's letter).

David Mellor's arguments seem plausible. But in reality, a strengthened CPMP will probably win the day. This is one of the few areas of European policy in which other member states appear highly protective of their own national licensing arrangements. We can therefore afford at this stage to take the fairly positive line suggested by David Mellor, but we shall have to watch carefully as the discussions develop in Brussels.

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Pricing

If one of our aims is to allow the free trade of pharmaceutical products throughout Europe, harmonisation of licensing is only the first step. A common pricing policy must surely be the next step.

Cars?

Already an enormous volume of medicinal products are imported into the UK - up to £400m each year. These are identical to products available in the UK. Indeed, in some cases the product is manufactured here; exported to those member states where prices are lower (France, Belgium, Italy and Greece); and then reimported here. Most of the saving is taken by the importer and the pharmacist with little benefit to the NHS.

You may want to ask David Mellor if there are plans to bring pricing policies into line. We want to see lower prices and consequent benefit to the NHS as well as consumers. This is an area of European harmonisation where the UK could take a lead.

Veterinary Medicinal Products

The position on these is rather different from that on human medicines. The Community already has competence as far as medicines administered in animal feed are concerned.

On non-feed medicines, the Commission have put forward proposals designed to facilitate a single market in traded veterinary medicines in 1992. These would involve a committee of experts from member states making decisions on licensing which, in certain circumstances, would be binding.

John Gummer proposes that we should play this long. His reply to the Commission asks a number of questions about the Commission's proposals.

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This approach looks sensible at this stage.

On the one hand, we want to see a single market for traded veterinary products, and perhaps even more, for foodstuffs. Harmonised licensing arrangements are a precondition for both (since animal medicines can leave residues in food).

On the other hand, we need to ensure that arrangements for harmonisation of licensing do not lead to decisions being based on political/emotional criteria rather than objective scientific ones (cf the row with the US on hormones). And we need to ensure that harmonisation in this area does not make it more difficult for us to retain those national arrangements for securing animal and public health which have produced higher standards in this country than prevail in most of the EC.

Conclusions

- In terms of the single market, we want to see harmonised arrangements for licensing human and animal medicines. However, this is not the only condition for a freer market for human medicines - pricing policy in member states is also important.

- Harmonised arrangements will include some loss of national competence.

- In the case of veterinary medicines, we would not be breaking new ground. Community competence already exists for medicines in feed, and the extent of existing Community competence in agriculture means that there is less cause to worry about the thin end of wedges. But we must ensure that we keep our ability to maintain higher national standards in animal and plant health.

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And we want to avoid arrangements which would allow licensing decisions to be based on non-scientific criteria.

- In the case of human medicines, a loss of competence would be breaking new ground. We do not want Community policies across the field of public health. Fortunately other member states are likely to be as, if not more, concerned about this than we are.

Recommendations

- Accept the approaches proposed by David Mellor and John Gummer.

- But ask for the position to be closely monitored and reported to Ministers as discussions proceed in Brussels.

- Also ask David Mellor whether there are any proposals to bring pricing policies into line.

CAROLYN SINCLAIR   IAN WHITEHEAD

PRIME MINISTER

THE SOCIAL CHARTER

I attach a long note from the Policy Unit about the Social Charter. I think it underestimates the extent to which you and the Employment Secretary have already identified all the weaknesses and failings of the Commission's draft Social Charter, publicised them and fought against them within the European Community. The classic statement of the case against it was your intervention in the debate in Madrid. The main points have been reiterated in the House.

You will want to look in particular at their views on "The Way Forward" from page 9 of their note. They have four recommendations:

- that we should try to quantify the social cost of the Social Charter;
- that we should mount a major campaign to educate public opinion into the reasons why the Government opposes it;
- that we should draw up an alternative Social Charter embodying the principles which have brought about our own economic success;
- and that we should make a broad pitch at opinion in Southern Member States to point out to them the extent to which the Social Charter is intended to undermine their competitiveness.

I have considerable reservations about some of these recommendations.

Following your meeting with President Mitterrand, our tactics are to see whether some sort of document can be devised and agreed at Strasbourg which is not objectionable to us. This is going to be quite a lengthy process. The first meeting with President Mitterrand's office took place last week and was limited to identifying the points in the Commission's draft Social Charter which we cannot accept. The draft itself remains just as bad as it was at the time of the Madrid European Council (which is actually rather helpful: life would have been more difficult for

us if it had been modified in a more reasonable direction). The French Presidency are likely to spend the next month or so working through it in the EC. We will oppose the Commission's draft on almost every point. If the scenario which you agreed with President Mitterrand works out, the French - looking for a Presidency success at Strasbourg - will then come to us and try and agree a different document, drafted by them and not the Commission, with which we could live. It would have to be no more than a declaratory statement, which underlined the importance of enterprise and competition, the diversity of national practice and the principle of subsidiarity.

If one relates this strategy to the Policy Unit paper, there are some obvious problems. There is no difficulty with their idea of trying to quantify the cost of the Commission's draft Social Charter: it would be good additional material for knocking the Commission's proposals in debate in Brussels. But I think it would be a mistake to mount a "major and concerted campaign" to attack any sort of EC statement. If our objective is to achieve a piece of declaratory prose from Strasbourg, we will want to make that look like a minor triumph not a defeat. The same reservations apply to the idea of an alternative Social Charter. An alternative to the Commission's draft brandished at this stage is unlikely to find any takers and will only make our task of getting agreement to an anodyne statement in December harder. In short, I don't think we should be beating the drum against any sort of European Community activity in this area; otherwise it will look like a climb-down if we do accept something harmless in Strasbourg.

I think, therefore, we want to be a little more sophisticated in our approach than the Policy Unit note suggests. It may be that we shall end up at Strasbourg once again in an 11-1 situation, and there will be no great harm if we do. But the clear conclusion of your discussion with President Mitterrand was that we would look for something to which we can all put our names, provided it is not binding, and does not involve obligatory legislation or new 'rights'. We are working towards something consistent with our policies and practices, not to sweep the whole issue from the table (which is unrealistic).

Pace the Policy Unit, I do not see a need for you to chair a meeting on this at present: I think John Major, Norman Fowler and the officials directly concerned know your mind very well. It would be useful to commission work on quantifying the cost of the Commission's social charter. Otherwise we should proceed with the tactics which flow naturally from your meeting with President Mitterrand.

Agree?

CDP

C. D. POWELL

27 September 1989

Sensible contingency planning requires that we

(1) quantify the cost of the Commission's social charter

(2) prepare our own charter. [We need to do this anyway for Mitterrand – We must decide ourselves what can be in and what must be out.

I shall be making some comments in my speech about the charter and why it won't suit us.

So we [illegible] go half-way with the Policy Unit's proposals so that we prepare ourselves for whatever argument we encounter

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PRIME MINISTER   September 1989

THE SOCIAL CHARTER

This is going to be one of the most important and difficult issues facing the Government this Autumn.

There is a real danger of being backed into a corner under pressure to sign something unsatisfactory. The consequences would be unpalatable in the extreme:

- Europe's ability to compete in the world would suffer from higher costs and the entrenchment of trade union power;

- our ability to withstand Commission incursions into sensitive domestic policy issues would be damaged, perhaps fatally;

- the Labour Party and the TUC would be able to claim a moral victory over you on two vital issues - the role of trade unions in society and the extent of Government regulation of the market - which will be central to the debate at the next general election.

Officials are now fully engaged exploring with their European counterparts whether or not it is possible to arrive at a draft on which everyone can agree. Judgement must be reserved on this although agreement seems fairly unlikely, thus opening the door to a French 'compromise' text. That could be even more unpalatable still; but it is at that point that precise tactics for Strasbourg will need to be addressed.

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We are concerned in this note with what else needs to be done to strengthen your hand and give you added room for manoeuvre. The stakes are very high and it is essential to start preparing the ground now.

The task will not be easy:

- the real agenda behind the Social Charter - protecting the vested interests of trade unions in Northern Europe from the impact of the Single Market - remains underplayed in the media and hidden from the public;

- the Commission is determined to achieve a broad political mandate for extending its role in social and employment policy;

- the TUC and the Government's political opponents will press for as comprehensive a charter as possible, and will seek to capture opinion with simplistic 'social justice' rhetoric;

- some of the Government's own supporters do not understand the reasons for fighting the Social Charter. This is because they have not focussed on the implications for extending the Commission's role, nor realised that the small print of the present text is wholly inconsistent with everything you stand for;

- there is much potential for your attitude to social policy, and the Government's record on it, to be misunderstood; and for you to be unfairly characterised as against social justice as well as 'negative' on Europe.

Why is a Social Charter Considered Necessary?

There is firm political and economic purpose behind those pressing for it. They are not motivated simply by a belief in high levels of social benefits for their own sake.

It is becoming quite clear that the main motive in France and Germany is to protect their high-cost economies after 1992 against competition from low-cost southern Member States. One way to do this is to push up non-wage costs in the south, so making it less attractive for capital to migrate south, and for cheap labour to migrate north. German officials are quite open about this.

The high wages of Northern Europe reflect not just high productivity, but also the restrictive practices of powerful trade unions. One intended consequence of the Social Charter is to strengthen trade union power. Buying 'social peace' in this way is seen, for example, by Kohl's advisers as a prerequisite for the CDU in next year's German elections, and German employers see it as a price well worth paying to help get Kohl re-elected.

These arguments however remain largely hidden from public view. The Commission, for example, is carefully relying on the standard argument about the need to 'complement' for workers the benefits which the Single Market will bring for industry.

Except for the UK, no-one has much to say about the crucial need to recognise diversity of national practice. Indeed little is being said about individual Member States' records on social policy. That is not seen as the issue. A Social Charter talking about 'minimum standards' is rather seen as a means to an end, not an end in itself.

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None of this can give us much comfort. With so many Governments prepared to accommodate trade union vested interests, it will not be enough to say we have a good record on social policy which others should please respect.

Critique of the Commission's draft Social Charter

The overwhelming criticism is that it will produce higher, not lower, unemployment in Europe and act as a deadhand on productivity and growth. As a device for intra-European protectionism it will produce a new form of Euro-scelerosis. It will be a gift to American and Asian competitors.

Some main examples of this are:

(i) **Almost total neglect of the need for general prosperity**

An effective social dimension can only flow from a wealth creating economy. This is where the true interests of workers lie. The whole emphasis of the Commission's approach is that workers' interests depend largely on the collective rights of trade unions.

(ii) **no recognition of the consequences of extending regulation**

a) minimum wages

It calls for 'decent' (ie minimum) wages throughout the Community.

Extensive research has been conducted on the economic consequences of minimum wages. They may improve the pay of those who remain in work. But they also raise the cost of employing labour. Higher unemployment is the result and frequently amongst the least well-off.

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But the narrow trade union objective is very clear. At aged 18 the statutory minimum monthly wage in France is about £430. In Spain it is £230 and in Portugal only £90. French unions are fearful of being undercut, either by migration of capital south, or labour north. This is not disguised by French officials.

(b) the burden of non-wage costs

Social rights are not costless. Many of the "rights" in the Social Charter will raise the non-wage costs of employing labour, and reduce flexibility in key parts of our labour market currently lightly regulated or not regulated at all.

Examples are: entitlement to equal treatment for all workers, maximum working week, tighter rules on part-time work, workers' right to consultation and participation, and equitable remuneration of young persons.

All these proposals imply higher costs to employers, and higher costs are a direct cause of higher unemployment.

All this flatly contradicts the approach we have adopted in the UK to free up the labour market (creating 1.4 million part-time jobs since 1983 in the process), and to leave such matters to free bargaining between employers and employees.

(c) the right to strike

The Social Charter includes the right to resort to

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collective action including the right to strike.

This would also destroy jobs not create them. In the UK we have redressed the balance between the negotiating power of employers and trade unions, and between the individual rights of trade unionists and the collective rights of trade unions. The effect has been to reduce the level of industrial conflict to its lowest level for over half a century. The Charter's approach would undermine this by strengthening the hand of trade unions to extract larger wage settlements for those in work, at the expense of jobs for those out of work.

Moreover the right to strike has never been a feature of British law, which instead has been based on trade union immunities in tort if they go on strike. We have not removed those immunities, but narrowed them and made them dependent upon trade union responsibilities eg strike ballots. This is the most dramatic example of where the Commission's approach would simply turn UK policy and law on its head and give the unions a field day. No wonder the TUC is so keen.

(iii) imbalance of rights and responsibilities

Rights cannot be divorced from responsibilities. Job creation and prosperity depends on the acceptance by workers of responsibilities. And social rights are not the exclusive prerogative of workers. For example:

- individuals have a responsibility actively to seek work. In the UK the right to unemployment benefit depends on this;

- trade unions have a responsibility to ensure their actions reflect the democratic wishes of their members;

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- employers have a right to hire non-union labour;

- employers have a responsibility to guarantee health and safety at work.

The Commission's draft is silent on responsibilities. The reason for this (frankly admitted by German officials) is that they are irrelevant to the main, protectionist purpose of the Social Charter. But it is something we must press very hard. If a social charter is agreed, matching rights with responsibilities could make a crucial difference to the way unions (or even the European Court) were able to interpret it for their own particular ends.

Implications of the Social Charter for Community Competence

The Social Charter is Delors' chosen political weapon to give the Commission an active role in social policy. No secret is made of this. The rhetoric of the 'social dimension' is a marvellous cloak for this ambition.

The Commission is already planning a whole range of legislation in the social field. Delors has just told the European Parliament that this will include measures on free circulation, work and pay, working time, consultation in the firm, and equal opportunities. The Commission, he said, "would respect subsidiarity, gradualism and partnership", but if the Treaty gave insufficient powers, the next IGC (the EMU one) might be asked to enlarge the Treaty basis on the social side too.

A Charter would not of itself be legally binding, but it would certainly be prayed-in-aid by the Commission if a Member State challenged its social policy competence in the Court. It would be bound to carry weight, as a solemn declaration by Heads of

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Government. Therein lies one great danger - that by signing up to a document ostensibly satisfactory we might nevertheless be fettering the way in which we might oppose specific measures later on.

And if the Commission's game plan succeeds, it is then not hard to see it promoting the charter approach in other areas, as a way of extending competence through political action rather than Treaty amendment. Education might be an attractive target, or consumerism, both areas where the Treaty gives the Commission few if any direct powers.

Other Member States are also worried about competence. But they seem to be far more sanguine than we are about the ability of Member States to constrain the Commission by (a) including specific exclusion clauses within a Social Charter (eg to exclude social security), and (b) relying on alliance-building thereafter to thwart specific Commission directives as and when they are proposed.

But the real reason they are much more sanguine is that they feel politically comfortable, in broad terms, with the Commission's approach. It fits in quite well with their own general approach to the social dimension and to trade unions in particular. This is Delors' and Mitterand's strongest card.

De Lors on 15% membership of T.Union

Conclusion

Unlike the CAP and EMS where we can live with some kind of system even if it is not ideal, the Social Charter is of a different nature. It attacks the fundamental philosophical roots of Thatcherism to such an extent that it will kill it. As of now, the signs are it is going to be extremely difficult to agree any text to which you can put your name without compromising a basic element of your political beliefs, and without undermining public support for your stance towards the trade unions.

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Equally, it is going to be very hard not to sign without being falsely accused of being negative and anti-European, although not signing would be easier the more outrageous the texts are. Perhaps the greatest danger is that the French will deliberately try to move the language as far as possible in our direction to reduce your room for manoeuvre.

The Way Forward

There is clearly going to be a Charter on the table at Strasbourg. Almost certainly its text will be far from acceptable. While hoping for the best, we must plan for the worst. It is too early to consider precise tactics but there are some actions which it seems essential to set in hand now to prepare the ground. In particular:

(i) **Quantify the Social Cost**

We must work out the adverse costs of all this regulation and giving in to trade union interests, in terms of jobs lost, costs raised, and competitiveness foregone.

This needs to be done in a UK context to influence domestic opinion but also, as far as possible, on a European basis too.

A slogan such as 'the Social Charter will cost a million jobs' even if it were to be over, say, ten years, would be a salutary thought. It would help us enormously in exposing the Charter's hidden agenda.

(ii) Influencing Public Opinion

We need a major and concerted campaign to influence public opinion. We must make absolutely clear the

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adverse costs and impact on jobs inherent in the Social Charter and the Commission's follow-up plans. We need to expose the underlying protectionist objectives. The Party Conference is an important platform, but action is needed earlier than that in order to ensure that others do not seize the initiative first.

(ii) An Alternative Social Charter

We must not simply be seen to criticise others' drafts. Just as with EMU, we need to develop alternatives: in this case, a Thatcherite "social charter" which emphasises that rights go in tandem with responsibilities, that the cornerstone of the social dimension is a successful economy and that what matters are individual freedoms, not collective rights.

The European Council' Social Charter – (without any added commission powers) would do.

The document you produced at Madrid was largely evidence. We have in mind now a document which is more similar in form to the Social Charter and which embodies the principles which have been the basis for our success. At the same time it should not be critical of the different approaches in other Member States: nobody would deny the success of corporatism in Germany. But this means that diversity of national practice must be protected, and their systems not imposed on us.

(iv) Influence opinion in southern Member States

There are some helpful signs that the Spanish are beginning to realise what the French and Germans are up to. We must build on this actively. The Irish, Portuguese and Greeks must also be targeted. It will make your task immeasurably easier at Strasbourg if we can get them to appreciate, beyond all the rhetoric,

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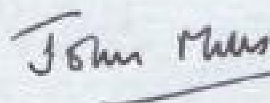
the implications for their own competitive position after 1992.

Recommendation

We recommend:

(i) Norman Fowler should be asked to put in hand work on the above points, as a matter of priority, in conjunction with the Foreign Secretary, the Chancellor and the Chancellor of the Duchy.

(ii) He should be asked to prepare an initial report with a view to your chairing a meeting with colleagues as soon as possible to establish the main lines of the Government's strategy.



ANDREW DUNLOP JOHN MILLS

CONFIDENTIAL

Ref. A089/2462

PRIME MINISTER

Cabinet: Community Affairs

1. The Secretary of State for Trade and Industry may report on:

a. the Research Council on 18 September, where there was an initial discussion of the new R & D Framework programme:

- Germany and Spain joined Mr Hogg in expressing concern at the proposed level of expenditure, while France, Denmark and Greece defended it.
- All member states called for more detail, which the Commission will provide before the next Research Council on 17 October.
- The Presidency declared its determination to reach agreement by Christmas.

b. the Internal Market Council on 18 September, where Mr Redwood represented the United Kingdom:

- Merger control was the main item. Progress was limited, although the Presidency claimed that a consensus was developing around the proposal that only mergers over 5 becu would be caught by the regulation, and on the period after which this might be reviewed. Mr Redwood said that any review of the threshold must be agreed by unanimity.

- Commissioner Bangemann made a helpful statement on barriers to takeovers (the Commission will bring forward proposals as soon as possible).

- He also tabled the Commission Communication on implementation of directives, emphasing the need for member states to improve their compliance records (ours is among the best);

c. the Industry Council on 26 September, where Mr Hogg represented the United Kingdom:

- The Commission's modified proposals for restructuring the bankrupt Italian steel group Finsider were approved 11:1. Italy remained isolated, but was warned that court action would result if the disputed closure of the Bagnoli plant was not implemented.

- It was agreed that the EC should continue exploratory talks with the US on extending the present voluntary restraint arrangement for steel, although the current US proposals are unacceptable.

- A Presidency initiative to bring a European dimension to crafts and cottage industries was greeted with some scepticism.

2. The Secretary of State for the Environment may report on the 19 September Environment Council, at which the key points were:

- support from the United Kingdom and others for the proposed European Environmental Agency, provided that its remit was

more closely defined; the United Kingdom joined those offering to host the Agency;

- Council support in principle, at the United Kingdom's initiative, for the development of an EC eco-labelling scheme;

- helpful discussions on tropical forests and transfrontier waste policy;

- adoption of a resolution on natural and technological hazards, amended to meet United Kingdom concerns; and political agreement on a directive on deliberate release of genetically modified organisms.

Despite Mr Patten's efforts to secure more time for consideration of our case, the Commission announced on 20 September that they were taking the United Kingdom to the European Court for failing to implement the Community directive on drinking water quality. Similar proceedings have already been brought or are in preparation against most other member states.

3. The Minister of Agriculture will probably report on the Agriculture Council meeting on 25-26 September. Key points were:

- agreement was reached on implementing reform of the sheepmeat regime agreed in principle last July. This means the phasing out of the United Kingdom variable premium over the next three years;

- the levels of New Zealand butter and lamb imports were settled for the next three years on the basis negotiated between the Commission and New Zealand last autumn.

Both of these issues were resolved satisfactorily for the United Kingdom.

4. Forthcoming meetings are:
   - Social Affairs Council, 29 September
   - Foreign Affairs Council, 3 October
   - Education Council, 6 October.

FER.B.

ROBIN BUTLER

27 September 1989

CONFIDENTIAL

Reference.....................................

Prime Minister

This is the EC Working Group on the Social Charter.

You may like to glance at the covering summary (first 2 pages only).

CDP

PS/SECRETARY OF STATE

cc PS/Minister of State
PS/Secretary
Mr David
Mrs Le Guen
Mr Hadley
Mr J Kerr
Mr C Powell

AD HOC GROUP: REPORT OF MEETING, 27 SEPTEMBER

1 My overall impression is that the discussion of the first day bodes ill for getting any kind of acceptable Charter to the Social Affairs Council and to the Summit. This is not principally because of the discussion of the draft Charter itself. Indeed there was considerable criticism of the Commission Charter and its approach from a number of countries. Denmark has fundamental objections to the pay articles; Portugal is similarly opposed to Article 5; many countries are concerned about subsidiarity; and Germany has serious problems with the vagueness of many articles.

2 The difficulty we face is that the French Chairman shows no signs of accommodating us in any way compatible with our record of President Mitterrand's statements to the Prime Minister. Neither is he (so far) taking much account of the Madrid conclusions. He is totally attached to the Commission Charter and clearly wants to present a revised version of that rather than something which is drafted with the political objective in mind. The French and the Commission are clearly in close collaboration on this whole exercise, and the French delegate - almost alone of any member state - is simply approving and parrotting the Commission text.

3 I think that some other countries are also concerned about this. I know the Germans are unhappy at the way the Chairman treated some of his fundamental objections. The Danish delegate cannot be happy either, given that the important points he raised about subsidiarity had been given very cursory treatment indeed.

Reference.......................................

4 I attach a detailed commentary on the discussion: to summarise, we had a morning dealing with general points and the afternoon dealt with articles in the revised draft Commission Charter, tabled at lunch time, in which we reached article 12. I reserved our position to return with new points on articles which had been subject to major revision or redrafting since the text on which our brief was based.

5 Needless to say the Secretary of State and the Prime Minister's positions at the Social Affairs Council and the Summit have been completely reserved.

G L REID

Ext: 5824 28 September 1989

CODE 18-77

1 The meeting began with a number of procedural points following statements by the Chairman and the Commission. A couple of these points are of interest. First, Denmark asked whether they could be given a note of the consultations the Commission had held with the two sides of industry. This consultation had been important and requested by the Council. Degimbe replied that no note existed and the Commission did not intend to produce one. Denmark then made the point that the Madrid Conclusions suggest that the Council should consult the sides of industry before the Social Charter is discussed at Strasbourg. No one quite knew what to make of this, (I cannot see the Prime Minister consulting the TUC) and the Chairman took note and agreed to put the point to Soisson.

2 Secondly, Greece asked whether the group would put their signature to the final report. I pointed out that our task was to inform the Presidency of our views on the Social Charter, and for them to put a text to the Social Affairs Council. There was no requirement on the Working Group to agree this. The Chairman accepted this interpretation.

3 We then went into the general discussion which had been requested the previous evening.

4 Germany led off with their usual points. They did not want any grey areas in the Charter. Articles should either be the strict application of legal minima; or the application of political instruments which were completely non-binding and which should be ruled out of the jurisdiction of ECJ. (I subsequently spoke to Clever on the way to the airport about ECJ, and there may be common cause to be made with the Germans on this subject.)

5 Discussions with both sides of industry meant that trade unions expected legally binding social instruments and his country supported that. We must however be clear which areas were suited to minimum legal norms and there should be precise wording. He also attached great importance to acting with unanimity. He pointed out the immense differences between national practices and did not feel that any state should be forced to accept anything contrary to their practices by majority decision. He did not want article 118A to be turned into a general power since if that did happen it would cause great difficulty for the social development of the Community. A more limited catalogue of minimum rights was much better than flowery phrases. It was a risk, but a calculable risk, to have minimum standards. He accepted it would dispense with national sovereignty to some degree but felt that the social advance required this provided there was unanimity.

6 Denmark said they were generally content with the notion of a solemn declaration and agreed that fundamental rights should be stated. They however felt that too little attention was being given to the Social Dimension, on employment growth, unemployment, qualifications, employment policies and so on. While this is mentioned in the introduction there should be a more in-depth analysis of these areas in a separate chapter from the area dealing with social rights: this would effectively be a two part declaration.

7 The Danish delegate was also concerned to identify clearly the implementation basis of each article in the interest of securing the subsidiarity condition.

8 I then came in with a statement based broadly on the brief, adding a strong statement against regulation, quoting Soission "opening the door" statement at the dinner as an indication of our doubts about competence; and making the point that we have to

decide what kind of Charter we want, with a broad political statement of aims being more to our taste. Effectively I rolled up parts 1 and 2 of the brief into one.

9 Luxembourg fully supported the Charter. It was a major building block towards the completion of the market and it would avoid social dumping. Subsidiarity should be defined and things could be dealt with below Community level, they should be and not referred to the Community. They broadly agreed with Germany on the substance of the declaration.

10 Italy joined Germany in agreeing that the Charter should be binding perhaps on a limited basis to supplement existing regulations.

11 Ireland said that the Charter should contain general principles. Subsidiarity should be made clear, and the key point was the impact of the Charter on employment and unemployment. In member states with high unemployment there was a need for flexibility to allow experiment, and the reduction of unemployment was top priority. They also strongly emphasised the wide diversity of practice between member states, and shared our concern on the legal basis of the Charter and the possible role of ECJ.

12 Belgium felt we must have concrete measures and binding standards.

13 Portugal thought that minimum rules could be accepted but they must be precise and not general principles. Binding legislation was not acceptable unless it is clearly spelled out beforehand what effects it might have. There should be no grey areas and the legal basis of the Charter must be clear. Subsidiarity was important.

14 Greece would like a legal framework but would be satisfied with a general declaration if progress could be made more speedily in that way. They would not want a regulatory role for the Commission, but rather a co-ordinating one.

15 Germany came back to support the Danish proposal.

16 Netherlands made a short intervention in which they effectively reserved their position until the new text was available.

17 Spain had no problems if the rights were legal but aware that this was a problem for others. We must ensure that the social field did not lag behind the economic development of the Community.

18 The Commission spoke last. Degimbe agreed that grey areas should be avoided, and suggested that avoiding the ECJ scenario would require either a political decision or a clear differentiation between principles and instruments. The Charter would be a political decision but the EC retained a right of initiative and would go ahead with its action programme. He would not wish to have regulations which caused major difficulties for member states to implement.

19 In his concluding observations the Chairman noted that 11 countries had agreed at Madrid on the preliminary draft and that we should now begin to work on individual articles. We must take a pragmatic line on competence, subsidiarity and so and must avoid grey areas.

20 We then turned to discussion of the individual articles in the revised Charter as discussed by the Commission yesterday morning.

Article 1

21 Germany made clear its fundamental objections to the drafting of article 1. Free movement without conditions was not acceptable and Germany expressed its disappointment that the Commission was trying to ignore the clear wish of the Heads of State and "just slip things over". This created mistrust. The Charter was about workers and not citizens, and this was the only basis on which Germany would agree.

22 This conclusion was endorsed in various way by the UK, Denmark, Netherlands, Ireland, Italy, Luxembourg and Belgium. Portugal and France agreed with citizens, and Greece was ambiguous.

23 The Commission accepted that it had no counter arguments to the German line. There was however a political argument that free movement of persons was needed in the context of the social dimension. I argued strongly that this was precisely the kind of "blank cheque" approach of which we had complained at Luxembourg. If the Commission wished to move in this direction it should make proposals in a quite different forum and not try to get unspecified agreement in the Charter.

24 The Chairman agreed that the Charter should deal with workers and not citizens, and this should read through to all the other articles. Article 2 was agreed without debate.

Article 3

25 I queried the reference to taxation, and also asked what was meant by "in all fields": Denmark agreed with this last point, and pointed out that equal treatment was already covered by the Treaty. A few other countries made detailed points, but the highlight of this article was a violent argument between Germany and the Commission about "territoriality " in social security.

Since Degimbe had not been briefed and was not fully in touch with the facts of the situation, the exchange was somewhat inconclusive.

Article 4

26 Denmark felt the reference to family reunification caused great difficulties and should be deleted. Present regulations would suffice. Germany, Belgium and Netherlands agreed. Italy disagreed.

27 Germany had misgivings about the second indent on mutual recognition because of technical points and I agreed with their reservations: so apparently did Italy.

28 The third indent, on frontier workers, may not be necessary in the light of the deletion of citizens.

Articles 5 and 6

29 I opened, saying that we found this fundamentally difficult. It was anti-competitive and implied wage regulation of some king. I asked whether there was a hidden agenda on preventing illegal low payments.

30 Germany took the opposite view to us, and so did Denmark.

31 The Commission pointed out that the key issue here was the public works contracts, and Degimbe gave an example which I pointed out seemed to be completely undermined by the addition of the word "non temporary" in this article (and article 6).

32 Portugal then entered with serious reservations. This was very difficult for them, given the protectionist tendency of these articles. As it stood it was unacceptable. Germany felt we might have to reflect further. There were however problems arising for

Germany which required understanding. Employers were shifting job within the law and still having work done at below due rates in Germany itself. This was "social dynamite".

33 The Netherlands felt the ideas in 5 and 6 were important and possibly indispensable, though the Commission edition might be very difficult. Spain also felt they were problematic for the reasons raised by Portugal though "economic and social cohesion was vital".

34 There seems to be some kind of consensus that article 5 might be dropped, but the issue of sub-contracting might be represented in a revised version of paragraph 6.

Article 7

35 This was agreed with some version of the addition made by the Commission.

Article 8

36 Denmark was very concerned. The text of the Charter should state clearly that wage fixing took place at the national not the Community level. They wanted to be clear that there was no EC competence in wage fixing and no scope for such competence. If there was any doubt Denmark would not sign up to a Charter in December. In a subsequent intervention Denmark pointed out that just by mentioning wages EC might be given competence. The speech by Delors to the European Parliament was quoted and Denmark's reservations again made very clear. A number of countries swung in behind Denmark, including Germany, Portugal, Italy, Ireland, Netherlands and Belgium.

37 I recorded our fundamental objection partly for the Danish reason of subsidiarity and national differences being ignored, but also because of the regulatory nature of the article. We had no intention of introducing rules into our wage system.

38 France said we had to ensure that there was a clear statement of the right to fear remuneration, and Greece broadly agreed.

39 Germany suggested deleting this article which was not essential to Germany, but the Commission said trade unions would find it difficult to live with a Charter which had no reference to pay. Degimbe said it had never been intended that EC would be given competence in fixing remuneration, and Delors' speech was a response to a debate in general terms rather than a specific intent to move in that direction.

40 The Chairman said we could not really delete pay given that the two sides of industry had seen the draft Charter with this article in. National competence must be made clearer and the wording must come closer to article 4 of the Council of Europe Charter.

Article 9

41 There was little discussion of this, though the Council of Europe provisions were noted. There was however another debate on the Danish proposal for a text on employment policies. No decision was taken on whether the structure of the Charter should be amended.

Article 10

42 A number of countries, led by Germany, felt the reference to "European labour market" was misleading.

43 I argued that the introduction to this article was vague but acceptable in the preamble, but that the individual clauses were unacceptable for the kind of Charter we should be drafting. We should be concerned with flexibility and not regulation and we would find these clauses impossible to accept in the context of our national ways of fixing working time.

44 Germany shared our desire for flexibility but felt there were difficulties with some new kinds of labour contracts. Minimum standards might be needed.

45 Portugal and Ireland felt that the practicalities of this instrument might cause problems: what body or instruments would deal with these areas?

46 France felt that a general statement would fall well short of legitimate expectations and that something more precise was needed.

47 The Chairman felt it would be difficult not to deal with this area which could either be stated in the preamble or kept in the body of the Charter with revisions. A redraft will be attempted.

Article 11

48 Germany proposed that this should deal with EC nationals, and proposed legal minimum standards of 24 working days or four weeks annual holiday. Denmark, Belgium and Luxembourg agreed, as did Portugal and Greece in principle though they would wish to look at the practicalities. I entered our strong objection to a legal provision in areas where our national approaches were quite different.

49 I was asked why in that case we had signed the Council of Europe Charter which provides two week minimum holidays. I replied that the implementation of the Charter was left entirely to member countries to achieve, and we had chosen to do this through collective bargaining and contractual arrangements. Rather surprisingly, Germany agreed that thought needed to be given on how the minimum four week holiday should be implemented, and that the route depended on individual countries.

50 The Chairman recorded a consensus on this item.

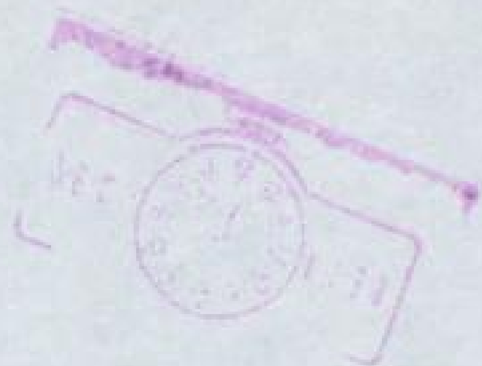
Article 12

51 This began with a quite incomprehensible debate between Portugal and the Commission about contracts of employment. When this was finished I reserved our position on this article but said I thought it unacceptable given that Civil Servants did not have contracts of employment. I also pointed to yet another example of sloppy Commission drafting, eg. the article would imply that self employed workers had to have a contract of employment, and that it was yet another imprecise area.

52 Germany saw dangers in this and asked why we should change, when things worked well already, (an argument which might demolish most of the Charter, although they did not extend it in this way). They noted the bureaucracy which would follow, as did Ireland. France as usual shared the EC view though accepting that the wording needed change.

53 The Chairman agreed that we would come back to this article which was "clearly talking about private sector employees". The wording should be improved.

54 This concluded the session, and the Chairman suggested that we should follow the same procedure at Brussels of having only one delegate in the Conference chamber. I said this was quite unacceptable and that while I would be the delegate who would present the UK position, I would be accompanied by as many colleagues as I felt it necessary to bring. Other delegates nodded at this and the Chairman retreated.



cc P.U.

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

The Rt Hon John Major MP
Secretary of State for the Foreign Office
Foreign and Commonwealth Office
Whitehall
London SW1A 2AH

26 September 1989

Dear Secretary of State

Single Market in Veterinary Medicinal Products

I am writing about a competence issue which has been raised by a Commission discussion paper on future arrangements for licensing medicines, both for human and for veterinary use. The issue was examined on the basis of a joint DH/MAFF paper by officials in EQO on 31 August, and it was agreed that colleagues in the Department of Health and I should separately let you know how we propose to respond to a Commission request for comments as it affects our respective responsibilities. David Mellor has already done so in his letter to you dated 22 September covering human medicines.

at flag

For veterinary medicines the current position is as follows. Medicines which are administered by incorporation into animal feedingstuffs are already subject to Community arrangements, and may be used only if they are approved by Commission regulation. Licensing decisions for other medicines are taken by Member States; in certain circumstances Member States must await the opinion of a Community expert committee before reaching a decision, but are not bound by that opinion. The Commission have made interim proposals, not yet discussed in detail, which would make the Committee's opinion binding in certain circumstances. The Commission's new discussion paper reviews these arrangements in the context of the advent of the single market in 1992, and

/explores the possibility...

explores the possibility of introducing more harmonized arrangements, either by strengthening the existing Committee procedure with binding opinions (ie developing the iterim proposals), or by moving to a centralised EC body with decision-making powers.

The single market context for the discussion paper derives from the fact that veterinary medicines are traded products, but had historically been subject to national licensing arrangements. Starting in 1970 the Community has elaborated procedures to start harmonizing these arrangements; further work is needed to complete this process and remove remaining technical barriers to trade. Furthermore, it is inevitable that residues of veterinary medicines remain in food produced from treated animals, and there is therefore an intimate link between the regulation of veterinary medicines and the regulation of production and trade in agricultural products of animal origin.

Although these areas clearly fall within Community competence, the interim proposals and the new discussion paper would involve a transfer of decision-making from Member States to a Community body. Because such a body would be established and funded by the Community, and because licensing decisions are necessarily based on criteria related to public (and animal) health, legal advisers in EQO could not discount the possibility that the precedent established by such a transfer, even if only (at first) for veterinary medicines, might be used by the Commission to extend their competence into other public health areas, with implications for the position the Government has adopted on other public health matters.

In view of this, and subject to your agreement, I propose that in their reply commenting on the Commission's discussion paper, officials should draw attention to the practical difficulties involved in the approach taken in the Commission's interim proposals, difficulties which would need to be explored during negotiations about to start. This will provide an opportunity to assess the extent to which it is possible to negotiate satisfactory solutions, and to take further account of the competence implications, before a final decision is needed. I attach a draft with which I hope you can agree.

I am copying this letter to the Prime Minister, colleagues on OD(E), Peter Walker, Malcolm Rifkind, Peter Brooke, and to Sir Robin Butler.

Yours sincerely

A Thebrecht

JOHN GUMMER
(approved by the Minister and
signed in his absence)

ANNEX A

DRAFT LETTER FOR UKREP'S SIGNATURE

F Sauer
DGIII

I am writing to convey the views of my authorities on the Commission's "Memorandum on the Future System for Authorization of Medicinal Products in the European Community", circulated in April. My authorities agree strongly with the considerations set out in sections 3 and 4 of Chapter VII of the Memorandum which establish that, although there needs to be a broad similarity between the approach taken to licensing human medicines and to licensing veterinary medicines, there are some significant differences between the two sectors. This letter, therefore, responds only in respect of the veterinary medicines sector: a separate reply will the address the issues raised in respect of human medicines.

My authorities consider that the fundamental objectives of medicines licensing are to protect consumer, animal and environmental health by means of an independent scientific appraisal of products' safety, quality and efficacy. These objectives are not altered by the advent of the single market, although the means of achieving them might be affected. My authorities are grateful to the Commission for preparing the Memorandum which reviews licensing procedures in the single market context.

My authorities do not, at this stage, have any firm view in principle on whether future arrangements should focus on a centralised or a decentralised approach. As the Memorandum points out, the use of veterinary medicines in food producing animals impinges on Community policies relating to production and trade in food produced from those animals. These considerations are less relevant in respect of medicines for non-food animals.

My authorities would not wish to rule out the possibility that future arrangements could operate flexibly, with decision-making resting at national or Community level as appropriate for different categories of medicine, provided that all such procedures were adequately controlled, and included adequate appeal procedures.

My authorities note that in its interim proposals to extend and update Community provisions relating to the licensing of veterinary medicines (document COM(88) 779) the Commission has already made proposals which constitute a major step towards developing a decentralised Community licensing system, involving the determination at Community level of maximum residue limits, and the introduction of binding opinions delivered by the Committee for Veterinary Medicinal Products. These proposals have yet to be examined in detail by Council groups. My authorities would view this examination by the Council as an opportunity to explore in depth the issues raised by the decentralised approach. These issues include:

a) whether it is practicable for periodic meetings of a body made up of named experts to deal satisfactorily with the volume of work to which, it is hoped, this approach will give rise;

b) the cost, both to the Community and to Member States, of servicing the structure, of handling the large quantities of scientific information involved, and of providing the appropriate expertise to deal with the wide range of scientific issues on which the Committee would be asked to decide;

c) the legal status of Committee opinions which, on the present proposals, would have the legal authority of neither the Commission nor the Council;

d) the implications for the constitution and membership of the

Committee if it were to be vested with powers to make legally binding decisions, for which it should be accountable in the event of litigation;

e) the political implications were the position to arise (as it has done on human medicines although not, yet, for any veterinary medicine) were the Committee opinion to be favourable to a particular product about which a Member State was known to have reservations or, in the extreme, had already taken action to keep off the market;

f) the desirability, in a regulatory system in a democratic society, of allowing applicants for marketing authorizations access to an independent, but expert, appeal procedure.

The extent to which it is possible, in discussion, to resolve these issues and to elaborate arrangements which are efficient, cost-effective, accountable and fair, should influence the approach to be taken subsequently.

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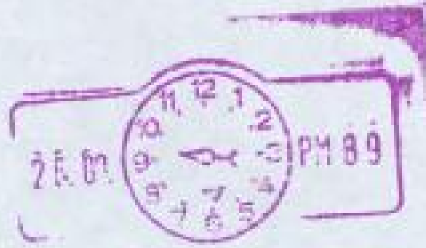

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EV

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS

Telephone 01-210 3000

From the Minister for Health

CC. Margaret Thatcher

Rt Hon John Major MP

22 SEP 1989

Dear M. Major,

EC SINGLE MARKET AND PHARMACEUTICALS

Introduction

1. I am writing to seek your agreement and that of other members of OD(E) to a paper which my officials are proposing should be sent in reply to a memorandum by the European Commission on ways of achieving a Single Market in medicinal products after 1992 (draft response is at annex A). The memorandum is concerned with future arrangements for the licensing of medicinal products. Whilst the paper does not commit Ministers to any proposals I think that colleagues should be aware of the issues involved especially as they include a question of extending the competence of the Community in the public health field.

Background

2. Most member states have well established systems for the licensing of medicines. In the UK, under the Medicines Act 1968, Health & Agriculture Ministers act as the licensing authority for human and veterinary medicines. Medicines may not be marketed without a licence.

3. Completion of the internal market in medicines is incompatible with the continuation of arrangements under which a medicine may be licensed in one part of the Community but not another and under which licensing decisions are wholly matters for the national authorities.

4. Ever since the first medicines directive in 1965, the Community has been aiming for full mutual recognition of licensing decisions. Much progress has been made in harmonising the technical requirements which companies must satisfy but much less towards convergence of decisions taken by national authorities. Such decisions depend on subjective assessment of potential risks and benefits of medicines. National differences in medical practice and therapeütic conditions necessarily influence the decisions reached.

5. In Spring 1988, OD(E) gave Tony Newton (then Minister for Health) approval in correspondence to allow officials to explore ways of achieving a Single Market in medicinal products after 1992, including the option of establishing a supra-national licensing agency. This agreement was without prejudice to the ultimate decision or to the UK's commitment to 'mutual recognition' in other Single Market areas. The supra-national approach was to be considered because experience had shown that the alternative course of automatic mutual recognition was unlikely to be acceptable.

E.R.

Current Position

6. The European Commission is committed to making formal proposals to the Council before the end of the year to achieve the Single Market in pharmaceuticals. The Commission believe that automatic mutual recognition of licensing decisions will not find acceptance and that if the Single Market is to be achieved after 1992, some means must be found by which differences of view among competent authorities on licensing applications can be resolved. Member states generally share this perception. In a memorandum issued earlier in the year the Commission sought views on this matter; these are now due. The proposed UK response on medicines for human use is at annex A. While there is much common ground between medicines for human and veterinary use and my Department and MAFF are keeping in close touch on the matter, there are sufficient differences to justify the separate response which MAFF will be making on veterinary medicines.

7. As it is clear that automatic mutual recognition of national licensing decisions is unacceptable, officials' preferred option is for some form of supra-national agency to license medicines, initially with a limited remit, to work alongside national agencies. They recognise, however, that majority opinion among member states appears at this stage to favour instead a strengthening of current arrangements whereby the Committee for Proprietary Medicinal Products (CPMP), a Community body comprising representatives of national competent authorities and the Commission, is given powers to issue binding opinions to member states on licence applications instead of the non-binding opinions it now gives (a summary of existing arrangements is at annex B).

Community Competence

8. Recent discussion in EQO raised the question of whether setting up a supra-national agency or strengthening the CPMP would involve the transfer of a new competence to the Community. EQO considered that this issue should be put to Ministers before the reply was sent to the Commission.

9. Extensions of Community competence to new areas may impose new obligations on member states, can constrain domestic law and increase Community expenditure. In the field of health, the Commission is believed to have an eye on areas which include alcohol abuse, disease prevention, health information for minorities and health promotion.

10. There is a risk that if either of the options in paragraph 8 were implemented the Commission would seek to use the extension of Community powers involved as a precedent for extending Community competence into other areas of public health. Against this it can be argued that the Community control over medicines regulation is necessary if the single market is to be achieved and that this step had no implications for Community involvement in other areas of public health where economic consideration relating to completion of the single market did not apply. I believe that this is a strong and persuasive argument but the issues are not clear cut and the risk is there, however small. I think this is a risk we must be willing to take if we are to keep to our commitment to complete the internal market in human medicines which is bound to involve some transfer of competence to the Community.

Barriers to Trade

11. In preparing a response to the Commission, my officials took account of the results of a consultation exercise they conducted on the Commission's memorandum, including the views of industry. I am satisfied that the proposals are likely to result in a removal of technical barriers to trade and will not discriminate against third country suppliers.

Costs

12. It is very difficult to estimate the cost of a supra-national agency as much would depend on its precise remit and mode of operation. The present annual costs of the UK Medicines Control Agency are around £12m. This has a much wider remit than a supra-national agency might have initially. However the costs of a European agency might well build up to a figure in excess of the UK agency within a few years. There should however be offsetting reductions in the cost of national agencies as the new European body developed. A strengthened CPMP might cost consideratbly less but with less prospect of savings at national levels. Apart perhaps from start up costs, we would expect the expense to be met by licence fees paid by the industry.

Conclusions

13. A final UK position on the future arrangements for the regulation of medicines in the Community need not be taken until we have considered the Commission's specific proposals, which will not be published until later this year, and formal negotiations begin. So at this stage I am not seeking a firm commitment to any specific approach. However, I invite colleagues:

a. to note the paper prepared by officials setting out UK comments at this stage, and in particular that some loss of national authority over the regulation of medicines is necessary if the Single Market in human medicines is to be achieved; that paper (paragraph 20) expressly reserves the position of Ministers on the acceptability of <u>any</u> proposals for completing the single market until they have satisfied themselves that the proposals are acceptable - including the maintenance of acceptable standards of public health in the UK.

b. to note that any transfer of competence in this area of public health may give rise to some risk that the Commission will attempt to build on that in other areas where similar economic (single market) factors do not apply; but to accept that this is a risk we have to take if we are serious in our commitment to complete the internal market in human medicines - a market in which the strong UK pharmaceutical industry already has a large and developing share.

14. Officials need to respond to the Commission by the end of the month if we are to have any real opportunity of influencing the formal

E.R.

proposals for completing the Single Market in medicines which the Commission have a commitment to produce before the end of the year. Replies by 27 September would therefore be helpful. There will of course be further opportunity to determine the UK position when negotiations begin on formal proposals from the Commission.

15. Copies of this letter go to other members of OD(E), Peter Walker, Malcolm Rifkind, Peter Brooke, the Prime Minister's office and Sir Robin Butler.

Rachel Woosley

pp DAVID MELLOR

(agreed by M. Mellor and signed in his absence.)

Annex A.

DRAFT ccunsdoc

COMMISSION MEMORANDUM ON THE FUTURE SYSTEM FOR THE AUTHORISATION OF MEDICINAL PRODUCTS IN THE EUROPEAN COMMUNITY:

UK RESPONSE IN RESPECT OF MEDICINES FOR HUMAN USE

INTRODUCTION

1. This paper provides the UK response to Commission Memorandum 111/B/6 of April 1989 in respect of medicines for human use. A separate paper will deal with medicines for veterinary use.

2. Before discussing options for post 1992 systems, the UK wish to confirm its general support for the objectives which any future system should meet, set out in the Commission's paper in particular:

"2a. A scientific evaluation of dossiers for authorisation by the best European experts which can be recognised throughout the Community.

2b. Criteria of quality, safety and efficacy based upon rigorous requirements imposed by harmonised Community legislation.

3d. Objective criteria for evaluation, based exclusively on the quality, safety and efficacy of the product, expressed in evaluation reports.

4c. A single scientific evaluation valid for the whole Community in order to prevent discrimination in favour of national companies, repetition of evaluations, waste of human resources, proliferation of files and duplication of administrative costs and

2c. Clearly defined political and legal responsibilities for each authority dealing with the authorisation of medicinal products in the Community and the refusal or withdrawal of products from the market."

3. Another factor which the UK wishes to stress is that any arrangements must be capable of dealing with a large and growing volume of business. It should be emphasised that whatever centralised or decentralised systems are adopted, they will have to deal with:-

a. all applications for new active substances in the Community;

b. potentially very large numbers of applications under the Article 4.8 a.iii procedures of Directive 65/65;

c. all variations to licences granted under (a) and (b).

The workload associated with C for example is likely to be considerable since on average a new active substance produces 12 Variations a year some of which can raise issues comparable to those arising from the original application.

4. The chosen system must be capable of providing for single uniform decisions on all these types of applications and for handling the work involved efficiently, economically and consistently, both in the interests of industry and the public agencies which may be involved, and the consumers.

Centralised and Decentralised Systems

5. The Commission paper outlines possible approaches based on 'decentralised' or 'centralised' systems. Any decentralised system would, however, need to provide some means of resolving differences between responsible national bodies at a Community level. This makes the question of how to provide for the satisfactory consideration and determination of regulatory matters at Community level the key issue in the context of a decentralised system as well as a centralised system.

6. Within a decentralised system any mechanism for resolving differences at national level must be based on a development of the role of the CPMP.

7. Within a centralised system there is a choice between building on the CPMP or deciding to develop a new European institution with powers to make

legally binding decisions applicable throughout the Community. Even if a new institution were set up, a role for the CPMP would probably continue (see Paragraph 12 below). If it is decided <u>not</u> to establish a new institution, then the question of how to develop the work and role of the CPMP becomes the key consideration within a centralised system as well as within a decentralised system. The CPMP would be the common and most important element within either system.

8. The UK recognise that the CPMP has given and is giving much time and thought to how it should develop its role to meet the increasing demands now being placed on it under both the multi-state and concertation procedures. For the future, however, the UK have serious concerns about the extent to which it would be advantageous to build on this approach post-1992 were the CPMP to be empowered to take legally binding decisions on behalf of the Community. These concerns include:-

a. whether it is practicable for a structure based around periodic meetings of representatives of the national agencies/expert advisory bodies to deal with the increasing volume of work which will build up in respect of all the areas of work outlined at 3 above. The viability of this approach seems questionable;

b. whether the CPMP has in its membership the appropriate expertise to cover the extremely wide range of matters on which it would be asked to decide;

c. unless the CPMP remained essentially a body of national representatives, there could be difficulty in devolving any

authority to eg a secretariat to take any decisions on its behalf. But without such delegation there is a real risk that the system would become seriously overburdened;

d. the implications for the constitution and membership of the CPMP if it were to be vested with powers to make legally binding decisions, for which it would (presumably) be accountable in the event of litigation (the UK licensing authority's own experience suggests this is a <u>real</u> issue which need to be clearly resolved);

e. there are also political implications in respect of the public accountability for decisions of the CPMP. Situations may well arise where one or more member states is known to have opposed the grant of a marketing authorisation but to have been a minority voice in the CPMP. Will member states be expected, where necessary, publicly to support CPMP decisions they themselves may have opposed?

f. potential difficulties in the multi-state procedures in respect of a negative binding opinion from the CPMP over a product already on the market in one or more member states.

<u>A Central Agency</u>

9. It was partly because of these concerns that the UK, in its evidence to the Commission in September 1988, whilst rejecting both automatic mutual recognition or a central agency fully replacing the competent national bodies, took the view that the development of a central agency - a new

institution - perhaps working alongside a decentralised system - might offer the best way forward. It is the UK view that a central agency would best meet the objectives outlined by the Commission.

10. The UK understands the concerns that a new central agency could damage the viability of existing national bodies and accepts that any such agency might initially have a relatively narrow remit. For example it might be concerned only with those applications which involved new hi-technology or bio-technology proposals currently subject to the concertation procedures, such applications being put direct to the central agency by companies. Alternatively or additionally companies might prefer to have the option of putting any new active substance application direct to the agency,though this would make it difficult to plan the workload of the agency.

11. An agency with a remit limited as outlined in paragraph 10 would not deal with the range of applications which currently may be considered under the multi-state procedures. Under this system, however, it would be possible to envisage the continuation of a role for the CPMP in respect of those procedures, dealing with applications not going to the agency. Such a dual system could provide a possible further role for a central agency as an appellate body to determine cases where a member state or states had serious or fundamental concerns about a particular application but was a minority within the CPMP and discussion in CPMP was unable to resolve differences (this legal liability would raise similar implications to those mentioned earlier at Paragraph 8(d) in respect of the CPMP). It would also be possible to provide for a company to have a similar right of appeal from the CPMP's opinion where this was not in its favour. The possibility of an appeal from the CPMP might help to make any change to strengthen the powers of the CPMP (eg to give legally binding opinions) more acceptable both to member states and to companies.

C

12. The UK has submitted separately to the Commission a discussion paper outlining how a central agency might be established and operate (under cover of Mr Cox's letter to Mr Sauer dated 4 August).

A strengthened CPMP

13. Whether or not the Community decides to establish a new central agency, separate from the CPMP, a continuing role for the CPMP seems inevitable for some time ahead. If a central agency is not established as outlined above, the CPMP would have to be the key institution within either a centralised or decentralised system. If so the UK consider that it would be essential to strengthen and improve the operation of the CPMP in the following respects:-

a. establishing extended and improved expert advisory machinery to support the work of the CPMP. This could include specialist advisory panels to whom CPMP could refer issues for expert opinion. This would be a development of the role which the Biotechnology Working Group currently performs in support of the concertation arrangements;

b. developing a much strengthened professional and administrative secretariat for the CPMP, capable of supporting the volume and nature of the work involved, including the build up of central records and data.

14. It would also be important to review the status of the CPMP ie its membership, terms of reference, and procedures and to make any changes

necessary (eg clarification of representation and voting rights) to take account of any enhanced powers and responsibilities. This should include clarification of the legal implications for the CPMP and member states of a power for the CPMP to issue legally binding opinions and the scope for appeal at least on points of law.

15 The UK also considers that prior to any change which gave the CPMP power to issue legally binding opinions, the Community should achieve significant further progress in harmonising the licensing requirements of member states and the criteria they use in assessing licensing applications (which despite the substantial progress made in recent years still are a cause of avoidable differences of opinion within the CPMP). Specific areas for further progress include;

a. the structure and content of the assessment report to be exchanged between agencies;

b. updating of old, and when necessary, production of new CPMP guidelines, in particular for efficacy;

c. harmonising general requirements for product quality;

d. all areas of assessment for vaccines, serums, blood products, immunologicals and radio pharmaceuticals;

e. clinical dossier requirements in the Notice to Applicants.

16. The UK would also think it important to ensure that member states would remain able, if they wished, to receive the complete dossier of any

application considered by the CPMP whether or not they were the rapporteur.

Pharmacovigilance

17. The UK firmly endorses the Commission's view that pharmacovigilance is an issue of major importance for any future system as well as for the present one. The UK also believes that the collection, assessment, analysis and interpretation of pharmacovigilance data would be best carried out nationally. This is because of the differences of various kinds that exist between the member states, including differences in the methods of collection and assessment of reports, clinical practice and patients' perspectives on drug needs. In addition, many products will continue to be marketed work different indications in different member states for an indefinite period. Community procedures should, however, be such as to enable necessary pharmacovigilance information to be brought together centrally so that a consensus view can be reached on suspected drug hazards. The arrangements must be capable of allowing rapid action to be taken within the Community to deal effectively with major hazards. The Rapid Alert scheme should assist in this respect and, together with the establishment of the Pharmacovigilance sub group, should help to improve communications between regulatory authorities on drug safety issues.

18. The UK regard the specific legislative measures that the Commission intend to introduce as important. It may be useful however, to focus particular attention on the most important reactions, ie those that are serious and fatal and those in relation to newly marketed products.

19. Turning to the review of the obligations on member states currently set in Articles 30 and 33 of Directive 75/319/EEC, the UK believe that great care will be needed if new requirements on member states are to be clearly understood and practicable. In the case of highly efficacious but very toxic drugs, the UK favour the procedure already used in member states under which marketing authorisation is granted initially for limited indications which can be expanded when more efficacy and safety data are available. There would be concern about any general use of a procedure under which drugs were subjected to very limited testing prior to marketing on the basis that further information would be gained from "phase iv" studies. UK experience has been that the quality of such studies has been mixed and that in many cases marketing appears to have been the prime objective of the study.

CONCLUSION

20. The UK has found difficulty in commenting on the proposals in the Commission's paper because at this stage many of the key aspects of either a centralised or decentralised system remain to be clarified. It hopes, however, that its contribution in this paper on the choice of system and pharmacovigilance, and in the discussion paper submitted separately about a central agency, will assist the Commission in the preparation of more definitive proposals. Until these proposals have been made and studied the UK would not wish to commit itself to a firm position on the choice of systems. Indeed, whilst recognising that in the words of the Commission's paper 'a major transfer of executive competence (or of sovereignty)' is necessary if the goal of a single market authorisation is to be achieved, UK

Ministers wish to reserve their position on the acceptability of any particular proposals to that end until they can satisfy themselves that the proposals are capable of meeting satisfactorily the objectives set and of maintaining acceptable standards of protection of the public health.

21. Subject to these reservations, the UK is of the view that the development of a new central agency properly constituted with its own powers to issue marketing authorisations and to discharge the post marketing responsibilities of drug regulation remains the best long-term option for the Community to develop. It recognises, however, that there are serious problems in establishing a body which from the outset would take over most of the responsibilities of national agencies; and that there are also problems in establishing a central agency with a limited remit operating alongside the CPMP and national agencies (though it does suggest a possible working relationship with the CPMP - as in paragraph 11 above). If the Community wishes to take the option of developing the role of the CPMP within either a centralised or a decentralised system, the UK would wish to satisfy itself that its concerns, as outlined in paragraph 8 above, and the steps to strengthen and clarify the work of the CPMP as outlined in paragraphs 13-16 above had been satisfactorily progressed before the CPMP was invested with any new legal powers.

Annex B.

EXISTING EC MEDICINES LICENSING MACHINERY.

1. EC directives issued under Article 100 (now 100a) govern procedures to be adopted by national medicines regulatory authorities. These procedures include two systems designed to coordinate national decisions as follows.

Multi-State.

2. This procedure has been in operation for 11 years (Directive 75/319/EEC) in respect of medicines for human use, but only 6 years for veterinary medicines (Directive 81/851/EEC).

3. A pharmaceutical company which has already obtained marketing authorisation in accordance with EC rules in one member state may apply to the Committee for Proprietary Medicinal Products[1] (CPMP) (medicines for human use) or the Committee for Veterinary Medicinal Products (CVMP) for marketing authorisation in two or more of the remaining member states. Under this procedure marketing authorisation must be granted by each member state concerned unless "reasoned objections" are lodged within 120 days. If any objection is lodged the CPMP (CVMP) meets to consider the application and to deliver a non-binding "Opinion". Over 130 applications have been processed by CPMP so far and nearly all have produced objections from one state or another.) The company concerned is given copy of all reasoned objections made. The member state which issued the original marketing authorisation acts as "rapporteur" ie coordinates the company's responses, and, in effect, acts as the company's advocate. Member states have 60 days after the date of the non-binding Opinion in which to take their own decision and notify the CPMP or CVMP of the action taken. The Commission monitor results, and put pressure on laggards to complete action. The Commission's expectation was that objections would be exceptional because the application had already been approved in a member state.

Concertation.

4. This procedure, introduced by Directive 87/22/EEC, applies to biotechnology and other "high technology"[2] products. It covers both medicines for human use and veterinary medicines and was introduced to assist EC research based pharmaceutical companies by coordinating national consideration of new applications in areas where patent protection was of uncertain value, where delays in reaching the market place might prejudice the EC economy in competition with other major industrialised countries, and where economies of scale would be of particular value. Operational details are still evolving in the light of experience, but in essence the procedure involves mandatory prior reference to the CPMP or CVMP for biotechnology products, and optional reference for other high technology products. The first member state receiving an application for a product covered by the procedure acts as rapporteur, in this case coordinating results of member states assessments (not "reasoned objections") and company responses. The CPMP or CVMP Opinion is not binding on member states, but the Commission monitors the eventual licensing decision and any divergence would be subject to further "consideration". So far only 12 concertation applications have been lodged, and member states have experienced problems in preparing themselves for CPMP discussion within the tight deadlines prescribed. Furthermore there is no evidence that concertation procedures have in any case affected subsequent national decisions.

(1). CPMP and CVMP comprises delegates from national regulatory authorities and the Commission; chairman elected by national delegates.

(2). Relevant categories of products are defined in Directive 87/22/EEC. They include significant therapeutic innovations, and novel delivery systems or manufacturing processes.

CONFIDENTIAL

Prime Minister
First steps in what is likely to be a long campaign
CDP 24/9.

Qz06442

From: D A HADLEY
22 September 1989

MR POWELL

SOCIAL CHARTER: DISCUSSIONS WITH THE FRENCH

1. As agreed during the Prime Minister's talks with President Mitterrand on 1 September, I met Mme Guigou and other French officials last Friday to discuss the proposed Social Charter. I was accompanied by officials from FCO, Department of Employment and Department of Social Security, as well as by Mr Mills from the Policy Unit.

2. I made clear at the outset that anything we said was without prejudice to the fundamental view of UK Ministers that a Charter served no useful purpose. I said I did not know whether it was possible to arrive at a text which the Prime Minister would find acceptable at the European Council. If so, it would have to differ greatly from that put forward by the Commission.

3. Mme Guigou said her remit was to go through the Commission text to explore UK problems on each article: she was reluctant to debate differences of principle. But we firmly registered the following points:

- the idea that the Single Market benefitted only management and thus had to be "balanced" by benefits to workers, which the French made clear they held, was factually incorrect and completely foreign to our Government's view;
- any suggestion that this was a first step towards harmonising or levelling up member states' social policies was unacceptable, both politically and economically: among other things it would inevitably lead to yet further demands from the less prosperous member states for financial transfers;

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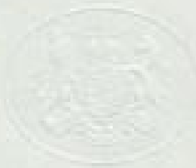

- the Charter must not be a basis for Community legislation outside the area of existing Community competence (limited, in our view, essentially to free movement of workers, health and safety at work, equal opportunities, and vocational training): consequently, and in line with the Madrid conclusions, the text would need to make it clear that action in other areas was left to member Governments or to voluntary agreement.

4. On the Commission's proposed text, we made the following general points:

- it implied that certain terms of employment should be regulated by legislation, whereas our view was that they must be left to employers and employees to settle;
- where the text did refer to agreement between employers and workers, it implied this would be only through collective agreements, thus appearing to leave no room for individual deals;
- mixed with general principles were certain specific requirements, which we could not accept and which were in any case inappropriate to such a document;
- on matters within Community competence, it seemed to pre-suppose acceptance of certain Commission proposals still under discussion.

5. In going through the text in detail, our aim was to make clear which articles might be acceptable if re-drafted, though we did not at this stage table redrafts, and which caused fundamental problems. The main ones in the latter category are those dealing with: pay and other conditions of employment; trade unions and industrial action; social security and pensions.

6. The text will now be considered in a high level group of officials from all member states set up by the French Presidency. The first meeting is on 27 September; the French envisage completing the exercise by mid October. UK representatives will participate under a general reserve on the Charter as a whole. Mme Guigou will consider a further bilateral meeting, at around the stage when the Presidency is drawing its conclusions from these discussions.

Comment

7. The French side carefully noted all our comments. In a number of areas they accepted that re-drafting was needed. Given that Mme Guigou's remit was to report UK problems back to the President, it was understandable that she felt unable to respond in detail on our more fundamental problems. It is clear that the French will conduct the discussions in the Group of officials on the basis of the Commission's text (a revised version of which is expected very shortly). They did not respond to our hints that they might abandon the Commission's text and produce something substantially different, though they may well draw that conclusion from the discussions in the High Level Group.

8. On the vital issue of Community competence, Mme Guigou stressed several times that they had no intention of extending this beyond its existing limits. This is helpful: even so, I am not sure that they fully grasped that careful drafting would be needed to achieve this aim, and we will need to re-emphasise this message.

9. We need now to see how matters progress in the meetings of the Group of officials. We should clearly not run after the French, but if they do next month propose a further round of bilateral talks, I believe we should respond positively.

J.F.M

pp. D A HADLEY

Foreign and Commonwealth Office

London SW1A 2AH

20 September 1989

Dear Andrew,

White Paper on Developments in the European Community: January-June 1989

I enclose, for your information, a pre-publication version of the six-monthly White Paper on developments in the European Community. It has been approved by OD(E) and will be published on 22 September.

I am copying this letter to the Private Secretaries to Members of Cabinet.

Yours
Stephen Wall

(J S Wall)
Private Secretary

Andrew Turnbull Esq
10 Downing Street

X 04276

P/A.

MR MORRIS - NO 10 DOWNING STREET

THE EUROPEAN COUNCIL

1. Before the summer break you kindly sent me a copy of a letter from Liz Smith about the European Council, following earlier exchanges with her over a PQ from Mr Teddy Taylor. Although some time has passed, the issue could come up again, and it may therefore be helpful if I amplify her explanation.

2. Although the European Council is not provided for in the Treaties establishing the European Communities, its long-standing existence is formally recognised by Article 2 of the Single European Act, which provides that it shall "bring together" Heads of State or Government and the President of the Commission, assisted by Foreign Ministers and a Member of the Commission; and that it shall meet at least twice a year. No mention is made of the European Council's role or powers.

3. In practice, the European Council has been responsible for a series of major EC policy decisions on CAP reform, the budget, the UK contribution, the internal market etc. Its conclusions are reached by consensus (although divergent views have occasionally been recorded). The Council and the Commission regard themselves as bound by these conclusions; they do not however become legally binding in terms of Community law unless they are translated into formal Community acts (eg by the Council).

4. As Liz Smith says, the Council of Ministers can be a meeting of any group of Ministers. The Community Treaties say simply that:

> "The Council shall consist of representatives of the Member States. Each Government shall delegate to it one of its members".

This would appear to leave open the possibility that the European Council could decide in a specific instance to act as "the Council", provided that all other relevant procedural requirements were met, eg as to consultation of other Community institutions. If so, the decision could be by unanimity, qualified or simple majority vote, depending on the legal base. Using the European Council in this way might not be consistent with the member states' decision in 1965 that Luxembourg, Brussels and Strasbourg would remain the "provisional places of work" of the Community institutions, but in other respects it seems theoretically feasible. However the present European Council format is now so firmly established that any change seems highly unlikely.

5. I am copying this letter to Liz Smith and (with a copy of hers) to Richard Gozney (FCO).

LYN PARKER

18 September 1989

JW/B1/59

Department of Employment
Caxton House, Tothill Street, London SW1H 9NF

Telephone 01-273 5803
Telex 915564 Fax 01-273 5821

Secretary of State

cc Lyn Parker Cab Off

CABINET OFFICE
X 8137
27 JUL 1989
FILING INSTRUCTIONS
FILE No.

still has me doubts about their theology!
DM

Dominic Morris Esq
10 Downing Street
LONDON
SW1A 0AA

25 July 1989

Dear Dominic

PRIME MINISTER'S QUESTION TIME: 20 JULY 1989: TEDDY TAYLOR

You contacted this office recently about a factual point in the background note to the draft reply which we sent you to Mr Teddy Taylor's PQ on the Social Charter (see attached copy).

You were concerned that the sentence "The European Council is not a legislative body and can act only by unanimity" was incorrect. This statement is in fact true though it might have been better phrased. The confusion seems to be between the Council of Ministers and the European Council. **The Council of Ministers** can be a meeting of any group of Ministers eg. Labour and Social Affairs or Agriculture Ministers. It is provided for by the Treaty of Rome and is invested with powers by the Treaty to legislate for the Community. **The European Council** on the other hand is made up of the Heads of State and Government of the Community countries. This latter body is not provided for by the Treaty and does not legislate in the same way as the other Councils. In other words the meetings have no legal status under the Treaty of Rome. The European Council steers the Community by asking for work to be carried out by the Council of Ministers.

I hope this clears up the confusion. Please let me know if you need anything else.

Yours sincerely

Liz Smith

LIZ SMITH
Private Secretary

Employment Department · Training Agency
Health and Safety Executive · ACAS

DEPARTMENT OF EMPLOYMENT

WRITTEN REPLY

THURSDAY 20 JULY 1989

MR TEDDY TAYLOR (SOUTHEND EAST): To ask the Prime Minister, if the European Economic Community Commission reported to the European Council meeting at Madrid the number of directives they proposed to present to the Councils of Ministers arising out of the Social Charter approved by that council on a majority vote.

DRAFT REPLY FOR PRIME MINISTER

No Sir. I refer my hon. Friend to my reply to him on Tuesday 18 July 1989 Official Report col.

PQ 2275/89

BACKGROUND NOTE

1. Teddy Taylor is an outspoken critic of the Europe and its institutions and has tabled a series of questions on the Social Charter. A similar question has been tabled to the Prime Minister for oral reply on 18 July (copy attached); and this draft assumes the earlier question will be answered on that date.

2. A preliminary draft proposal for a "Community Charter of Fundamental Social Rights" was issued by the Commission on 30 May 1989. The Commission draft is in the form of a proposal for a solemn declaration to be adopted by Heads of State and Government of the Community, probably at the Strasbourg European Council in December.

3. The proposal contains the following provisions:

- a right to freedom of movement for all citizens of the Community;
- a decent wage for all workers in the Community, and a right to placement services free of charge;
- limits on the number of working hours per week, night work and shift work, and a right to annual leave and a weekly rest period;
- a right to social protection;
- a right to freedom of association and negotiation;
- a right to vocational training;
- a right of men and women to equal treatment and equal opportunities;
- a right to information, consultation and participation of workers;
- a right to health protection and safety at the workplace;
- a minimum employment age of sixteen;
- a right for the elderly to an income affording them a decent standard of living;
- rights for people with disabilities.

It also invites the Commission to draw up a programme of

work by June 1990, consisting of a package of proposals for legislation in selected areas, and against a firm timetable.

5. No decisions on the proposal were taken at the Madrid meeting of the European Council - none were asked for by the Spanish Presidency. The European Council is not a legislative body and can act only by unanimity.

6. The UK does not support the principle of a Charter. However, all other member states have already expressed their support for some sort of charter.

CC/C

ROYAL COURTS OF JUSTICE

LONDON WC2A 2LL

01-936 6269

Robert Jackson Esq., MP,
Parliamentary Under Secretary of State,
Department of Education & Science,
Elizabeth House,
York Road,
London,
SE1 7PH

13 September 1989

Dear Robert.

CDP 1529

ECJ CASE NO. 51/89 : UK -v- COUNCIL : COMETT II

You copied to me your letter to Francis Maude dated ~~30 August~~ [1 Sep]. I have also seen Francis' reply dated 8 September.

You and colleagues will already have seen a copy of the letter dated 21 July recording my advice on the issues canvassed in your letter.

As you know, I have advised that the argument seeking to distinguish the COMETT II programme from the Erasmus and Youth Training programmes on the basis that COMETT II goes beyond "Community information and promotional measures "(in the sense in which that term was used in the judgment of the Court of Justice in the Erasmus case) and goes beyond measures "which merely..... support and supplement through Community measures" (in the sense used in the Youth Training case), is weak. I had not, at that time, seen the German reply to the Council's defence in the parallel proceedings brought by Germany against the Council. In the light of the German reply, I recognise the danger which you identify in paragraph 10 of your letter. The approach which you have suggested to meet the danger is consistent with my earlier advice and I agree with the line which you propose.

I am copying this letter to the Prime Minister, Members of OD(E), the Secretaries of State for Wales, Scotland and Northern Ireland and to Sir Robin Butler.

Yours ever

Nick.

Ref. A089/2310

PRIME MINISTER

Cabinet: Community Affairs

1. The Chancellor of the Exchequer will probably report on the informal ECOFIN meeting on 9 September. Key points were:

- On preparations for stage 1 of EMU, broad agreement on proposed revisions to update the 1964 and 1974 Decisions on cooperation between EC Central Banks and on economic policy convergence.

- On later stages of EMU:

  a. Most Finance Ministers expressed readiness to accept the general lines of the Delors report; however Germany, Denmark, the Netherlands and Spain cautioned against an over-ambitious timetable, while Denmark and Spain expressed some reservations on the substance.

  b. The Chancellor described the UK's market-based approach, emphasising the importance of subsidiarity, competition and stable prices. He floated the possibility of a system of competing national currencies, and promised to circulate a paper setting out these ideas more fully before the next ECOFIN discussion on 13 November.

- Commissioner Scrivener recognised that the (French-inspired) proposal for a withholding tax was now dead, and argued that the Commission's proposals on mutual assistance between tax authorities would therefore need to be strengthened. The Chancellor welcomed this approach.

- There was a brief discussion of preparations for the forthcoming IMF/World Bank Annual Meetings.

2. Next week's meetings will be:

- Internal Market Council, 18 September
- Research Council, 18 September
- Environment Council, 19 September.

P.P. R.B.

ROBIN BUTLER

<u>13 September 1989</u>

Foreign and Commonwealth Office

London SW1A 2AH

8 September 1989

From The Minister of State
The Hon Francis Maude MP

Robert Jackson Esq MP
Parliamentary Under-Secretary of State
Department of Education and Science
Elizabeth House
York Road
London SE1 7PH

CSD 11/9.

Dear Minister,

ECJ CASE NO. 51/89: UK VERSUS COUNCIL - COMETT II

Thank you for your letter of 30 August. I agree that we should continue our challenge to the COMETT II case.

I am sending copies of this letter to the Prime Minister, members of OD(E), the Secretaries of State for Wales, Scotland and Northern Ireland, the Chief Secretary, the Solicitor General and Sir Robin Butler.

Yours sincerely,

pp. Francis Maude

[approved by the Minister and signed in his absence]

EURO POL: Budget Pt 42

CDP
149.

Q206429

From: D A HADLEY
8 September 1989

MR C POWELL

THE UK AS A "GOOD EUROPEAN"

The Press yesterday gave some publicity to the useful figures issued by the Commission on (a) member states' records in implementing EC measures; and (b) infraction proceedings by the Commission against member states for alleged non-observance of EC law.

The first point was covered in UKRep telegram 2583. The Commission's report on implementation of EC measures will go to the 18 September Internal Market Council. Bangemann had already pointed out, at the July Council, that member states sometimes thought of as not being good Europeans had the best records; while those who tended to shout loudest about their own credentials had the worst.

* On the second point, you may like to see (if you have not already done so) the attached table which the Commission published. It shows, for 1981-1988, the numbers of formal letters, "reasoned opinions", and European Court cases brought by the Commission against member states. The figures are very telling. Leaving aside the two newest member states, we and Denmark have the best records.

D A H

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MDLIAN 8480

UNCLASSIFIED
FM UKREP BRUSSELS
TO ROUTINE FCO
TELNO 2583
OF 061745Z SEPTEMBER 89
INFO ROUTINE EUROPEAN COMMUNITY POSTS

FRAME INDUSTRIAL

IMPLEMENTATION OF SINGLE MARKET MEASURES

SUMMARY

1. COMMISSION HAVE TODAY ADOPTED A COMMUNICATION ON IMPLEMENTATION OF SINGLE MARKETS MEASURES, FOR DISCUSSION AT THE 18 SEPTEMBER IMC. USEFUL THAT THIS IMPORTANT ISSUE IS BEING HIGHLIGHTED.

DETAIL

2. AS RECORDED IN PARA 10 OF MY TELNO 2385, THERE WAS A BRIEF DISCUSSION OF IMPLEMENTAITON OF DIRECTIVES OVER LUNCH AT THE 18 JULY IMC, DURING WHICH IT WAS AGREED THAT THE COMMISSION WOULD SUBMIT A REPORT ON THIS ISSUE FOR DISCUSSION AT THE SEPTEMBER IMC. TODAY'S COMMISSION MEETING DULY APPROVED THE DRAFT REPORT (A COPY OF WHICH WILL BE FAXED TO SAVILL, DTI).

3. THE DOCUMENT NOTES WITH SATISFACTION THE ACCELERATED RATE AT WHICH SINGLE MARKET DIRECTIVES HAVE BEEN ADOPTED DURING THE PAST FEW YEARS, BUT THEN GOES ON TO FOCUS ON THEIR IMPLEMENTATION AT NATIONAL LEVEL. IT NOTES THAT THE IMPLEMENTATION DATES OF 68 WHITE PAPER DIRECTIVES HAVE NOW BEEN PASSED, BUT THAT, OF THESE, ONLY SEVEN HAVE ACTUALLY BEEN IMPLEMENTED IN NATIONAL LEGISLATION IN ALL THE MEMBER STATES (TAKING ACCOUNT OF NATIONAL DEROGATIONS THAT ARE PERMITTED). THE DOCUMENT NOTES THAT THIS FIGURE OF SEVEN IS ALREADY AN IMPROVEMENT ON THE POSITION IN THE COMMISSION'S REPORT OF JUNE, AT WHICH STAGE ONLY TWO DIRECTIVES HAD BEEN IMPLEMENTED THROUGHOUT THE EC. THE SITUATION IS COMPARED BY MEMBER STATE, BUT ON THE BASIS OF PROBABLY INACCURATE FIGURES (THE UK IS SHOWN AS HAVING FAILED TO IMPLEMENT 11 DIRECTIVES). EVEN SO, WE COME OUT ROUGHLY COMPARABLE TO DENMARK AND THE NETHERLANDS, AND SECOND ONLY TO ~~GERMANY~~ FRANCE SEMICOLON AND OUR TRUE RECORD IS BETTER THAN THIS. THE MAIN POINTS MADE IN THE PAPER AS FAR AS INDIVIDUAL PERFORMANCE IS CONCERNED ARE :

- SPAIN AND PORTUGAL ARE PARTICULARLY BEHIND-HAND (THOUGH THE POINT IS MADE THAT THERE ARE MITIGATING CIRCUMSTANCES FOR THESE TWO MEMBER

STATES).

- LESS EXPLICABLE ARE THE DELAYS (WORRYING IF LESS IMPORTANT THAN THOSE OF SPAIN AND PORTUGAL) IN IMPLEMENTATION BY GREECE, ITALY, BELGIUM AND IRELAND.

- AS REGARDS THE AREAS WHERE IMPLEMENTATION IS LAGGING, THE DOCUMENT HIGHLIGHTS TECHNICAL HARMONISATION (INCLUDING VEHICLE EMISSIONS), AIR TRANSPORT, SUCH PEOPLE'S EUROPE ITEMS AS HAVE BEEN ADOPTED BY THE COUNCIL (GERMANY AND THE NETHERLANDS ARE SINGLED OUT FOR CRITICISM HERE ALONG WITH ITALY AND IRELAND), PUBLIC SUPPLIES (ITALY, , DENMARK AND THE NETHERLANDS ARE LAGGARDLY) AND LEGAL PROTECTION OR MICRO CIRCUITS (BELGIUM AND GREECE).

4. THE REPORT IDENTIFIES A NUMBER OF FACTORS WHICH SEEM LIKELY TO HAVE CONTRIBUTED TO THE DELAYS, NOTABLY:

- INTERNAL ORGANISATION WITHIN THE MEMBER STATES, AND SPECIFICALLY THE ABSENCE OF A CENTRAL COORDINATING RESPONSIBLITY FOR IMPLEMENTATION. THE DOCUMENT PROPOSES THAT, IN ADDITION TO THE PRESENT PRACTICE OF SENDING A LETTER OF REMINDER TO MEMBER STATES AFTER THE ADOPTION OF A DIRECTIVE, THE COMMISSION WILL HENCEFORTH ISSUE A GLOBAL COMMUNICATION TWICE A YEAR ON THE STATE OF IMPLEMENTATION.

- THE IDENTIFICATION OF DIFFICULTIES OF INTERPRETATION OF DIRECTIVES. THE REPORT NOTES THAT THE COMMISSION HAVE ON OCCASION ORGANISED MEETINGS OF NATIONAL EXPERTS IN AREAS WHERE SUCH DIFFICULTIES CAN BE PREDICTED, AND IT IS PROPOSED TO PURSUE SUCH AN APPROACH MORE SYSTEMATICALLY IN THE FUTURE. THE MODEL OF PRIOR EXAMINATIOIN OF DRAFT NATIONAL MEASURES PROVIDED FOR IN DIRECTIVE 83/189 IS SUGGESTED AS BEING SUITABLE FOR WIDER USE.

- NATIONAL LEGISLATIVE PROCEDURES. REFERENCE IS MADE TO THOSE MEMBER STATES WHICH ALREADY ARRANGE FOR NATIONAL PARLIAMENTS TO HAVE INFORMATION ON PROPOSALS BEFORE THEY ARE ADOPTED BY THE COUNCIL (THE POINT BEING MADE IS THAT THIS FACILITATES THE SUBSEQUENT ADOPTION OF NATIONAL LAWS). THE QUESTION IS ALSO RAISED OF WHETHER GREATER USE SHOULD BE MADE OF (DIRECTLY APPLICABLE) REGULATIONS UNDER ARTICLE 100A.

5. THE REPORT NOTES THE NEED FOR GREATER TRANSPARENCY IN NATIONAL IMPLEMENTATION, AND THE POOLING OF INFORMATION AMONG THE MEMBER STATES, NOT LEAST IN ORDER TO PUT PRESSURE ON THE LAGGARDLY

MEMBER STATES. A GREATER CODIFICATION OF EC LEGISLATION IS ALSO PROPOSED (EG OF THE 30 DIFFERENT DIRECTIVES ON TRACTORS). FINALLY IN THE AREA OF DELAYED IMPLEMENTATION, THE POINT IS MADE THAT IS SOME CASES THE DEADLINE FOR IMPLEMENTATION IN THE DIRECTIVES MIGHT BE UNREALISTICALLY SHORT SEMICOLON BUT THIS IS CONSIDERED NOT THE BE A MAJOR FACTOR.

6. THE REPORT ALSO CONTAINS A SECTION ON STRENGTHENING RECOURSE TO JUSTICE (IE ONE ASPECT OF COMPLIANCE), WITH THE CONCLUSION THAT MORE ENCOURAGEMENT SHOULD BE GIVEN TO ACTIONS BEING TAKEN IN NATIONAL COURTS AND DECISIONS BEING TAKEN AT THAT LEVEL.

COMMENT

7. WHILE WE WILL WISH TO CONSIDER CAREFULLY SOME OF THE SPECIFIC IDEAS IN THE COMMISSION COMMUNICATION, THE WAY IN WHICH THE COMMISSION ARE NOW HIGHLIGHTING THE ISSUE OF IMPLEMENTATION IS TO BE WELCOMED, AND SOME OF THE DATA IN THE DOCUMENT WILL BE USEFUL FOR US IN PUBLICITY TERMS.

HANNAY

YYYY

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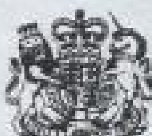

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH

TELEPHONE 01-934 9000

FROM THE PARLIAMENTARY UNDER-SECRETARY OF STATE

CF.

31/8

CDP 4/9

The Private Secretary to
The Hon Francis Maude MP
Minister of State
Foreign and Commonwealth Office
Downing Street
LONDON
SW1A 2AL

31 AUG 1989

Dear Mr Grant

ECJ CASE NO 51/89: UK VERSUS COUNCIL COMETT II

Your Minister and the other recipients of Mr Jackson's letter of 30 August may like to see the full text of the advice offered by the Solicitor General, which is referred to in paragraph 6 of Mr Jackson's letter. A copy of the letter conveying that advice is now enclosed.

attached

I am copying this letter and the enclosure to the private secretaries to the Prime Minister, the other members of OD(E), the Secretaries of State for Wales, Scotland and Northern Ireland, the Chief Secretary, the Solicitor General and the Secretary of the Cabinet.

Yours sincerely

Helen Bennett

MISS H BENNETT
PRIVATE SECRETARY

THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

General enquiries 01-936 6602
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Alan Preston Esq.,
DES Legal Advisers Branch,
Elizabeth House,
York Road,
London,
SE1 7PH.

21 July 1989

Dear Alan,

ECJ CASE 51/89 : UK -v- COUNCIL : COMETT II

1. Thank you for your letter of 4 July 1989. I am sorry that, due to other urgent commitments, it has proved impossible to reply before now.

2. The Solicitor General has considered the points raised in your letter. He has also been greatly assisted by Dr. Plender's Opinion of 14 June 1989.

3. The issues are addressed in the order in which you have raised them in paragraph 12 of your letter. The Solicitor General's conclusions may broadly be summarised as follows:

   i) On the assumption that the Court of Justice intended to take a narrow view of the scope of Article 128 in the Erasmus and Youth Training decisions, there is, in this respect, little to distinguish COMETT II from the Erasmus and Youth Training programmes and therefore it is very unlikely that the Court of Justice would decide that the COMETT II programme went beyond supporting and supplementing measures in the sense in which that term is used in the Youth Training judgment, or beyond Community information and promotional measures in the sense in which that term is used in the Erasmus judgment;

   ii) If Ministers were to decide to continue with the application under Article 173 seeking to annul the COMETT II decision, it would be possible, provided that the research elements in the COMETT II programme were of some substance, to advance a respectable argument to the effect that such elements went beyond the scope of vocational training policy thus requiring a legal base in addition to Article 128;

   iii) If Ministers were to decide to continue with the UK application for annulment, it would weaken the argument referred to in ii) (above) if the UK were to argue for an additional legal base of Article 130q2;

iv) If the UK application under Article 173 were to be continued, the risk of the Court's providing an unwelcome interpretation of Article 128 would be minimised by confining the UK's case to the research argument referred to in ii) above.

Paragraph 12 (i) of your letter

4. It is unnecessary for present purposes to express a final view on whether the ratio decidendi of the Youth Training judgment is intended to confine Article 128 to the adoption of Community measures which "merely.....support and supplement through Community measures the policies and activities of the Member States in the area in question...." (Paragraph 15 of the judgment) (The parallel passage in the Erasmus judgment refers to the fact that the contested decision in that case provided "for Community information and promotional measures and imposes obligations to cooperate on the Member States....". Nevertheless, it is at least arguable that the ratio of these two judgments is contained in these passages and it would therefore be a point which could reasonably be used by the Government in negotiations with the Commission if it were judged helpful to do so.

5. Assuming that the Court of Justice intended to take a narrow view of the scope of Article 128 in the sense referred to in paragraph 4, the Solicitor General has considered the argument which is summarised in paragraph 8 of Dr. Plender's Opinion. He notes your comments on that part of the Opinion. He also notes that Dr. Plender himself recognises in paragraph 9 that the argument seeking to distinguish COMETT II from the Youth Training programme would be very weak. In the circumstances, the Solicitor General concludes, on the available information, that there is in this respect little to distinguish COMETT II from the Youth Training and Erasmus decisions and that therefore it is very unlikely that the Court of Justice would decide that the decision in COMETT II went beyond supporting and supplementing measures in the sense in which that term is used in the Youth Training judgment, or beyond Community information and promotional measures in the sense in which that term is used in the Erasmus jugment.

Paragraph 12(ii) of your letter

6. In paragraph 37 of the Erasmus judgment, the Court of Justice held that "since the contested decision concerned not only the field of vocational training, but also that of scientific research, the Council was not empowered to adopt it purely on the basis of Article 128 and could not, therefore, before the entry into force of the Single European Act, do other than add Article 235 of the Treaty as a legal base."

7. As to the extent to which the COMETT II decision would need to concern scientific research (as opposed to vocational training) thereby necessitating a legal base in addition to Article 128, it should also be noted that the Court of Justice held that "to interpret the disputed decision as not concerning scientific research in universities would be substantially to limit the scope of certain objectives of the Erasmus programme." The Court also held that "it must be concluded that at

least some of the proposed action concern both research and vocational training". In the circumstances, it should be assumed that, in order to mount an argument based on the relevant part of the Erasmus judgment, the research element of COMETT II must be of a sufficiently substantial kind.

8. At paragraphs 5, and 6 of your letter, you point out that the COMETT II decision contains a number of elements which relate to various aspects of research. Certain such elements included in the programme are capable of being identified as activities which may be carried out in pursuit of the objectives referred to in the Research and Technological Development title of the treaty. In paragraph 11 of his Opinion, Dr. Plender also refers to other points which could be advanced in support of the argument that the COMETT II programme contains elements relating to research. However, what is not clear is the extent to which these elements form part of the scope of the objectives of the COMETT II programme.

9. The Solicitor General concludes that, if Ministers wished to continue with the application to annul the COMETT II decision, it would be possible, provided that the research elements in the COMETT II programme were of some substance, to advance a respectable argument to the effect that such elements went beyond the scope of vocational training policy thus requiring a legal base additional to Article 128. Paragraph 12(iii).

10. If an additional legal base is required for COMETT II, the choice seems to fall between Article 130q2 and Article 235. The Solicitor General recognises that Ministers, having negotiated provisions in the Single European Act for the purpose of ensuring that a financial ceiling for Community research and development expenditure was imposed by unanimity, might not want to accept that such expenditure could instead be incurred by measures under Article 235, even though Article 235 itself requires unanimity. However, if the argument in support of adding Article 130q2 to the legal base were deployed in the Court of Justice, it would seem that the Government would be driven to arguing the line, inter alia, i) that the research elements of COMETT II should have been implemented by a specific programme implementing the framework programme under Article 130k, first paragraph and ii) that COMETT II as drafted, is not such a programme. In effect, therefore, it would follow that the Council could not have adopted COMETT II in its present form, The Court of Justice is unlikely to favour an argument which had such consequences particularly if, as a matter of policy, the Court were minded to uphold the validity of the programme which seems to have been its approach in Erasmus and Youth Training (see paragraph 13 of Dr. Plender's Opinion).

11. It is understood that, in the parallel German challenge to COMETT II (Germany -v- Council: Case 91/89), the German Government is arguing (i) that the research elements in COMETT II require an additional legal base to Article 128 and ii) that that should be Article 235. The Court of Justice is unlikely to be impressed by any divergence of approach between the UK and Germany on this point, especially in circumstances

where the research point had not in the first place been taken by the United Kingdom in its application.

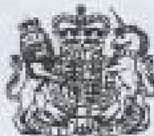
12. If, therefore, the UK application for annulment is to be continued, it would weaken the case to argue for an additional legal base of Article 130q2.

Paragraph 12(iv) of your letter.

13. If the UK application under Article 173 were to be continued, the risk of the Court's providing an unwelcome interpretation of Article 128 would be minimised by confining the UK's argument to the research point referred in paragraphs 6-9 above. But clearly this would expose the question whether research related measures could be adopted outside the Research and Development title of the Treaty.

Yours ever,
Christopher

C. P. J. MUTTUKUMARU



DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH
TELEPHONE 01-934 9000

FROM THE PARLIAMENTARY UNDER-SECRETARY OF STATE

The Hon Francis Maude MP
Minister of State
Foreign and Commonwealth Office
Downing Street
LONDON
SW1A 2AL

30 AUG 1989

Dear Francis

ECJ CASE NO 51/89: UK VERSUS COUNCIL
COMETT II

Having considered the judgments of the European Court in the Youth Training and ERASMUS cases (56/88 and 242/87) I am writing to propose that we should continue the UK's action before the Court seeking annulment of the Council's Decision adopting the second phase of the COMETT programme.

2. If you and colleagues agree we need to be ready by 14 September to instruct Counsel to draft the UK's reply to the Council's statement of defence. Our reply needs to be lodged by 30 September, a deadline which has already been extended from 3 July. We therefore need an early decision.

3. The COMETT programme seeks to stimulate Community-wide cooperation between higher education and industry in the field of advanced technology for the development of training to remedy key skill shortages. A second phase of the programme to run from 1990 to 1994 at a cost of 200 mecu (£128 million) was adopted by the Social Affairs Council in December 1988 by simple majority on the basis of Article 128 of the Treaty.

4. The UK, France and the Federal Republic of Germany have all applied to the European Court seeking annulment of the COMETT II decision on the grounds of an inadequate legal base. The issue was essentially the same as in the Youth Training and ERASMUS cases: could Community expenditure on this scale be authorised on the basis of an Article which referred only to the Council laying down general principles for the implementation of a common vocational training policy, and which required only a simple majority for the adoption of Decisions taken under it?

5. In the Youth Training and ERASMUS cases, the Court has ruled in favour of the Commission on the interpretation of Article 128. The basic principle underlying our application in relation to

COMETT II has, therefore, already been lost. The Court also ruled, however, that Article 235 - requiring unanimity - was nevertheless needed in the legal base of the Decision adopting the ERASMUS programme because the content of the programme related to research as well as to vocational training.

6. The Court's central conclusion about the interpretation of Article 128 will apply equally to COMETT II. Officials have, however, also considered whether it is possible to argue that the scope of COMETT II, like ERASMUS, goes beyond vocational training and therefore requires a legal base in addition to Article 128. Their view, which is supported by Counsel and the Law Officers, is that it would be possible to mount an intellectually respectable argument that the COMETT II programme also has objectives relevant to the promotion, dissemination and application of research. Given the ruling of the Court in the ERASMUS and Youth Training cases they consider there are no other arguable grounds for contending that a legal base of Article 128 is inadequate.

7. Counsel's view is that although such an argument could respectably be mounted, its chances of success are "considerably less than even". In the ERASMUS case Counsel believes that the Court was disposed to find ways of avoiding the disruption that would have been caused by the annulment of a Council decision. The same considerations may influence the Court in the case of COMETT II. Any disposition by the Court to avoid disruption by upholding Council decisions could only weigh against us.

8. We should not without good reason persist in a case that we are advised we do not stand at least an even chance of winning. My reason for proposing that we should continue lies in the arguments that will be addressed before the Court when the FRG's application is heard. We shall be able to influence these arguments only if we continue with the case.

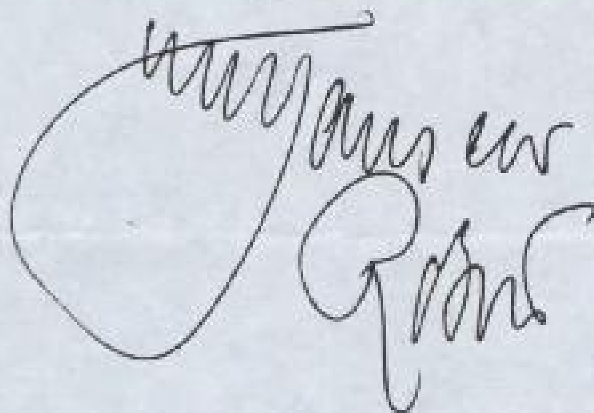
9. The FRG's reply to the Council's statement of defence has already been lodged. It advances arguments about the research relevance of COMETT II broadly along the lines that we should wish to use. But it also addresses the broader question of the type of action that can properly be based on Article 128 of the Treaty.

10. The question at issue is whether Article 128 can be used only for expenditure programmes and other activities that can be described as "supporting and supplementing" the policies of member states through Community measures of "information and promotion", which is how the Court chose to regard the ERASMUS and Youth Training programmes, or whether Article 128 can provide a legal base for "autonomous" Community actions. The latter would allow Article 128 to be used, for example, as the basis for Community legislation to impose a statutory right of access to vocational education as part of the proposed "social charter". The FRG reply argues that COMETT II is properly regarded as such an autonomous measure. If the Court were to accept that this was so but nevertheless ruled that it was permitted under Article 128 the scope for the further exploitation of that Article by the Commission would be unlimited.

11. Passages in the Youth Training and ERASMUS judgments (paragraphs 6 and 9 respectively) suggest that the Court might incline to the wider view of Article 128. If so, we should try to minimise their opportunities for elaborating it. We need therefore to try to persuade the FRG to drop this aspect of their case and to concentrate on the research argument. We shall be in a much better position to do this if we continue with our case, which will be heard jointly with the German case, than if we withdraw.

12. I should also mention that if we do persist with the COMETT II case, there is a risk - on the basis of a passing reference in the ERASMUS judgment (paragraphs 36 and 37) and the Court's likely disposition to avoid forcing the Council to reach a unanimous decision - that the Court would now look to the research articles of the Treaty (Articles 130f - q), added by the Single European Act after the ERASMUS Decision, to provide an additional legal base. If the Court so ruled, this might undermine the tight structure of financial control imposed on Community research programmes by those Articles. We should therefore seek to avoid this by arguing that Article 235 was the appropriate legal base. It would be less damaging to our wish to maintain the integrity of the research articles to accept that some activity of research relevance outside the scope of the framework programme could still be based on Article 235, because the requirement for unanimity would allow us to resist any unwelcome attempt to exploit the use of this Article.

13. I should be glad to know whether you and others agree that the UK should continue with the COMETT II case. I am sending copies of this letter to the Prime Minister, the other members of OD(E), the Secretaries of State for Wales, Scotland and Northern Ireland, and to the Chief Secretary, the Solicitor General and Sir Robin Butler.



ROBERT JACKSON

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:
Your ref:

The Rt Hon Peter Walker MBE MP
Welsh Office
Gwydyr House
Whitehall
LONDON
SW1

16 August 1989

Dear Peter,

You copied to Nicholas Ridley your letter of 21 July to Geoffrey Howe about the case being brought before the European Court of Justice by the Commission against Germany for an alleged breach of its obligations under the Birds Directive.

As you say, the case has serious implications for our planning policies, and indeed for the rights of Member States to pursue vital projects of economic benefit.

We have known for some time that certain legal advisors in the Commission adopted a very rigid interpretation of the terms of the Directive; an interpretation which they know is totally unacceptable to us and to many, if not all, other Member States. In these circumstances it is alarming that the Commission should have deliberately set out to seek confrontation on this issue.

I agree that we must intervene in support of the German case that in some circumstances there will be economic and social considerations which are so important that the requirements of conservation in SPAs, which should normally prevail, should be overruled.

I understand that an interdepartmental meeting of legal advisors agreed that action should be taken to secure the Government's right to intervene and that this has now been done. I suggest that we should also seek to mobilise opinion in all Member States to face the Commission with, hopefully, a unanimous condemnation of their action.

I am copying this letter to the Prime Minister, John Major, Malcolm Rifkind, other members of OD(E) and Sir Robin Butler.

Yours ever,

CHRIS PATTEN

Foreign and Commonwealth Office

London SW1A 2AH
16 August 1989

From The Minister of State
The Hon Francis Maude MP

Tim Eggar Esq MP
Minister of State
Department of Employment
Caxton House
Tothill street
London SW1H 9NF

Dear Tim

COUNCIL OF EUROPE: EUROPEAN SOCIAL CHARTER: PROPOSED DENUNCIATION OF ARTICLES 7(8) AND 8(4)(B)

I am replying to John Cope's letter of 19 July to Geoffrey Howe in which he proposed that we now proceed to give notice of our intention to denounce Articles 8(8) and 8(4)(b) of the European Social Charter.

I agree. However, the draft letter to the Council of Europe Secretary-General attached to John Cope's letter has been amended, in consultation with your officials, to follow the normal notification procedure. Our Permanent Representative will be instructed to give notice in the attached draft before the 26 August deadline.

Careful thought must of course be given to the handling of presentation of the denunciation, particularly in the EC context, since there have been favourable references at two successive European Councils to the Council of Europe text. My officials have already been in touch with yours on this.

I am copying this ~~minute~~ to the Prime Minister, other members of the Cabinet and Sir Robin Butler.

Francis Maude

To:

Her Excellency Mme Catherine Lalumière

Secretary-General

Council of Europe

Strasbourg

From:

UK Permanent Representative

Strasbourg

Your Excellency,

I have the honour to refer to the European Social Charter which was opened for signature on 18 October 1961 and entered into force for the United Kingdom on 26 February 1965.

Upon instructions from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs I have now to declare in accordance with Article 37(2) of the Charter that the United Kingdom wishes to denounce its acceptance of Articles 7(8) and 8(4)(b).

Under the terms of Article 37(1) six months notice is required for a Contracting Party's intention to denounce the Charter or any part of it in order that the denunciation can take effect from 26 February, the biennial anniversary of the Charter's entry into force.

I have therefore been instructed to request you to take the necessary steps to register the United Kingdom's denunciation of Articles 7(8) and 8(4)(b) to be effective from 26 February 1990.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

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MY TELNO 227 : EC/AUSTRIA: SOVIET VIEWS

SUMMARY
1. A MORE CAUTIOUS LINE FROM VRANITZKY, IN AN INTERVIEW WITH A WEST GERMAN NEWSPAPER. INTRA-COALITION DIFFERENCES, WITH INFLUENTIAL SOCAILIST VOICES CALLING FOR ADEQUETE ACCOUNT TO BE TAKEN OF SOVIET VIEWS. SOVIET MFA PRESS SPOKESMAN TURNS THE SCREW, REFERRING TO THE 1955 MOSCOW MEMORANDUM AND THE STATE TREATY. MFA AND PROBABLY MOCK HOPE TO BRAZEN IT OUT, BUT THIS MAY NOW PROVE LESS SIMPLE.

DETAIL
2. IN A WEEKEND INTERVIEW WITH THE WEST GERMAN SUD-DEUTSCHE ZEITUNG, WIDELY REPLAYED IN THIS MORNING'S AUSTRIAN PRESS, VRANITZKY HAS COMMENTED ON THE SOVIET AIDE MEMOIRE REPORTED IN MY TUR, COMMENTING THAT THE COMMITMENT TO NEUTRALITY COULD PREVENT AUSTRIA FROM ACCEDING TO THE COMMUNITY. VRANITZKY SAID THAT BOTH SIDES IN THE FORTHCOMING ACCESSION NEGOTIATIONS WOULD HAVE TO DISCOVER, IN TIMES OF RAPID POLITICAL CHANGE, WHETHER A SOLUTION COULD BE FOUND TO THE PRESERVATION OF NEUTRALITY. A PRE-CONDITION FOR MEMBERSHIP WOULD BE THAT AUSTRIA'S NEUTRALITY SHOULD BE ESTABLISHED IN QUOTE WRITTEN OR SOME OTHER LEGALLY VALID FRAMEWORK UNQUOTE. (THIS APPEARS TO CONTRADICT HIS EARLIER STATEMENT THAT QUOTE NEUTRALITY IS CERTAINLY NOT TO BE ESTABLISHED (IN THE ACCESSION TREATY) BECAUSE AUSTRIA IS NOT NEGOTIATING ABOUT IT UNUQOTE : MY TELNO 203). ON THE OTHER HAND, VIENNA COULD NOT ALLOW BRUSSELS TO REGULATE AUSTRIAN NEUTRALITY POLICY : SINCE THIS WAS FOR AUSTRIA ALONE. VRANITZKY SAID THE SOVIET LINE IN THE AIDE MEMOIRE WAS CONSISTENT WITH PREVIOUSLY STATED SOVIET VIEWS, FOR EXAMPLE AS SET OUT IN DISCUSSIONS WITH RYZHKOV AND GORBACHEV DURING HIS VISIT TO MOSCOW LAST YEAR. VRANITZKY REJECTED THE SUGGESTION THAT THE SOVIET UNION MIGHT USE THE AIDE MEMOIRE TO EXTRACT AN ECONOMIC PRICE FOR SOVIET ACQUIESCENCE IN AUSTRIAN ACCESSION: EVEN IN THE WORST PHASES OF THE COLD WAR, RELATIONS WITH THE SOVIET UNION HAD ALWAYS BEEN GOOD. IN A CUTTING REFERENCE TO VIEWS OF THE PEOPLES PARTY RIGHT WING, INCLUDING IMPLICTLY MOCK. VRANITZKY SAID THAT AN END HAD BEEN PUT ONCE AN FOR ALL TO THE SWEEPING PROPOSITION THAT NEUTRALITY WAS COMPATIBLE WITH EC MEMBERSHIP QUOTE SIMPLY BECAUSE WE SAY SO UNQUOTE. THOSE WHO HAD

USED TRITE FORMULAE OF THIS KIND TO WIN DOMESTIC POLITICAL POINTS HAD RECEIVED THEIR BILL : QUOTE AND IT IS A VERY UNFRIENDLY BILL UNQUOTE.

3. IN FURTHER OFFICIAL REACTIONS OVER THE WEEKEND, THE PEOPLES PARTY ECONOMICS MINISTER, WOLFGANG SCHUESSEL, SAID AUSTRIA NEEDED NO INSTRUCTOR AS REGARDS ITS NEUTRALITY. AUSTRIA WOULD NOTE THE COMMENTS OF OTHER COUNTRIES IN THE EC DISCUSSION, BUT NO MORE THAN THAT. THE FEDERAL MANAGER OF THE GREENS, VOGGENHUBER, DESCRIBED THE AIDE MEMOIRE AS A FOREIGN POLICY DISASTER: IT WAS THE RESULT OF THE SUPRESSION FOR MORE THAN A YEAR OF QUOTE PROOF UNQUOTE THAT MEMBERSHIP WAS INCOMPATIBLE WITH NEUTRALITY.

4. EX-CHANCELLOR BRUNO KREISKY (SOCIALIST), NOW 78 YEARS OLD AND THE LAST SURVIVOR OF THE AUSTRIAN TEAM WHICH NEGOTIATED THE 1955 MOSCOW MEMORANDUM, HAS CONDEMNED IN A NEWS AGENCY INTERVIEW, ATTEMPTS TO DISMISS THE SOVIET VIEW AS NONSENSE : IT WAS AUSTRIA'S DUTY TO ENSURE THAT ITS NEUTRALITY WAS NOT PLACED IN DOUBT. THE SOVIET AIDE MEMOIRE WAS NOTHING NEW AND MADE IT CLEAR THAT AUSTRIAN NEUTRALITY MUST BE SEEN AS PART OF THE BALANCE IN EUROPE. IT WAS CERTAIN, SAID KREISKY, THAT EC MEMBERSHIP, EVEN WITH A NEUTRALITY CLAUSE, WOULD BRING QUOTE MODIFICATIONS IN UNRESTRICTED NEUTRALITY UNQUOTE. EVERYTHING DEPENDED ON WHAT CAME OUT OF THE NEGOTIATIONS WITH BRUSSELS. FORMER FOREIGN MINISTER LANC, WHO HAS BEEN PROMINENT AMONG LEFT WING SPO OPPONENTS OF EC ACCESSION, ATTACKED IN A PUBLIC STATEMENT THOSE WHO HAD SOUGHT TO PRESENT SOVIET RESTRAINT ON THE SUBJECT AS ACQUIESCENCE.

5. IN A FURTHER DEVELOPMENT, THE SOVIET FOREIGN MINISTRY SPOKESMAN, VADIM PERFILYEV, WAS REPORTED TO HAVE MADE A STATEMENT DURING A WEEKEND PRESS CONFERENCE REPEATING SOME OF THE ARGUMENTS IN AIDE MEMOIRE BUT ALSO REFERRING TO THE LINK BETWEEN THE AUSTRIAN STATE TREATY OF 15 MAY 1955 AND NEUTRALITY, AS ENSHRINED IN THE AUSTRIAN PARLIAMENT'S NEUTRALITY LAW FIVE AND A HALF MONTHS LATER. PERFILYEV SAID THAT THE MOSCOW MEMORANDUM OF APRIL 1955 HAD HAD THE EFFECT OF TYING CLOSELY TOGETHER THE STATE TREATY AND AUSTRIAN NEUTRALITY. IN THE MEMORANDUM, THE AUSTRIAN SIDE HAD COMMITTED ITSELF TO PUTTING NEUTRALITY INTO ITS CONSTITUTION AFTER SIGNING THE STATE TREATY. THIS HAD BEEN A PRE-CONDITION FOR MOSCOW'S AGREEMENT TO THE RESTORATION OF AUSTRIA'S FULL SOVEREIGNTY AFTER WORLD WAR II.

6. IN A RESPONSE TO PERFILYEV'S REMARKS, THE OVP'S CONSTITUTIONAL SPOKESMAN, ANDREAS KHOL - MOCK'S CLOSEST FOREIGN POLICY ADVISER, AND CHAMPION OF THE QUOTE RIGHT WING UNQUOTE PEOPLE'S PARTY AND MFA VIEW

OF AUSTRIAN NEUTRALITY - HAS REJECTED ANY LEGAL CONNECTION BETWEEN THE MOSCOW MEMORANDUM AND THE STATE TREATY. KHOL DESCRIBED THE SOVIET INTERPRETATION AS QUOTE INCORRECT UNQUOTE, AND SAID THE MOSCOW MEMORANDUM HAD BEEN MERELY A STATEMENT OF INTENT. THE FOUNDATION OF PERMANENT NEUTRALITY WAS THE CONSTITUTIONAL LAW. OVER WHICH ONLY THE AUSTRIAN PARLIAMENT HAD JURISDIICTION.

7. AS FORESEEN IN PARA 4 OF MY TELNO 228, THE DEPUTY ECONOMIC DIRECTOR BRIEFED EC HEADS OF MISSION THIS MORNING. THE MFA HAD REACHED NO DEFINATIVE VIEW OF THE SOVIET AIDE MEMOIRE, NOR HAD MINISTERS YET DECIDED IN WHAT FORM THE REPLY WOULD BE PRESENTED. THE PROVISIONAL VIEW WAS THAT THE AIDE MEMOIRE WAS CONSIDERABLY MILDER IN TONE, LESS DETAILED AND MORE FRIENDLY THAN THE 1972 SOVIET NOTE, FOLLOWING AUSTRIA'S SIGNATURE OF THE FREE TRADE AGREEMENT WITH THE COMMUNITY. VAVRIK SUGGESTED THAT THE AIDE MEMOIRE WAS NOT UNEXPECTED, SOUGHT TO PLAY DOWN THE SIGNIFICANCE OF THE SOVIET OVERTURE, AND GAVE AN IMPRESSION OF CONFIDENCE IN AUSTRIA'S ABILITY TO RIDE WITH IT, MAINTAINING THE OBJECTIVE OF EVENTUAL ACCISSION. VAVRIK DISTRBUTED A COPY OF A PRESS RELEASE BY THE MFA LAST FRIDAY (MIFT), WHICH IS LIKELY TO BE PARTLY REFLECTED IN THE EVENTUAL AUSTRIAN REPLY.

COMMENT

8. PERFILYEV'S REMARKS IN MOSCOW, RECALLING THE LINKAGE BETWEEN THE MOSCOW MEMORANDUM, THE STATE TREATY AND THEIR NEUTRALITY, WILL HAVE BROUGHT MANY AUSTRIANS UP WITH A START. THE INITIAL UNITY OF VIEW REPORTED IN MY TUR BETWEEN THE PARTIES REGARDING THE 10 AUGUST AIDE MEMOIRE APPEARS TO BE CRUMBLING. MANY WILL SHARE VRANITZKY'S VIEW THAT MOCK AND KHOL HAVE MISLEADINGLY OVER-SIMPLIFIED THE NEUTRALITY PROBLEM : AND SOME ON THE SPO LEFT WING WILL EVEN SHARE THE SOVIET PRESS SPOKESMEN'S VIEWPOINT. FEW AUSTRIANS WILL RELISH THE PROSPECT OF A MAJOR DIFFERENCE WITH THEIR POWERFUL EASTERN NEIGHBOUR. THE MFA AND MOCK CAN BE EXPECTED TO CONTINUE TO BRAZEN IT OUT, HOPING THAT YEARS OF DISCUSSION WITH BRUSSELS WILL SHIFT THE FOCUS, AND ASSUMING THAT AT THE END OF THE DAY MOSCOW WILL NOT BE ABLE TO BRING ITS DISAPPROVAL TO A POINT. THIS CALCULATION MAY BE WELL FOUNDED. BUT IT WOULD BE SUPRISING IF VRANITZKY'S CONSISTENTLY MORE CAREFUL AND SENSITIVE APPROACH TO THE PROBLEMS OF THE EC AND NEUTRALITY IS NOT, AS A RESULT OF THE LATEST DEVELOPMENTS, CONSIDERABLY ENHANCED, TO THE DETRIMENT OF MOCK'S MORE BULL-HEADED APPROACH. AS OF TODAY, HOWEVER, NOTHING THE SOVIET UNION HAS DONE OR SAID IS LIKELY TO PROVE SUFFICIENT TO KNOCK THE AUSTRIANS OFF THEIR INTENDED EC COURSE.

025702
MDADAN 2069

9. FCO PLEASE ADVANCE TO NO 10, TO PASS ON TO PRIME MINISTERS PARTY IN SALZBURG. (MRS THATCHER IS MEETING CHANCELOR VRANITZKY TOMORROW, 15 AUGUST).

CROWE

YYYY

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FROM. DUTY CLERK 10 DOWNING ST. DEPT. PRIVATE OFFICE

TO. PRIME MINISTER'S PARTY, AUSTRIA. FAX No.

CLASSIFICATION: CONFIDENTIAL

PRECEDENCE: IMMEDIATE

ORIGINATING OFFICERS NAME. PATRICIA PARKIN

ORIGINATING OFFICERS TELEPHONE No. ex 3024

ORIGINATING OFFICERS SIGNATURE. Patricia A. Parkin

DELIVERY INSTRUCTIONS. IMMEDIATE VIA GARDEN ROOM GIRL - MISS MAIN or MISS KNIPE.

mike.91

CDP 1/8

PRIME MINISTER 31 July 1989

1990 EC BUDGET COUNCIL

I attended the Budget Council on 28 July at which the 1990 preliminary draft budget (PDB) received its first reading.

The Council was low-key and, from the UK's point of view, satisfactory. In his minute to you of 24 July my predecessor said that our key objectives were to confine the growth of non-privileged, non-compulsory expenditure to no more than half the maximum rate; and to get agreement on the package of anti-fraud measures proposed by the Commission. Both objectives were achieved. In addition - and as something of a bonus - the Council agreed to ask the Court of Auditors to carry out an examination of staffing levels and efficiency in the Commission and the Council Secretariat. We shall aim to ensure that the terms of reference adequately address the question of how to use existing resources more effectively.

I am copying this to John Major and other members of OD(E), and to Sir Robin Butler.

pp.

EARL OF CAITHNESS

Agreed by the Paymaster and signed in his absence.

Covering CONFIDENTIAL

MR POWELL

PROSPECTS FOR THE FRENCH EC PRESIDENCY

1. Sir Robin Butler's minute of 4 May proposed that in the first month of each EC Presidency a note should be prepared reviewing the prospects for that Presidency for consideration in OD(E) and subsequent submission to the Prime Minister.

2. I attach the first paper in the series, together with the minutes of the OD(E) discussion, in which the conclusions of the paper were endorsed.

D A HADLEY

27 July 1989

Encl.

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Euro Pol Budget Pt 42

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INFO ROUTINE EUROPEAN COMMUNITY POSTS, VIENNA, ANKARA, STRASBOURG

FRAME GENERAL

EUROPEAN PARLIAMENT PLENARY, STRASBOURG, 27 JULY 1989:

FRENCH PRESIDENCY PROGRAMME SPEECH

SUMMARY
1. DUMAS GAVE THE PRESIDENCY PROGRAMME SPEECH TO THE EP - A MIXTURE OF KNOWN FRENCH AND INHERITED PRESIDENCY ASPIRATIONS. ON ECONOMIC AND MONETARY UNION, HE RECALLED HIS PROPOSAL TO THE COUNCIL TO INSTITUTE A GROUP OF MINISTERS' PERSONAL REPRESENTATIVES TO PREPARE TEXTS FOR A NEW TREATY. HE ARGUED AN OBSCURE LINKAGE BETWEEN FREE MOVEMENT OF CAPITAL AND FULFILLING COMMITMENTS MADE ON WITHHOLDING TAX. A COUPLE OF NEWISH IDEAS ON CITIZEN'S EUROPE. EXTERNALLY, HE HOPED THAT NEGOTIATIONS ON EC/EFTA WOULD BE LAUNCHED IN DECEMBER, AND THAT THE EC/SOVIET CO-OPERATION AGREEMENT WOULD BE SETTLED BY THE END OF THE YEAR. ROBUST REMARKS ON TURKISH/AUSTRIAN ACCESSION, WITH LOTS OF QUESTION MARKS. CAUTION ON INSTITUTIONAL CHANGE (GLOSSED OVER).

DETAIL
2. DUMAS GAVE THE TRADITIONAL PRESIDENCY PROGRAMME SPEECH ON 27 JULY (TEXT BY FAX TO ECD(I)). AFTER CONGRATULATING BARON ON HIS ELECTION AS PRESIDENT OF THE EP, HE EMPHASISED STRASBOURG'S STATUS AS A EUROPEAN CAPITAL WHERE HE HOPED THE EP WOULD FEEL AT HOME IE. STAY AND FLOURISH. PEPPERING HIS SPEECH WITH RESPECTFUL ALLUSIONS TO PRESIDENT MITTERRAND AS ARBITER OF THE COMMUNITY'S DESTINY, HE SUMMARISED THE PRESIDENCY'S PROGRAMME UNDER THREE HEADINGS:

A) 1992 - COVERING THE SOCIAL DIMENSION, EMU, AUDIOVISUAL, ENVIRONMENT AND RESEARCH
B) STRENGTHENED OPEN DIALOGUE WITH THE REST OF THE WORLD, WHILE AFFIRMING THE EC'S IDENTITY
C) GREATER CLOUT IN EUROPEAN POLITICAL CO-OPERATION.

SOCIAL EUROPE
3. STANDARD FRENCH PRESENTATION ON THE INDISSOLUBILITY OF

ECONOMIC AND SOCIAL DIMENSIONS. FRANCE WOULD FIRST STRIVE TO SECURE ADOPTION OF THE EC CHARTER OF FUNDAMENTAL SOCIAL RIGHTS. THE EUROPEAN EMPLOYMENT ''OBSERVATORY'' WOULD ENABLE THE EC TO EVALUATE AND TAKE ACTION. DUMAS HOPED THIS PROJECT WOULD COME TO FRUITION BEFORE THE END OF HIS PRESIDENCY.

ECONOMIC AND MONETARY UNION

4. THE PRESIDENCY WOULD ENSURE THAT THE STRASBOURG EUROPEAN COUNCIL COULD PRONOUNCE ON THE PROGRESS MADE ON THE WHOLE PROCESS OF EMU. ECOFIN WOULD FOLLOW ITS WORK PROGRAMME WHILE THE FOREIGN AFFAIRS COUNCIL PERFORMED ITS GENERAL CO-ORDINATING ROLE TO MAINTAIN THE POLITICAL IMPETUS. DUMAS HAD PROPOSED TO THE COUNCIL THE INSTITUTION ''OF A GROUP OF PERSONAL REPRESENTATIVES OF MINISTERS TO PREPARE - WITHOUT LOSING ANY TIME - THE NECESSARY TEXTS FOR THE ELOBRATION OF A NEW TREATY''.

AUDIOVISUAL

5. THE PRESIDENCY WOULD DO ALL IT COULD TO CONCLUDE THE CO-OPERATION PROCEDURE NOW UNDER WAY ON THE BROADCASTING DIRECTIVE - HENCE THE COUNCIL'S REQUEST FOR AN EXTRA MONTH FROM THE EP TO ENABLE THE A DECISION TO BE TAKEN (SEE PARA 13). A PLUG FOR THE PARIS AUDIOVISUAL CONFERENCE WITH A GRACEFUL BOW TOWARDS THE COMMISSION'S PREPARATORY WORK. THE CONFERENCE WOULD BE THE POINT OF DEPARTURE FOR AN AUDIOVISUAL EUREKA.

ENVIRONMENT/RESEARCH

6. NO SURPRISES. PRIORITY TO THE PROPOSED EUROPEAN ENVIRONMENT AGENCY.

SINGLE MARKET ETC

7. DUMAS SAW A NEED FOR BALANCE BETWEEN LIBERALSIATION AND HARMONISATION. HE CLAIMED THAT COMMITMENTS HAD BEEN ENTERED INTO ON APPROXIMATION OF TAX ON INTEREST, ''A PRECONDITION/COMPLEMENT'' FOR THE LIBERALISATION OF CAPITAL MOVEMENTS. THESE COMMITMENTS MUST BE RESPECTED. A PLUG FOR THE COMMISSION'S PROPOSALS ON THE FUTURE OF THE RURAL WORLD. NOT A WORD ABOUT TRANSPORT LIBERALISATION.

CITIZEN'S EUROPE

8. THE COMMUNITY WAS LAGGING BEHIND. HE FLOATED TWO IDEAS OF ''SYMBOLIC'' IMPORTANCE:

I) A EUROPEAN YOUTH CARD FOR ACCESS TO TRANSPORT, MUSEUMS, SHOWS AND SERVICES AS A SORT OF OPEN SESAME TO EUROPE

II) EUROPEAN VOLUNTARY SERVICE/CIVIC CO-OPERATION INSTEAD OF NATIONAL SERVICE - DIRECTED TOWARDS DEVELOPING COUNTRIES, SO THAT YOUNG EUROPEANS (IRRESPECTIVE OF NATIONALITY) WOULD BE THE INSTRUMENTS OF EC AID PROGRAMMES.

EXTERNAL

9. AN AFFIRMATION THAT THE EC WAS NOT A FORTRESS. ON EC/EFTA, DUMAS SAID THAT THE MINISTERIAL OF 19 DECEMBER WOULD AIM TO LAUNCH NEGOTIATIONS TO IMPROVE THE FRAMEWORK OF RELATIONS. ON EASTERN EUROPE, HE SAID NOTABLY THAT DISCUSSIONS WERE UNDERWAY WITH BULGARIA AND THAT FORMAL NEGOTIATIONS WITH THE USSR SHOULD REACH THEIR CONCLUSION BEFORE THE END OF THE YEAR. AFTER BRIEF ALLUSIONS TO LOME IV, THE GULF AND EC/US, DUMAS REMARKED CRYPTICALLY THAT THE COUNCIL SHOULD FOLLOW CLOSELY REATIONS WITH JAPAN.

10. ON ACCESSION REQUESTS, DUMAS NOTED THAT THE COMMUNITY'S SUCCESS WAS DRAWING MORE COUNTRIES. THIS PHENOMENON SHOULD BE TREATED WITH DISCERNMENT. ON AUSTRIA AND TURKEY, THE EP'S OPINION WOULD BE OF PRIME IMPORTANCE. WARMING TO THIS THEME, DUMAS SAID BOTH APPLICATIONS RAISED FUNDAMENTAL PROBLEMS ON WHICH ALL THREE EC INSTITUTIONS WOULD HAVE TO CHEW. WOULD THERE BE MORE APPLICATIONS? COULD ONE ENVISAGE FURTHER ENLARGEMENT WHEN THE COMPLETION OF THE INTERNAL MARKET WOULD PREOCCUPY THE COMMUNITY FOR THE NEXT THREE AND A HALF YEARS? COULD THE COMMUNITY ACCEPT NEW MEMBERS WITHOUT CHANGING ITS WORKING METHODS? ON AUSTRIA, WAS NEUTRALITY COMPATIBLE WITH THE PROSPECT OF POLITICAL UNION ENSHRINED IN THE SEA? ALL THESE QUESTIONS DESERVED TO BE POSED AND WOULD REQUIRE DEEP REFLECTION - THEY WERE FUNDAMENTAL TO THE COMMUNITY'S FUTURE.

11. AT SOME LENGTH DUMAS SAID NOTHING NEW ON EPC.

12. HE CONCLUDED BY MAKING THREE POINTS:

A) THE CO-OPERATION PROCEDURE WITH THE EP WAS A TURNING POINT IN COMMUNITY LIFE WHICH MUST BE FULLY EXPLOITED

B) EMU WOULD BE A NEW STAGE IN A LABORIOUS BUT IRREVERSIBLE CONSTRUCTION PROCESS

C) NEW INSTITUTIONS WOULD BE THE GROWING (IE LAST) ACHIEVEMENT

THESE EVOLUTIONS WOULD PERHAPS (PERHAPS) REQUIRE NEW TREATIES - CERTAINLY, NEW PRACTICES. THE MAIN THING WAS TO MAINTAIN THE SPIRIT WHICH GUIDED THE COMMUNITY'S CONSTRUCTION.

13. MRS CRESSON SPOKE FIRST IN ANSWER TO THE LONG ENSUING DEBATE (IN WHICH, AS USUAL, THE COMMISSION DID NOT TAKE PART). SHE IDENTIFIED THE EUROPEAN COMPANY STATUTE AND RIGHT OF RESIDENCE AS PRESIDENCY PRIORITIES. SOCIAL ASPECTS WERE BLOCKING TOO MANY PROPOSALS. DUMAS ADDED THAT HE HOPED THE BROADCASTING DIRECTIVE WOULD BE ADOPTED WITH THE EP'S AMENDMENTS ON QUOTAS INCORPORATED INTO THE TEXT. HE PROMISED BEST ENDEAVOURS ON LOME IV.

HANNAY

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MR RATFORD

ADDITIONAL 1

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Already seen by PM
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27/7.

MR POWELL

THE LUXEMBOURG COMPROMISE

1. OD(E) reviewed our policy towards the Luxembourg Compromise last week. It was agreed that the Chairman would inform the Prime Minister of the outcome. Given the subsequent change of Foreign Secretary it may be more appropriate for the Secretariat to do so. For ease of reference I attach copies of the Foreign Secretary's paper and the minutes of the OD(E) discussion.

2. The OD(E) discussion focussed on three main issues:

- the over-riding need to ensure that, if we had to invoke the Compromise, we were in a strong position to do so successfully; this meant that in present circumstances we should avoid any action which would alienate supporters of the Compromise;

- hence the importance, as the Foreign Secretary had suggested, of choosing our ground carefully and preparing it thoroughly with other member states, including high-level bilateral pressure on Compromise supporters (making clear as necessary that inadequate support for us might colour our attitude to future invocations by them);

- at the same time, the desirability of preventing abuse of the Compromise by others. Various criteria were identified for possible use in the Government's internal deliberations on future invocations. It was agreed that we should not

discuss these with other member states, in case they took this as evidence that our support for the Compromise was weakening. Each specific case which arose would require very careful consideration to ensure that the balance of United Kingdom interests was fully assessed.

D. A Hadley

D A HADLEY

27 July 1989

File

MJ1ACV

bc: PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

27 July 1989

Dear Malcolm,

BUDGET COUNCIL, 28 JULY

The Prime Minister has noted the former Paymaster General's minute of 24 July about the forthcoming EC Budget Council.

I am copying this letter to the Private Secretaries to the Foreign Secretary and other members of OD(E) and to Sir Robin Butler.

Yours sincerely,

Charles Powell

Charles Powell

Malcolm Buckler, Esq.,
Paymaster General's Office.

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FRAME ECONOMIC

MR MAUDE'S VISIT TO PARIS: 26 JULY

SUMMARY

1. MR MAUDE HAD A DETAILED EXCHANGE OF VIEWS ON A WIDE RANGE OF SINGLE MARKET ISSUES WITH MME CRESSON AND OTHERS IN PARIS TODAY. DIFFERENCES ON MERGER CONTROL NARROWER THAN APPEARED. FRENCH PRESIDENCY DETERMINATION TO RESOLVE OUTSTANDING DIFFERENCES ON THIS. MME CRESSON REITERATED HER VIEWS ON INFRASTRUCTURE AND RECIPROCITY. FRENCH DETERMINATION TO PRESS FOR AGREEMENT ON RIGHTS OF RESIDENCE DIRECTIVE FOR STUDENTS. OTHER FRENCH PRIORITIES INCLUDED THE LIFE INSURANCE DIRECTIVE, PUBLIC PROCUREMENT (EXCLUDED SECTORS) AND PATENTS. MR MAUDE PRESSED FOR MAXIMUM PROGRESS ON THE INVESTMENT SERVICES DIRECTIVE. NO SIGN OF FRENCH MOVEMENT ON EUROPEAN COMPANY STATUTE, BUT MR MAUDE REGISTERED THE POLITICAL SENSITIVITY OF THIS PROPOSAL FOR US. A STRONG PITCH BY MME CRESSON FOR COMMITMENT TO MAINTAINING STRASBOURG AS THE SITE FOR EUROPEAN PARLIAMENT PLENARIES. SHE LINKED THIS, UNASHAMEDLY, TO FRENCH AQUIESCENCE IN A SITE FOR THE TRADEMARK OFFICE.

DETAIL

2. MR MAUDE HAD A FULL DAY OF TALKS IN PARIS TODAY. HIS MAIN INTERLOCUTOR WAS MME CRESSON. BUT HE ALSO SAW MME NEIERTZ (STATE SECRETARY FOR CONSUMER AFFAIRS AT THE FINANCE MINISTRY), DREYFUS (MINISTER IN THE PRIME MINISTER'S OFFICE) AND HANNOUN (BEREGOVOY'S DIRECTEUR DU CABINET). HE MET FRENCH INVESTMENT BROKERS OVER LUNCH. THE DISCUSSION WITH DREYFUS WAS EXCLUSIVELY ABOUT A PROPOSED FRENCH CONFERNECE ON COOPERATIVES, REPORTED SEPARATELY.

MERGERS

3. MME CRESSON THOUGHT THERE WERE FEW DIFFICULTIES LEFT ON THE MERGER CONTROL REGULATION. MR MAUDE AGREED THAT POSITIONS WERE NOW CLOSE ON THRESHOLDS, ALTHOUGH THE UK WOULD INSIST THAT THE REVIEW SHOULD BE ON A WITHOUT PREJUDICE BASIS, AND SHOULD REQUIRE UNANIMITY

TO CHANGE THRESHOLD LEVELS. BOTH MME CRESSON AND MME NEIERTZ SAID THEY COULD ACCEPT QUALIFIED MAJORITY VOTING ON THE REVIEW.

4. ON CRITERIA, MR MAUDE EXPLORED ACTUAL EXAMPLES WITH BOTH MINISTERS. CLEARLY, THE REGULATION SHOULD NOT BE USED TO STOP SOMETHING LIKE AIRBUS. ON THE OTHER HAND, A VW-FIAT MERGER MIGHT HAVE ANTI-COMPETITIVE EFFECTS AND THE COMMISSION SHOULD HAVE THE POWER TO STOP IT. LANGUAGE HAD TO BE FOUND TO MEET BOTH SITUATIONS. MME CRESSON AGREED THAT A RIGID FRAMEWORK SHOULD BE AVOIDED. SHE ALSO QUOTED EXAMPLES. A MERGER BETWEEN THE TWO MAJOR PARIS HOTEL CHAINS WOULD IMPAIR COMPETITION AND SHOULD BE STOPPED. BUT MERGERS IN MAJOR SECTORS SHOULD BE JUDGED AGAINST THEIR IMPACT ON INTERNATIONAL COMPETITION. MR MAUDE THOUGHT THAT LANGUAGE COULD BE FOUND TO ACCOMMODATE THIS DISTINCTION, WHICH UNDERLINED THE NEED TO KEEP EC MARKETS OPEN TO COMPETITION FROM OUTSIDE. THE QUADRILATERAL MEETINGS HAD COME CLOSE TO A FORMULA WHICH MIGHT WORK. MME CRESSON APPEARED TO AGREE. SHE AND MR MAUDE ALSO AGREED ON THE NEED TO TACKLE BARRIERS TO TAKEOVERS AND MR MAUDE PROMISED HER (AND HANNOUN) AN EARLY COPY OF OUR STUDY.

INFRASTRUCTURE

5. MME CRESSON LAUNCHED ANOTHER ATTEMPT TO EXPLAIN THE IDEAS SHE PUT FORWARD AT LAST WEEK'S INTERNAL MARKET COUNCIL. ADMINISTRATIONS AND INDUSTRY NEEDED TO WORK TOGETHER TO ENSURE THAT NETWORKS - IN TELECOMMUNCATIONS, ENERGY ETC - CONNECTED UP PROPERLY. OTHERWISE, LIBERALISATION WAS POINTLESS. MORE RESEARCH WAS NECESSARY TO ENSURE THAT EUROPE-WIDE STANDARDS APPLIED TO NEW NETWORKS FROM THE START. MR MAUDE SUGGESTED THAT LIBERALISATION WOULD ITSELF CREATE MARKET PRESSURES LEADING TO THE DEVELOPMENT OF COMMON SYSTEMS. BOTH LOOKED FORWARD TO THE COMMISSION STUDY PROMISED FOR OCTOBER.

RECIPROCITY

6. ASKED ABOUT HER PROPOSAL TO INCLUDE SOME SORT OF RECIPROCITY CLUASE IN DIRECTIVES, MADAME CRESSON SAID THIS WOULD NOT BE APPROPRIATE IN ALL CASES. BUT THE PRINCIPLE WAS IMPORTANT. THIRD COUNTRIES WOULD BENEFIT FROM THE COMPLETION OF THE SINGLE MARKET, BUT EUROPE MUST NOT ALLOW ITSELF TO BECOME A JAPANESE OR AMERICAN COLONY. HER AIM WAS TO ENSURE THAT THE COMMUNITY WAS AT LEAST AWARE OF THE EXTENT TO WHICH OTHER COUNTRIES - PRINCIPALLY JAPAN AND THE US BUT SOMETIMES OTHERS TOO - WERE PROTECTING THEIR OWN INDUSTRIES. BRINGING SUCH PROTECTIONIST PRACTICES INTO THE LIGHT OF DAY, AND CONTRASTING THEM WITH THE OPENNESS OF THE COMMUNITY, COULD BRING EFFECTIVE PRESSURE FOR THEIR REMOVAL. HER TALKS WITH MRS HILLS, FOR EXAMPLE, HAD SHOWN THAT THIS MIGHT HELP THE ADMINISTRATION COMBAT

CONGRESSIONAL PROTECTIONIST TENDENCIES.

7. MR MAUDE SAID HE SAW DANGERS IN THIS. THERE WOULD BE A TENDENCY FOR OTHERS TO MISINTERPRET SUCH A MOVE, HOWEVER WELL-INTENTIONED IT MIGHT BE, AND LEAD TO JUST THE KIND OF ESCALATION OF PROTECTIONISM WHICH THE COMMISSION HAD RECENTLY BEEN FIGHTING SUCCESSFULLY. MUCH BETTER FOR THE COMMUNITY TO USE ITS UNDOUBTED MUSCLE IN THE GATT.

RIGHTS OF RESIDENCE

8. MME CRESSON SAW IT AS POLITICALLY IMPORTANT TO CONCLUDE THE DIRECTIVES ON RIGHTS OF RESIDENCE, IN PARTICULAR THAT FOR STUDENTS. AS PROGRESS WAS MADE TOWARDS COMPLETING THE SINGLE MARKET, THERE HAD TO BE SOMETHING ATTRACTIVE ON CITIZENS EUROPE, AND FOR EUROPE'S YOUTH IN PARTICULAR. MR MAUDE AGREED THAT SPLITTLING THE PREVIOUS COMMISSION PROPOSAL INTO THREE DIRECTIVES WAS HELPFUL, BUT WE STILL HAD LEGAL BASE PROBLEMS, AND COULD NOT ACCEPT THAT ARTICLE 7 WAS THE APPROPRIATE TREATY BASE FOR THE STUDENTS' DIRECTIVE. MME CRESSON ACKNOWLEDGED THAT ARTICLE 235 (UNAMIMITY) WOULD BE BETTER, BUT NOT IF THE GREEKS THEN BLOCKED. HOWEVER SHE THOUGHT THE NEW GREEK GOVERNMENT WOULD HAVE NO DIFFICULTY WITH THE DIRECTIVE. MR MAUDE WARNED OF AN INCREASING COMMISSION TENDENCY TO USE LEGAL BASES THAT WERE CONVENIENT, RATHER THAN ONES WHICH WERE TECHNICALLY APPROPRIATE. WE WOULD WATCH THIS VERY CAREFULLY. RIGHTS OF RESIDENCE WAS A CASE IN POINT.

FINANCIAL SERVICES

9. WITH HANNOUN AND MME CRESSON, MR MAUDE URGED RAPID PROGRESS ON BOTH THE LIFE INSURACE DIRECTIVE (ON WHICH THE FRENCH HAD MADE AN ADMIRABLE START) AND THE INVESTMENT SERVICES DIRECTIVE. WHY WAS THE LATTER BEING HANDLED SO LEISURELY? HANNOUN SAID THE ISD COULD NOT BE TAKEN FORWARD UNTIL THE OWN FUNDS PROPOSAL WAS ON THE TABLE. MR MAUDE DISSENTED: SEVERAL ELEMENTS IN THE DIRECTIVE COULD BE AGREED IRRESPECTIVE OF THE OWN FUNDS/CAPITAL ADEQUACY PROPOSALS. THE LATTER WAS OF COURSE ESSENTIAL BEFORE IMPLEMENTATION. IT WAS IMPERATIVE THAT THE ISD BE TAKEN FORWARD RAPIDLY, NOT LEAST BECAUSE IT WAS ONE OF THE REQUIREMENTS SET OUT IN STAGE 1 OF THE DELORS REPORT, AND NO-ONE WANTED THAT HELD UP. MME CRESSON SAID SHE WOULD URGE BEREGOVOY TO MAKE RAPID PROGRESS.

EUROPEAN COMPANY STATUTE

10. MR MAUDE AGREED WITH MADAME CRESSON THAT THE LATEST DRAFT OF THE ECS WAS AN IMPROVEMENT OVER EARLIER ONES. BUT IT AND THE DRAFT 5TH COMPANY DIRECTIVE SUFFERED FROM THE FUNDAMENTAL FLAW THAT ALL COMMUNITY WORKER PARTICIPATION SYSTEMS WERE INCLUDED AS OPTIONS SAVE

OURS AND THE IRISH. THIS INFRINGED THE AGREED PRINCIPLE THAT WE SHOULD RECOGNISE EACH OTHER'S SYSTEMS, BUT NOT IMPOSE SYSTEMS ON EACH OTHER. MADAME CRESSON SAID THE PROBLEM WAS THAT OUR SYSTEM WAS NO SYSTEM. MR MAUDE SAID THIS WAS NOT SO. THE BEST BRITISH COMPANIES HAD GOOD ARRANGEMENTS FOR EMPLOYEE INVOLVEMENT, BUT THEY MUST CONTINUE TO BE ALLOWED TO CHOOSE WHAT SUITED THEM BEST. MME CRESSON SAID THE COMMISSION MUST BE ABLE TO SATISFY ITSELF THAT THE ARRANGEMENTS WERE ADEQUATE. MR MAUDE DISAGREED - THIS WAS A MATTER FOR NATIONAL ARRANGEMENTS. THE ISSUE WAS ONE OF GREAT DOMESTIC SENSITIVITY. IMPOSITION OF AN ALIEN AND UNNECESSARY SYSTEM WOULD NOT GO DOWN WELL IN BRITAIN, WHATEVER THE POLITICAL ADVANTANGES OF AN ECS MIGHT SEEM IN FRANCE OR ELSEWHERE IN THE COMMUNITY.

11. MADAME CRESSON SAID THE ECS COULD BE ADOPTED BY QUALIFIED MAJORITY. FRANCE HAD ACCEPTED MANY QM MEASURES WHICH IT DID NOT LIKE. MR MAUDE REPLIED THAT THE SEA REQUIRED ISSUES INVOLVING RIGHTS

OF WORKERS TO BE RESOLVED BY UNANIMITY.

SITE OF THE INSTITUTIONS

12. MR MAUDE ASKED MME CRESSON WHETHER THE FRENCH PRESIDENCY COULD RESOLVE THE SITE OF THE COMMUNITY TRADEMARK OFFICE (CTMO). IT DID THE PUBLIC IMAGE OF THE COMMUNITY NO GOOD TO HAVE HAD THE SUBSTANCE AGREED FOR SO LONG, BUT THE INSTITUTION NOT YET ESTABLISHED. THERE WAS AN OPERATIONAL NEED FOR IT. MME CRESSON LINKED THIS DIRECTLY TO THE WIDER PROBLEM OF SITES FOR INSTITUTIONS, IN PARTICULAR THE EUROPEAN PARLIAMENT. SHE MADE A HEAVY-HANDED PRESENTATION OF THE MAJOR POLIITCAL PRIORITY THE FRENCH ATTACHED TO RETAINING THE EUROPEAN PARLIAMENT IN STRASBOURG. MASSIVE INVESTMENT WAS BEING MADE TO IMPROVE COMMUNICATIONS IN STRASBOURG (SEVERAL FLIGHTS A DAY FROM BRUSSELS DURING PLENARY SESSIONS, THE TGV ALLOWING COMMUNICATION WITH LONDON IN FOUR HOURS WITHIN A FEW YEARS, ALL NATIONAL TV AVAILABLE IN STRASBOURG DURING PLENARIES ETC). UNANIMITY WAS REQUIRED FOR ANY CHANGE IN THE SITE OF INSTITUTIONS. YET THE PARLIAMENT ITSELF WAS WHITTLING AWAY THE STATUS QUO, BY TRANSFERRING OF SERVICES TO BRUSSELS. THIS WAS NOT ACCEPTABLE. IT DID NOT HELP TO HAVE BRITISH CONSERVATIVE MEPS VOTING SYSTEMATICALLY FOR SUCH A TRANSFER. SHE SAW NO PROSPECT OF EARLY PROGRESS ON THE CTMO UNTIL SOME SOLEMN ENGAGEMENT TO CONTINUE THE EP AT STRASBOURG WAS AGREED.

PATENTS

13. ON THE PATENT CONVENTION (WHICH MME CRESSON SAID WAS A FRENCH

PRIORITY) ONLY SPAIN REMAINED A PROBLEM. SHE ENVISAGED PROGRESS WIHTOUT IRELAND AND DENMARK IF NECESSARY, BUT THE SPAINARDS WERE CLEARLY ESSENTIAL. MR MAUDE AGREED. SHE HAD RECENTLY URGED SOLBES TO RESOLVE THIS: THE PROBLEM LAY WITH THE INDUSTRY MINISTER. IT WAS NOT CLEAR WHETHER SOLBES WOULD SUCCEED. MR MAUDE OFFERED TO HELP IF NECESSARY.

TAXATION

14. HANNOUN APPEALED FOR SUPPROT IN MAKING RAPID PROGRESS ON VAT, IN THE LIGHT OF THE MADRID REMIT TO CONCLUDE WORK IF POSSIBLE BY THE END OF THE YEAR. THE COMMISSION AND THE GERMANS IN PARTICULAR WERE STILL BEING DIFFICULT. MR MAUDE NOTED THE GOOD PROGRESS SO FAR IN THE AD HOC GROUP. WE SHARED THE FRENCH DETERMINATION TO RETAIN THE DESTINATION SYSTEM FOR VAT COLLECTION.

15. ON TAX ON SAVINGS, HANNOUN SAID WE MUST AVOID FRAUD AND TAX EVASION ONCE CAPITAL LIBERALISATION WAS ACHIEVED. IN PARTICULAR THE COMMUNITY MUST BEWARE OF ACQUIRING A REPUTATION FOR LAX RULES ON THIS. MR MAUDE SAID WE DID NOT SEE THE PROBLEM AS ACUTELY AS THE FRENCH BUT WERE PREPARED TO LOOK CONSTRUCTIVELY AT ANY COMMISSION PROPOSALS ON MUTUAL ASSISTANCE BETWEEN TAX AUTHORITIES.

FCO PSE ADVANCE PS, PS/MR MAUDE, KERR, ARTHUR (FCO), NEVILLE-ROLFE, DOBBIE AND STOW (DTI), HADLEY (CAB OFF) MRS BROWN (TREASURY).

FERGUSSON

YYYY

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.FRAME ECONOMIC ECD (I)

ADDITIONAL 1

FRAME

NNNN

Ref. AO89/2045

PRIME MINISTER

Cabinet: Community Affairs

1. The Secretary of State for Education and Science may report on the outcome of the Agriculture Council which he attended in Brussels on 24/25 July. There was unanimous agreement to the framework regulation enabling Community intervention stocks to be used to provide emergency aid to Poland. Satisfactory assurances were given by the Commission that the Council would be consulted immediately should either the costs or the product quantities seem likely to change. The Commission's proposed revisions to the rules on Setaside were accepted by qualified majority and further efforts will be made within the Council to achieve unanimity whilst the European Parliament's opinion is obtained. After an all night session an outline agreement was reached by qualified majority to reform the Sheepmeat regime after a transitional period until 1993. However, conversion of this agreement into formal adoption of the necessary regulations depends on finding ways of removing Greek and Italian reserves on the linked proposal covering New Zealand butter imports. Existing arrangements will continue until 30 September. The qualified majority agreement on New Zealand lamb imports will also be formalised when the Sheepmeat regime regulations are adopted. There was wide support for a 1% increase in the Community milk quota reserve but several Member States regard as too draconian the total withdrawal of compensation when there is over-production. Decisions will be sought from the September Agriculture Council.

2. The Secretary of State for Trade and Industry may refer to President Bush's announcement yesterday of a "Steel Trade Liberalisation Programme". The Administration is seeking a two and a half year's extension to their existing Voluntary Restraint Arrangements with the EC and others. An overall 1% per annum increase on existing quota levels has been set to encourage

progress towards an international consensus to deal with subsidies and other barriers to steel trade.

3. The Budget Council on 28 July will be the last before the Summer break.

FER.B.

ROBIN BUTLER

26 July 1989

3634/2

Prime Minister
Not too bad. But non-agricultural expenditure needs to be watched.
CDP 26/7

PRIME MINISTER 24 July 1989

BUDGET COUNCIL, 28 JULY

This note summarises the state of play on the 1990 EC Budget in advance of the Budget Council on 28 July, at which I should have represented the UK.

Under the Inter-Institutional Agreement of June 1988 between the Council, Commission and Parliament, the budget must respect the expenditure ceilings laid down in the financial perspective. The 1990 preliminary draft budget (PDB) is some 4 billion ecu (£2.7 billion) within the overall ceiling, with almost all of the unused margin relating to agricultural guarantee expenditure. For the first time in almost a decade the share of the total budget accounted for by agricultural support has fallen in two successive years.

Most other categories of expenditure in the PDB are at, or close to, the relevant ceilings in the financial perspective. Because of the commitments which were made at the February 1988 European Council in respect of the so-called "privileged" expenditure (the structural funds and R + D), the growth of non-compulsory spending as a whole is bound to exceed the maximum rate of 6.1% calculated in accordance with the Treaty. But there have been two encouraging developments in the run-up to the Budget Council. First, the French Presidency has stuck rigidly to the procedural rule that the growth of "non-privileged", non-compulsory expenditure should be confined to half the maximum rate at the Council's first reading: the Budget Committee has already agreed the necessary cuts in the PDB and one of our main objectives will be to prevent that agreement from unravelling. The second development is that potentially prejudicial references to the forthcoming mid-term review of the Community's RTD

Framework Programme have been removed from the PDB: we know that the Commission will propose a major increase in expenditure as part of the review and it is important that expectations should not be stoked up in the budget procedure.

As regards particular items of expenditure, one of our main concerns will be to press for a satisfactory agreement on the financing of a package of anti-fraud measures proposed by the Commission.

Looking further ahead in this year's procedure, the newly constituted Parliament will no doubt flex its muscles and seek to push non-compulsory expenditure hard up against the ceilings in the financial perspective. At the Council we shall emphasise the importance of ensuring that there is genuine co-decision between the Council and the Parliament on the rate of growth of such expenditure at the end of the procedure.

Copies of this go to Geoffrey Howe and other members of OD(E), and to Sir Robin Butler.

P.B.

PETER BROOKE

Though I shall no longer represent the U.K. at the Budget Council, signing this seemed desirable in the interests of both promptness and continuity.

dti

the department for Enterprise

Prime Minister
CDP 25/7

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Charles Powell Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1A 2AA

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Our ref MM1ANX
Your ref
Date 24 July 1989

Dear Charles

EUROPEAN COMPANY STATUTE

Thank you for your letter of 18 July to Neil Thornton recording the Prime Minister's comments on my Secretary of State's minute to her of 14 July.

My Secretary of State has put in hand the preparation of a further paper in consultation with other interested colleagues with the intention of putting it forward in September before the next meeting of the Internal Market Council, which is currently scheduled for 18 September. Provisional arrangements have been made for OD(E) to consider such a paper early in September.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary and other members of OD(E) and to Trevor Woolley (Cabinet Office).

Yours

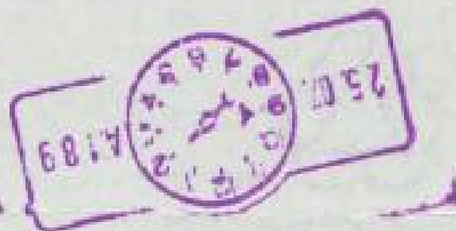
Ben Slocock

BEN SLOCOCK
Private Secretary

the Enterprise initiative

Recycled Paper

Euro Pol & Budget: Pt 4



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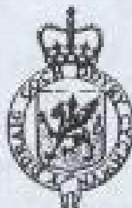

WELSH OFFICE
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01-270 0538 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

21 July 1989

Dear Secretary of State

At the meeting of OD(E) at the beginning of June we were asked to be vigilant in identifying potential extensions of the European Commission's competence and to combat them wherever necessary. The role of the European Court in extending previously understood interpretations of EC legislation was also to be treated with caution. I believe the European Commission are using the Court for such a purpose in respect of a case concerning the Directive for the conservation of Wild Birds.

The Commission have made an application to the European Court that a German land drainage and coast protection scheme is in breach of the Directive. A Court consideration of this case could undermine the UK's whole approach to statutory planning in respect of balancing development and conservation interests. It could be very damaging indeed for projects of national policy significance such as the Cardiff Bay Barrage.

At the heart of the Commission's case is that once a special protection area has been specified under the Wild Birds Directive, Article 4 of that Directive does not permit any harmful interference which might have an adverse effect on the birds' habitat. In making its case the Commission has reasoned that the Directive does not in any way allow for a balance to be made between the requirements of birds' protection and other demands. I am unable to understand why the Commission are taking such a rigid and unrealistic stance since in a Reasoned Opinion given just over a year ago on the Caenlochan case, they appeared to reach a contrary view which was in sympathy with our approach that a balance has to be struck. My only conclusion is that this is a deliberate attempt to extend their competence into members states' domestic planning policies.

/We cannot allow the...

Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign and
Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON SW1A 2AL

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We cannot allow the Commission's view to go unchallenged before it reaches the European Court. The UK approach, which is wholly sensible and takes full account of conservation concerns, is set out in the Nature Conservancy Circular issued to local planning authorities in December 1987. It lays down clear procedural guidance to be followed, including the requirement that in SPA's, or proposed SPA's, there has to be a careful evaluation of the balance between the needs of rare and migratory birds and economic and recreational requirements.

Apart from my concern about the impact of this case on planning policy in general, it will be most harmful to the Cardiff Bay project at a time when the Private Bill has just been introduced into the Commons. The sponsors of the Private Bill for the barrage have, as we know, undertaken the most comprehensive and detailed economic and environmental evaluation studies for any project of this nature. They did so to the full satisfaction of the Committee in the Lords which considered the consequences of the Bill.

Treasury Solicitor is examining the legal grounds for intervention. But the UK Government must intervene urgently and directly in support of the German case. In doing so we should use it as an example to seek the support and obtain the alliance of other member states which could find themselves just as seriously inhibited in their ability to seriously balance conservation with other issues.

I am copying this to the Prime Minister, Nicholas Ridley, Malcolm Rifkind, other members of OD(E) and Sir Robin Butler.

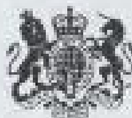
Yours sincerely

Keith Davies

Approved by the Secretary of State
and signed in his absence.

P.M.
VY/C/31

cc PC



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Minister of State
The Rt Hon John Cope MP

CDM 21/7

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
LONDON
SW1

19 July 1989

Dear Geoffrey,

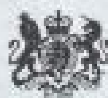
COUNCIL OF EUROPE: EUROPEAN SOCIAL CHARTER: PROPOSED DENUNCIATION OF ARTICLES 7(8) AND 8(4)(b)

The Secretary of State's Private Secretary wrote to your Private Secretary on 16 December regarding our proposals to denounce Articles 7(8) and 8(4)(b) of the European Social Charter in response to the provisions in the Employment Bill to repeal restrictions on nightwork by young persons and the employment of women underground.

The Employment Bill has now passed through its Commons stages and received a second reading in the Lords. The CBI and TUC have been formally notified of our intention to denounce. I propose that we should proceed with the denunciation of Articles 7(8) and 8(4)(b) to the Charter at the end of this month.

If you are content for denunciation to proceed, I should be grateful if you would arrange for the Secretary General of the Council of Europe to be informed by our Permanent Representative to the Council of Europe of the United Kingdom's intention to denounce Articles 7(8) and 8(4)(b) on 26 February 1990. Registration before 26 August 1989 of our intention to denounce will enable us to satisfy the requirements of Article 37 of the Charter to give six

Employment Department · Training Agency
Health and Safety Executive · ACAS



... months' advance notice. I attach a draft letter prepared by my officials setting out the reasons for the denunciation which might form the basis of the formal communication to the Secretary General.

I am copying this letter to the Prime Minister, other members of the Cabinet and Sir Robin Butler.

Yours ever
John

DRAFT

The Secretary General of the Council of Europe
Council of Europe
Strasbourg
FRANCE

July 1989

Following a review of restrictions on the employment of young people and removal of sex discrimination in legislation, the United Kingdom Government decided to abolish restrictions in the law affecting employment opportunities for women and young people. The Employment Bill now before Parliament provides for the repeal of the relevant legislation, principally the Employment of Women, Young Persons and Children Act 1920 and the Mines and Quarries Act 1954, which constitutes the United Kingdom's main means of complying with Articles 7(8) and 8(4)(b) of the European Social Charter.

These particular provisions concern the regulation of the employment of young people at night and prohibit the employment of women in underground mining. The United Kingdom Government believes that the current restrictions on young people's hours of work and the employment of women in underground mining, rather than being protective, are outdated, unnecessarily bureaucratic and discriminatory, and act as a disincentive to employment opportunities. It accordingly takes the view that it would now be right for Her Majesty's Government to denounce Articles 7(8) and 8(4)(b) as the Government will no longer be able to comply with their provisions.

Under the terms of Articles 37 of the European Social Charter, a Contracting Party is required to give six months' notice to the Council of Europe of its intention to denounce the Charter or any part of it. As far as the UK is concerned, the Charter came into force on 26 February 1965, the UK having ratified the Charter on 11 July 1962, and notice is required to be given by 26 August 1989 in order that the denunciations can take effect from 26 February 1990.

I should accordingly be obliged if the necessary steps could be taken to register the United Kingdom's denunciation of Article 7 paragraph 8 and Article 8 paragraph 4(b) to take effect from 26 February 1990.

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Ref: A. 089/1942

PRIME MINISTER

Cabinet: Community Affairs

The Foreign and Commonwealth Secretary is likely to report on the outcome of the Foreign Affairs Council on 17 July. This long Council agreed the acknowledgement of the Austrian application for membership although, at Belgian insistance, the referral of the application to the Commission for its opinion, as provided for in the Treaty, is to be discussed further at COREPER. There were demands for a strong coordinating role for the Foreign Affairs Council in future work on the EMU. The Presidency, anxious for rapid progress, promised procedural proposals, possibly involving the establishment of a high level official group. After six hours of debate, Italian and Greek intransigence on trade concessions led to a deadlock on all Lome questions: it was therefore decided that there was no point in further discussion with the ACP at present. The Commission gave an upbeat account of overall EC/US relations but noted continuing difficulties on soya and hormone-treated beef. The Commission also outlined how they would take forward the remit from the Economic Summit on aid for Poland and Hungary. A proposal on the immediate supply of emergency food aid will be submitted to the Agriculture Council on 24/25 July. An early meeting of officials will consider how to resolve the Polish food supply difficulties and, in the longer term, how to support economic and trade cooperation in Hungary and Poland. A paper on the European Investment Bank's role in providing loans to Eastern Europe was also expected shortly. Agreement on the Television Broadcasting Directive was stalled by French and German objections which, we are assured, will be resolved in September:

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the Presidency is to seek from the European Parliament a month's extension of the cooperation procedure. An Italian proposal for a programme of assistance for Argentina was successfully resisted.

2. The Secretary of State for Trade and Industry may report on the first Internal Market Council which Mr Maude attended on 18 July. On the European Company Statute we were able to join the Germans in expressing doubts about the legal base chosen by the Commission. A number of delegations expressed additional concerns about the proposed tax provisions and called for flexibility in the arrangements proposed for worker participation. Vice President Bangemann concluded helpfully by declaring that the Commission would seek to make it possible for the Council to reach a decision unanimously. There will be a more detailed discussion at the next Internal Market Council now scheduled for 18 September. Serious negotiations on the Merger Control Regulation are now underway with the Presidency's clear objective to reach agreement by the end of the year. There will be another discussion at the 18 September Internal Market Council. Bangemann also promised a paper for that Council on the implementation of Directives, noting that those who made the most noise often had the poorest records.

3. The Secretary of State for the Environment is likely to report on his meeting with Commissioner Ripa di Meana when he strongly restated the Government's good record on implementing the Drinking Water Directive. In reply the Commissioner confirmed that his officials would examine the summary of the remaining national compliance programmes we would be submitting at the end of the month. He said that his principal areas of concern would be the dates by which the remaining standards would be met and the need to be satisfied that the necessary funds would be available to carry out the programmes. It has

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subsequently been reported that the Commission has formally decided to take the UK before the European Court on this issue, but to suspend action on that decision for two months, the intention no doubt being to exert additional pressure on us. The Secretary of State also discussed the role of a European Environment Agency with the Commissioner and they agreed that, rather than act as a regulatory body, the Agency should collect and coordinate environmental information from existing national networks (the French Minister for the Environment, Mr Lalonde, who met Lord Caithness, also took this line).

4. There is to be a meeting of the Agriculture Council on 24/25 July.

FER.B.

ROBIN BUTLER

19 July 1989

dti

the department for Enterprise

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The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon John MacGregor OBE MP
Minister of Agriculture, Fisheries
and Food
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Your ref
Date 19 July 1989

Dear John,

Thank you for sending me a copy of your letter of 14 July to Geoffrey Howe.

I agree entirely with the approach set out in your paper. A return to "recipe law" would indeed cut consumer choice, restrict commercial flexibility and run counter to the overall aim of the single market programme. We must be on our guard to make sure that does not happen. My colleagues and I in DTI will continue to do all we can in the Internal Market Council, the Consumer Affairs Council and elsewhere to support this line.

I am copying this letter to the Prime Minister, to members of OD(E) and to Sir Robin Butler.

Yours
David

the Enterprise initiative

RESTRICTED

file MJ1ADF

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

18 July 1989

Dear Neil,

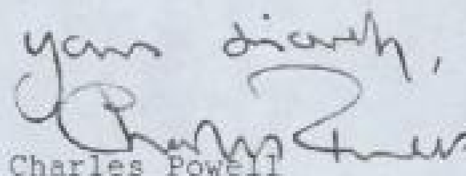
EUROPEAN COMPANY STATUTE

The Prime Minister has seen your Secretary of State's minute of 14 July on the European Company Statute and has commented that she would like to see a much fuller examination of the whole issue before reaching a decision on our negotiating strategy. As you will be aware from her remarks to Herr Waigel, the Prime Minister feels strongly about attempts to impose any model of employee consultation upon us and thinks this is an issue of principle on which we must be ready to fight. She would, I think, envisage recourse to the Luxembourg Compromise and to the ECJ if necessary. Clearly we cannot go back on what we have already agreed in the European Community, but the Prime Minister does not accept that the EC should lay down any further rules going beyond existing requirements and certainly not by qualified majority. As I understand it, this is the purpose of the approach set out in your Secretary of State's minute and the attached note: but I think the Prime Minister wants to feel that she has a comprehensive explanation of the issue, including earlier attempts by the EC to introduce legislation in this field, as well as a clear statement of the various options which would be open to us to oppose the Commission's proposals and an assessment of our prospects of prevailing.

I should be grateful if you could let me have a further paper as soon as possible.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary and other members of OD(E) and to Sir Robin Butler.

Yours sincerely,



Charles Powell

Neil Thornton Esq
Department of Trade and Industry

RESTRICTED

(24)

mr

10 DOWNING STREET

Prime Minister

Luxembourg Compromise

You may like to see the attached OD(E) paper on the Luxembourg Compromise

OD(E)(89)17

C.D.P.
17/7.

dti

the department for Enterprise

Prime Minister

This is much better. We would only agree to consultation procedures which involve no change in current national practice. Agree the revised tactics?

CDP 16/7

This is a pretty shocking 'minute' on which to make a decision. I thought industrial relations had to be by unanimity not

PRIME MINISTER

EUROPEAN COMPANY STATUTE

1. I have now seen Charles Powell's letter of 11 July recording your reservations about accepting the principle of Community legislation covering employee consultation while imposing strict limits in practice.

2. In the light of your concerns, I instructed Sir David Hannay not to put a paper to the Commission on 11 July, but instead to speak to Bangemann to make it clear that their proposals remained unacceptable to us. He also reiterated our firm views on the legal base.

3. The Commission subsequently announced on Wednesday that they had decided on a text of their proposal and to use a legal base which entails qualified majority voting.

4. We now need to consider our negotiating position. The Statute is optional, but if we could achieve a satisfactory outcome, it could be read across to the Fifth Company Law Directive, which is compulsory, and has a qualified majority legal base which will be difficult to challenge. So there is a real prize to be won. Of course, if necessary, we could invoke the Luxembourg Compromise particularly on the Fifth. But, to do so successfully, we will have to have shown willingness to negotiate. Otherwise, we will forfeit the necessary support.

LQ5ANG

5. The Commission have moved some way towards us

- their proposal effectively allows a Member State to establish its own employee involvement model

- but it does lay down minimum requirements for information and consultation

- the consultation requirements only apply to implementation of management decisions, not to the decisions themselves.

6. Clearly this does not go far enough and we have repeatedly stressed to Bangemann that the consultation requirements raise serious problems over management's right to manage - particularly if employees could have recourse to the courts. But I believe we have nothing to gain from total refusal to negotiate. I therefore propose that our line at this stage should be:

- to make it clear that we have fundamental reservations on the legal base, and on the substance of this part of the proposed Statute

- to stress these reservations at all stages in the negotiations

- to underline that any legal provisions on employee consultation raise major issues of principle for us and that we will oppose requirements for consultation which threaten management's right to manage, and which go beyond existing EC requirements

dti
the department for Enterprise

- to suggest that serious consideration should be given to the inclusion of more positive provisions on employee share-ownership. (We expect the draft to have something on this point)

- to let it be known that, if we do not succeed in persuading the Council to adopt a different legal base, we expect to challenge the Statute in the ECJ if and when it is formally agreed

7. We will need to develop a more detailed negotiating strategy later for use in the Article by Article discussion, particularly on the employee consultation aspect against the background of the 5th Directive considerations mentioned above. In the earlier correspondence I was suggesting conditions which would ensure that we could choose the extent of consultation in the UK, and would prevent any new legal recourse by employees. If we could achieve both these points there need be no practical change to UK arrangements. The attached note expands on these ideas.

8. I am copying this minute to Geoffrey Howe and other members of OD(E) and to Sir Robin Butler.

Ian Stocak.

(Approved by the Secretary of State and signed in his behalf)

D Y

14 July 1989

DEPARTMENT OF TRADE AND INDUSTRY

the Enterprise initiative

LQ5ANG

EUROPEAN COMPANY STATUTE: EMPLOYEE INVOLVEMENT

1. Statute is optional. But Commission and most Member States insist on worker participation clauses so that it does not undermine existing national arrangements. Without unanimity voting there is little chance of preventing the Statute being agreed with such clauses.

2. Commission propose 3 models of worker participation, from which Member States need only choose one. One is based on German co-determination, and the second on works councils. The third is a form of collective bargaining.

3. A development within the third option is intended to help us. This provides that if no agreement is reached between management and employees on the model to use, management may impose a standard model which is to be laid down in national legislation "in accordance with up-to-date national practice".

4. In all cases, there must be provision for certain minimum requirements:

- quarterly information on the company's progress
- consultation on the implementation of certain decisions

These decisions are laid down and include closures or transfer of establishments, and major changes in the activities or organisation of the company.

5. A possible negotiating stance is that:

- the subjects for consultation should be at the discretion of Member States.
- it should be for Member States to decide on the appropriate procedures for legal remedies. This would allow us to prevent recourse to the courts for interim injunctions.

We would also seek to whittle down the Commission's own list of subjects for consultation.

6. If we were successful in achieving these changes, we would be able to introduce the Statute without practical change to current UK statutory arrangements - though we would have to legislate for the 'national model'. In practice, this means we would limit consultation requirements to those already laid down in UK law as a result of earlier EC Directives - the Collective Redundancy Directive (which requires consultation where more than 10 redundancies are involved) and the Acquired Rights Directive (which applies in very limited circumstances).

EUROPOL: Dev. in E.C.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

11 July 1989

Dear Neil,

EUROPEAN COMPANY STATUTE

The Prime Minister has seen copies of the exchange of correspondence between your Secretary of State and the Foreign Secretary about the European Company Statute and, in particular, the proposal that we should accept the principle of Community legislation covering employee consultation, while imposing strict limits in practice. The Prime Minister thinks this raises important issues which will need to be considered very carefully before anything further is said to the Commission. As a first step, she will want an early discussion with your Secretary of State. We are in touch about this.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary, the other members of OD(E) and to Sir Robin Butler.

Yours sincerely,

Charles Powell

(C. D. POWELL)

Neil Thornton, Esq.,
Department of Trade and Industry.

Ref. A089/1869

PRIME MINISTER

Cabinet: Community Affairs

The Chancellor of the Exchequer is likely to report on the outcome of the Economic and Finance Council which he attended on 10 July. In addition to the traditional discussion of the general economic situation in the Community, the Council held in restricted session an exchange of views of the economic policies of member countries following the pattern of the multilateral surveillance discussions in the G.5. The main point of interest in the latter discussion was the pressure put on Germany by several member states to reduce subsidies to German industry. Over lunch the Commission outlined the timetable they had in mind for work on EMU to follow up the Madrid European Council. As regards Stage 1, the Commission expect to inform the Presidency by the end of July what changes they believe to be needed to the 1964 and 1974 decisions on the responsibility of Central Bank Governors and on the convergence of economic policy. It is proposed that these issues be discussed at an informal Ecofin meeting in September, with a view to preparation thereafter of revised legal texts. As regards Stages 2 and 3, the Commission announced the intention to prepare a first working document on preparations for an inter-Governmental Conference by the end of September. There are expected to be stocktaking discussions at both the September and November Ecofin meetings. The Chancellor of the Exchequer made clear that the preparatory work would have to address substantive issues going beyond those identified by Delors and gave notice that the United Kingdom intended to develop ideas for alternative models of EMU.

2. The Secretary of State for Employment may report on the informal meeting of Social Affairs Ministers in Auxerre which Mr Cope attended on 10 July. A High Level Group on the Social Charter has been set up: our agreement was only on the clear understanding that the United Kingdom's position was fully reserved. The Presidency announced that a new draft Charter is expected in mid-September, possibly around the same time as a revised version of the Commission's Action Programme.

3. There is to be a meeting of the Foreign Affairs Council on 17/18 July. A meeting of the Internal Market Council will also take place on 18 July.

FE.R.B.

ROBIN BUTLER

11 July 1989

(1)

PRIME MINISTER

EUROPEAN COMPANY STATUTE

The Trade and Industry Secretary is in negotiation with the Commission over the provisions in the draft European Company Statute for employee involvement in decisions - the polite way of saying worker participation. His aim is to secure a draft Statute with which we could live. The single most important consideration is to secure agreement on a legal base which requires unanimity.

The attached papers show that, in order to achieve this, he is prepared to go rather beyond our present position which contemplates provision for keeping employees informed and explore a provision which would involve both information and consultation. He sets very strict limits on this: it would be for Member States to establish the procedures for and legal consequences of consultation (so that employees could not use litigation as a means of holding up management plans); and it would be left to Member States to define the management decisions which would be subject to the consultation requirement.

No No

This is a matter of fine judgement. The Trade and Industry Secretary is doing the negotiation and one does not want to second guess him. The conditions he proposes would certainly impose strict limits on consultation in practice. But I think you should be aware that he is prepared to concede the principle of Community legislation covering employee consultation; and you may like to discuss it with him before he concedes the point to the Commission.

No - he has no authority to do so.

C.D.P.

It is nonsense.

CHARLES POWELL

10 July 1989

LO3BKJ

I must see him at once. He has given away everything.

RESTRICTED

FCS/89/148

SECRETARY OF STATE FOR TRADE AND INDUSTRY

European Company Statute

1. Thank you for your letter of 7 July suggesting that a version of Article 105 of the European Company Statute which could be acceptable to us should be put to Herr Bangemann before the Commission meets on 12 July.

2. I am glad that you propose to speak to Bangemann again before then to ensure that he is in no doubt about the strength of our substantive objections should the Commission opt for a qualified majority legal base for the ECS. But I think that this point should also be given pride of place in any written communication we now give to Bangemann. It might also be best, rather than sending a Ministerial letter, to adopt a low profile way of conveying our points about Article 105.

3. I understand that officials have agreed the attached paper, which closely followed the content of your draft letter, but reflects these two points. If you are content, Sir David Hannay will deliver it to Bangemann before 12 July.

4. Copies of this minute go to the Prime Minister, other members of OD(E) and to Sir Robin Butler.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
10 July 1989

RESTRICTED

EUROPEAN COMPANY STATUTE

The clear legal advice in London is that the appropriate legal base for the ECS is Article 235, as the Commission proposed in the earlier draft. A very difficult political situation would arise if a legal base not requiring unanimity were advanced. This would undoubtedly be seen as provocative.

As Lord Young told Dr Bangemann on 4 July, Article 105 of the proposed Statute is of particular interest to the UK. It could provide scope for meeting our concerns.

However, Article 105 is not acceptable to us as it stands. In particular, as Lord Young made clear, our preferred position would be to omit the references to consultation entirely. In agreeing to an information requirement, he pointed out that he was going much further than the UK had previously gone in discussion on any EC proposals about employee participation in the affairs of companies. Both information and consultation are, in our view, matters for companies themselves and not for national or Community law.

We have however now considered further whether there might be ways in which our requirements could be met. We would be prepared to explore a provision based on Article 105 involving both information and consultation, but on certain vital conditions:

(i) that the Statute contains a provision allowing member states to establish the legal consequences and procedures to be used in a situation where it is claimed that the provisions of Article 105 have not been correctly applied. This would meet the UK concern, that employees or their representatives could use litigation as a means of holding up the implementation of management plans. Dr Bangemann indicated he was sympathetic to this concern;

(ii) that it should be for member states to define the management decisions which are to be subject to the consultation requirement, having regard to the provisions of Articles 72 and 105(5). It will be appreciated that we could not accept the draft of Article 72 in its present form as a basis for the consultation requirement. We must therefore reserve our right to negotiate - constructively and in good faith - on these detailed provisions.

On this basis we would negotiate constructively while reserving the right to make detailed proposals on the Statute generally.

dti
the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign &
Commonwealth Affairs
Downing Street
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Mr Stow IEP
Miss Morton Sols B4
Mr Bender UKREP
Mr Lott D/Emp
Mr Grafen Clb
Mr Trent Cla o/r
Mr Marre Inf
MR GATLAND A/G

Direct line 215 5422
Our ref PS4CJG
Your ref
Date 7 July 1989

Dear Secretary of State,

EUROPEAN COMPANY STATUTE

You will be aware that the European Commission have, for some months, been preparing to issue their proposal for a European Company Statute. A particularly sensitive issue in this for us will be the provisions about employee involvement in the affairs of a European Company set up under the provisions of the Statute.

Francis Maude and I have been discussing with Martin Bangemann - and Leon Brittan - successive drafts which he has produced. In the process we have achieved a number of amendments which make the proposals much more nearly acceptable than they were originally. There is a possibility that, with a little more movement on both sides, we can reach a position which would form a satisfactory basis for negotiation as far as the UK is concerned and which Mr Bangemann could probably persuade his colleagues to go along with. There are two reasons why resolution of this particular problem on these lines, if it proves to be possible, would be worth seeking.

First, there is the possibility that Bangemann would be able to use such a settlement with the UK as support for his and Leon Brittan's view that the legal base for the Statute should be Article 235 of the Treaty, which provides for unanimity voting. They are however in a minority within the Commission and others are pressing for a base which would enable decisions to be made on a qualified majority vote. We have made it clear to Bangemann that, if they were to choose the qualified majority route, we would be likely to challenge that strongly and openly from the start. I propose to speak to him

the Enterprise initiative

again to emphasise that point. On the other hand, Bangemann is in no doubt that we would expect him to use a provisional settlement with us of the employee participation aspect as support for his case for unanimity voting. He is well seized of this point although he has been careful to point out that he cannot necessarily win over all his colleagues.

Second, and perhaps more important, is the possibility that we shall be able to build upon an acceptable arrangement for the UK in the European Company Statute to achieve a similarly acceptable resolution of very much the same problem in the draft 5th Company Law Directive. From the UK point of view a satisfactory arrangement in the 5th Directive is more important than the European Company Statute because whatever is eventually contained in the 5th Directive will have to be applied to all major PLCs in the UK whereas the European Company Statute will be an arrangement which UK companies can choose whether to join into or not.

After consultation between officials in my Department and the Department of Employment we have drafted the attached letter to send to Bangemann in time for him to have it before he discusses with other Commissioners on 12 July the finalisation of their draft proposal for a European Company Statute. This follows on from the discussions which I have already mentioned and which has resulted in us reaching the point described in the draft letter. Subject to any comment which you or colleagues may have, I propose to send this letter to Mr Bangemann or to arrange for UKREP to give him a paper based on it so that he gets it by 11 July at the latest.

We are in a tricky tactical situation. What I am trying to do here is to offer Bangemann enough to persuade him to fight for a unanimity legal base. This will put us in a strong position to negotiate further improvements subsequently - and I have reserved our right to do this in the letter. At the same time, I have been anxious - while presenting our position as positively as possible to the Commission - to ensure that we do not have to make major changes to UK law and practice. I have therefore suggested some strict conditions, which will leave us considerable flexibility in determining how the Statute operates here. Of course, there is a risk that the Commission will take up our proposals but still go for a majority legal base. I have made it clear that in this situation, all bets are off. But I do not think we will be in any worse a position as a result of this last effort to do a deal, as it has always been open to the Commission to go for a majority legal base and for provisions less acceptable to us on employee participation.

dti

the department for Enterprise

I am copying this letter to the Prime Minister, other members of OD(E) and to Sir Robin Butler.

Approved by the Secretary of State
and signed in his absence

Dr Martin Bangemann
Vice-President of the Commission
of the European Communities
Rue de la Loi 200
1049 BRUSSELS

As agreed at our meeting on 4 July I am writing to confirm our position on the draft of Article 105 of the proposed Statute, a copy of which you had passed to us earlier. As you readily appreciate, it is this Article which is of particular interest to the UK, and which could provide scope for meeting our concerns.

However, as I explained at our meeting, Article 105 is not acceptable to us as it stands. In particular, I said that our preferred position would be to omit the references to consultation entirely. In agreeing to an information requirement, I pointed out that I was going much further than we had previously gone in discussion on any EC proposals about employee participation in the affairs of companies. Both information and consultation are, in our view matters for companies themselves and not for national or Community law.

As I promised, I have however considered further whether there might be a formula which would meet our requirements. I can now tell you that we would be prepared to accept a provision involving legislation on both information <u>and</u> consultation, but on certain vital conditions:

i) that the Statute contains a provision allowing Member States to establish the procedures to be used and to provide for the penalties and legal consequences in a situation where it is claimed that the provisions of Article 105 have not been correctly applied. This would meet the concern, that Francis Maude and I have put to you, that employees or their representatives could use litigation as a means of holding up the implementation of management plans. You said you were sympathetic to this concern.

ii) that it should be for Member States to define the management decisions which are to be subject to the consultation requirement, having regard to the provisions of Articles 72 and 105(5). You will appreciate that we could not accept the current draft of Article 72 in its entirety as a basis for the consultation requirement. We must therefore reserve our right to negotiate - constructively and in good faith - on the detailed provisions on this point.

I must stress again that provisions on these lines would be a major step for the UK. We would only be able to proceed in this way if the Statute had a legal basis requiring unanimity. We would, of course, also reserve our position to make detailed drafting proposals on the Statute generally - but I do not think you have any trouble with this.

If you were able to agree to provisions on these lines, and to a unanimity legal base, I can give you a clear commitment that the UK will negotiate constructively on the Statute as a whole.

RESTRICTED

SUBJECT CC MASTER

SW2AXY

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

6 July 1989

EUROPEAN COMMUNITY

A group of MPs led by Mr. Hugh Dykes, and including Mr. David Curry, Mr. Anthony Nelson, Mr. Cyril Townsend and Mr. Timothy Raison came to see the Prime Minister this afternoon to discuss European Community matters.

The group congratulated the Prime Minister on the outcome of the Madrid European Council which had been very positive. In particular two critical elements had been put in place: a clear statement of our intentions on membership of the ERM and a reasonable position on EMU. We should now put forward our own proposals for the latter framed in a way which was not too minimalist. This would enable our friends to rally to our position. The group thought that the social dimension was now manageable. They expected the French to seek a declaration divorced from a specific, itemised legislative agenda. Proposals would come from the Commission for legislation, but this would be under existing competences and could be treated pragmatically on their merits. Their main elements would be training and health and safety at work. The group urged the Prime Minister to push hard on the Single Market concentrating on three areas: a mergers directive, where we were in sight of agreement; the European Company Statute, where we should be able to secure replacement of the concept of "consultation" with "information"; and telecommunications liberalisation. We should also continue to press forward on financial services and banking.

Some members of the group expressed reservations about the tone of our approach to Europe. There was a risk that the Labour Party would look more pro-European than the Government which was not at all how the situation was in reality. The Prime Minister pointed out that we had to fight hard to get our views accepted in the Community and our forthright approach had in practice secured very good results for this country. She agreed with the Group's objectives for the Single Market. She confirmed that we would be putting forward our own proposals for closer cooperation and alignment of policies on economic and monetary matters.

I am copying this letter to Neil Thornton (Department of Trade and Industry) and Roger Lavelle (Cabinet Office).

(C. D. POWELL)

Richard Gozney, Esq.,
Foreign and Commonwealth Office.

RESTRICTED

Ref. A089/1806

PRIME MINISTER

Cabinet: Community Affairs

With the change-over of Presidency no Councils have taken place since last week's Cabinet.

2. The Economic and Finance Council and an informal meeting of the Social Affairs Council will take place on 10 July.

FE.R.B.

ROBIN BUTLER

5 July 1989

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FRAME GENERAL

FRENCH PRESIDENCY/COMMISSION JOINT MEETING IN PARIS : 1 JULY 1989

1. THE SECRETARY-GENERAL OF THE COMMISION HAS GIVEN ME THE FOLLOWING ACCOUNT OF THE FRENCH PRESIDENCY/COMMISSION MEETING IN PARIS ON 1 JULY.

2. THE WORKING PART OF THE MEETING (THERE WAS ENDLESS GRUNTLING LAID ON WITH A SHOVEL AT THE TRIANON AND ELSEWHERE) HAD LASTED TWO AND A HALF HOURS. MITTERRAND HAD PRESIDED THROUGHOUT. THE FRENCH TEAM INCLUDED ROCARD AND MOST OF THE GOVERNMENT.

3. THE FOLLOWING SUBJECTS HAD BEEN COVERED:

(I) ECONOMIC AND MONETARY UNION
AGREEMENT BETWEEN THE TWO SIDES ON THE NEED FOR A FAST PROGRAMME OF WORK. THE COMMISSION UNDERTOOK TO TABLE THE TEXTS OF ANY STAGE 1 PROPOSALS FOR WHICH COMMUNITY DECISIONS WERE REQUIRED BY THE END OF JULY. THERE WOULD BE A FIRST MINISTERIAL DISCUSSION AT THE ECOFIN INFORMAL METING IN ANTIBES IN EARLY SEPTEMBER. BEREGOVOY HOPING TO GET SOME BROAD CONCLUSIONS AGREED THERE ON THE SHAPE AND CONTENT OF STAGE 1. THE OCTOBER AND NOVEMBER ECOFIN COUNCILS WOULD WORK ON THE LEGAL TEXTS WHICH WOULD BE BLESSED BY THE STRASBOURG EUROPEAN COUNCIL. THE FRENCH SIDE HAD PRESSED HARD FOR AN EARLY ECOFIN DISCUSSION OF STAGES 2 AND 3, TO BE TAKEN IN PARALLEL WITH THE STAGE 1 MEASURES. THERE HAD BEEN NO DETAILED INDICATIONS AS TO HOW THEY INTENDED TO CARRY THIS FORWARD.

(II) SOCIAL DIMENSION
MITTERRAND HAD MADE CLEAR HIS OBJECTIVE WAS TO ADOPT A SOLEMN DECLARATION (THE SOCIAL CHARTER) AT STRASBOURG. THE COMMISSION SAID THEIR FINAL DRAFT WOULD NOT BE AVAILABLE UNTIL THE AUTUMN, AFTER FULL CONSULTATION WITH THE SOCIAL PARTNERS. THE FRENCH HAD PRESSED THE COMMISSION TO REMOVE ALL REFERENCES TO IMPLEMENTATION AND FOLLOW-UP FROM THE TEXT OF THE CHARTER (PRESUMABLY TO MAKE IT LESS

UNATTRACTIVE TO US): BUT THEY HAD ALSO PRESSED FOR THE EARLY TABLING OF A WORK PROGRAMME SETTING OUT SPECIFIC LEGISLATIVE PROPOSALS IN THE SOCIAL FIELD AND HAD HINTED THAT THEY WOULD WANT TO TAKE THAT TO STRASBOURG TOO.

(III) SINGLE MARKET
A ROUTINE IDENTIFICATION OF THE MAIN FRENCH PRESIDENCY PRIORITIES. FIRM PRESIDENCY COMMITMENT TO RAPID PROGRESS ACROSS THE BOARD.

(IV) AUDIO-VISUAL
MUCH VAGUE RHETORIC ABOUT THE PARIS CONCLAVE. THE COMMISSION (BANGEMANN AND DONDELINGER) PRESSED FOR EARLY ADOPTION OF THE PRESENT DRAFT BROADCASTING DIRECTIVE. THE FRENCH MANAGED TO SOUND POSITIVE BUT ALSO SPOKE OF REVERTING TO THE EUROPEAN PARLIAMENT AMENDMENTS (MANDATORY QUOTAS ETC).

(V) TAX
THE COMMISSION PRESSED FOR HEADS OF AGREEMENT ON INDIRECT TAX TO BE SETTLED BEFORE THE END OF THE YEAR. THE FRENCH AGREED BUT SEEMED MORE INTERESTED IN GETTING AGREEMENT ON A VAT SYSTEM BASED ON THE DESTINATION PRINCIPLE THAN IN PUSHING TAX APPROXIMATION. COOPERATION AGAINST TAX EVASION ON SAVINGS A HIGH FRENCH PRIORITY.

(VI) RESEARCH
A HIGH FRENCH PRIORITY NOW. BUT NO SPECIFICS.
(VII) ENVIRONMENT
AGREEMENT ON THE AGENCY PROPOSAL WAS THE KEY PRESIDENCY/COMMISSION OBJECTIVE.

(VIII) EXTERNAL
UNEXEPTIONABLE DISCUSSION OF EC/EFTA AND URUGUAY ROUND. FRENCH PRESSED FOR DRAFT MANDATE ON EC/GULF. NO COMMISSION RESPONSE. AUSTRIAN MEMBERSHIP APPLICATION LIKELY TO BE PRESENTED BY MOCK TO DUMAS IN BRUSSELS ON 17 JULY. NO DISCUSSION OF HOW TO HANDLE IT.

4. NO REFERENCE WAS MADE THROUGHOUT THE MEETING TO AGRICULTURE.

5. A FURTHER COMMISSION/PRESIDENCY MEETING MAY BE HELD IN THE AUTUMN.

HANNAY

YYYY

Ref. A089/1673

PRIME MINISTER

Cabinet: Community Affairs

You will wish to report on the outcome of the European Council in Madrid at which you were accompanied by the Foreign and Commonwealth Secretary. You may like to mention the following points:

a. Monetary matters

- agreement only to implement stage 1 of the Delors report proposals, starting on 1 July 1990;

- further work to be done to define what is involved in subsequent stages. No commitment to the Delors prescription or on timing;

- positive response to statement on ERM; no date; inflation down and progress by others on Single Market, in particular abolition of exchange controls.

b. Social Matters

- Council's conclusions satisfactory on importance of creating conditions for more jobs;

- Social Charter would make Community less competitive. Our objections confirmed;

- recognition of role of national legislation and voluntary agreements.

c. <u>Spanish Presidency</u>

- effective performance: over 60 Single Market measures;
- excellent Chairmanship at Madrid.

2. With the changeover to the French Presidency there are no meetings of the Council due in the next week.

FER.B.

ROBIN BUTLER

28 June 1989

(2)

PRIME MINISTER

CC. Sir Alan Walters

22 June 1989

BRUGES GROUP: GERMAN PROFESSORS OF ECONOMICS

A group of German professors of economics, some whom I know and who are internationally distinguished, have decided to set up a German Bruges Group. It is officially launched on 22 June. Their Manifesto makes some familiar points.

Because, they are not a group who can be easily dismissed, this is a useful development.

Brian Griffiths

BRIAN GRIFFITHS

THE EUROPEAN GROUP AT THE FRANKFURT INSTITUTE

The following are signatories of the attached manifesto:-

	Peter Bernholz	-	Basel
	Hans Besters	-	Bochum
	Juergen B. Donges	-	Kiel
	Wolfram Engels	-	Frankfurt
	Hans-Jurgen Ewers	-	Berlin
	Ulrich Fehl	-	Marburg
	Herbert Giersch	-	Kiel
	Helmut Groner	-	Bayreuth
	Gernot Gutmann	-	Koln
	Ernst Helmstadter	-	Munster
	Erich Hoppmann	-	Freiburg
	Hans Otto Lenel	-	Mainz
	Josef Molsberger	-	Tubingen
	Hans G. Monissen	-	Wurzburg
	Manfred J.M. Neumann	-	Bonn
	Manfred Neumann	-	Nurnberg-Erlangen
	Jurgen Schroder	-	Mannheim
	Alfred Schuller	-	Marburg
	Joachim Starbatty	-	Tubingen
	Manfred E. Streit	-	Mannheim
Secretary:	Roland Vaubel	-	Mannheim — Tel: 010 49 621 2921, 010 49 6321 32655
	Christian Watrin	-	Koln
	Hans Willgerodt	-	Koln
	Manfred Willms	-	Kiel
	Artur Woll	-	Siegen

The telephone number of the Frankfurter Institute is 010 49 6172 42074. Contact addresses for all the members of the Group can be found c/o Gert Dahlmanns, the Director of the Institute.

FOR OPEN MARKETS AND DECENTRALISED ECONOMIC POLICY IN THE EUROPEAN COMMUNITY

Europe has produced the enlightenment, modern science and technology, and the industrial revolution. This "European miracle" - as it has also been called - was not a coincidence : in Europe the competition of states for people and capital offered more protection against governmental suppression and regulation than could be provided in other civilisations. The possibility to vote with one's feet was the political foundation of freedom, of intellectual diversity and of the economic incentives without which the "European miracle" would never have happened.

Today we are facing the question of how to preserve these achievements and how to give new impulses for the future development of Europe. The current efforts to dismantle trade barriers and restrictions of capital movements within the European Community and to create a European internal market deserve the support of us all. Moreover, the mutual recognition of national minimum standards creates incentives to remove unnecessary and harmful national regulations. The opening and the deregulation of markets will contribute to Europe's progress.

However, in order to create the European internal market, it is not necessary to transfer additional legislative or executive powers in the field of economic and social policy to the European Community. As economists we call attention to the merits of decentralised decision making. Decentralised economic policy - if properly assigned - is closer to the citizen. It facilitates the control of bureaucracy and exposes the national economic policy makers to international competition. Diversity in economic policy is at the same time a discovery procedure which enables voters and politicians to learn from the successes of other regions and countries.

This is also why we oppose the increasing attempts to "harmonise" national policies in advance by international agreements. Generally, international competition among economic policy makers is a superior mechanism of coordination because it forces them to pay more attention to the citizens' wishes. The decisions of market agents by themselves bring about convergence if and where international standardisation is in the interest of the people. Such a process is preferable to the rule of politicians and officials who draw up directives and plans "by stages" and predetermine the outcome.

As economists we warn against unnecessary centralisation and bureaucratic harmonisation in the European Community. The project of the European internal market must not become a pretext for unrelated transfers of powers and international standardisation by decree. Our concern is not based on nationalism. The merits of decentralisation and federalism are as valid within nations as among them. For good reasons, the member states have assigned certain constitutional powers to the lower levels of government. EC interference with these competences would also and especially harm Europe's progress.

Wrong decisions do not become right by taking them in the name of Europe. The common agricultural policy, the protectionism of the European Community and the European steel cartel - all established in the name of Europe but to the detriment of its citizens - are merely the most obvious examples. Economic policies which obstruct the market mechanism are unacceptable - also at the European level.

The secret of Europe's success in the past has been competition. It would be a tragedy, if we forgot this lesson of history - just at the moment at which the East is rediscovering it. As economists we plead for a Europe which removes the barriers among its peoples and which combines their different abilities. But it must be a Europe of diversity and competition.

We support the evolving parallel efforts of economists in the other member countries of the Community. We take the opportunity of the European election and the imminent decisions about the Community's future to draw the attention of Europe's politicians and of the German public to this important problem.

Ref. A089/1617

PRIME MINISTER

Cabinet : Community Affairs

You may like to mention your discussions with the Spanish Prime Minister on 19 June, and the Presidency's likely objectives in the discussions in the European Council on 26-27 June. You will want to consider how much to tell the Cabinet about, and seek their endorsement of, the approach which you propose to take in the discussion of the Delors Report and the Social Charter.

Presumably not much on Delors

2. The Foreign and Commonwealth Secretary may comment on the overall balance of the groupings within the European Parliament in the light of the elections.

3. The Chancellor of the Exchequer is likely to report on the outcome of the Economic and Finance Council which was attended by the Economic Secretary on 19 June. The Council agreed to three measures which will contribute towards the completion of the Single Market in financial services. (1) The Insider Dealing Directive establishes a minimum requirement for legislation against insider dealing. (2) The second Banking Coordination Directive provides the "single licence" under which a bank authorised in one Member State can carry out business in all other Member States. (3) The Solvency Ratios Directive establishes minimum standards of capital adequacy for banks. All three directives were agreed on a basis acceptable to the United Kingdom. The Council also agreed to the revised Financial Regulation to underpin the Community's financial procedures. In this context the Economic Secretary expressed our concerns about the risk of Commission misuse of "actions ponctuelles". On other issues the Council agreed to set up an ad hoc group to handle the

The Economic Secretary is reported to have done well.

various ideas that are on the table, including those developed by the United Kingdom, for the removal of fiscal frontiers; and unanimously adopted firm conclusions on fraud. The Presidency appear to accept that a reference to measures to combat fraud should appear in the conclusions of the European Council.

4. The Secretary of State for Trade and Industry is likely to report on the outcome of the Internal Market Council on 14 June. As a result of the decisions taken at the most recent Councils the Spanish Presidency has now managed to see to a conclusion nearly 60 Single Market items. Of particular value to us were decisions taken at this Council, one of which will open up purchasing arrangements for public works and another which sets up a framework for ensuring compliance by public authorities with the Community's rules on public purchasing.

5. The Minister for Agriculture Fisheries and Food will report on the meeting of the Agriculture Council on 19-20 June; and probably on the Fisheries Council which was due to meet on 21 June. At the Agriculture Council there was a general discussion of the sheepmeat regime, without any significant progress. The existing New Zealand butter import arrangements were rolled forward for a further month. In discussion of checks and penalties, the Commission underlined the need for fraud to be fought vigorously.

6. The Chancellor of the Duchy of Lancaster may report on the meeting of the Research Council which took place on 20 June. The main business was a first general debate on the review which is due later this year of the R&D framework programme at its mid point. The Commission indicated that it favoured a rolling 5 year programme overlapping with the final 2 years of the present programme with fewer lines of activity than in the present programme, but the possibility of increased funding within the ceilings provided by the Inter-institutional Agreement (IIA). Mr Newton underlined the need to assess existing activities

thoroughly before producing any proposals for a revised programme, and the need to redeploy resources from low priority programmes before considering further funding.

7. The European Council is on 26-27 June in Madrid. Thereafter at the beginning of the French Presidency there are no Councils until the Economic and Finance Council and the Social Affairs Council, both on 10 July.

pp R.B.

ROBIN BUTLER

21 June 1989

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FROM UKREP BRUSSELS

FRAME ECONOMIC

ECOFIN COUNCIL 19 JUNE 1989
SUMMARY TELEGRAM

1. THIS COUNCIL WAS MARKED BY 3 CONSIDERABLE SUCCESSES FOR THE SPANISH PRESIDENCY: AGREEMENT ON THE INSIDER DEALING DIRECTIVE, THE SECOND BANKING COORDINATION DIRECTIVE AND THE SOLVENCY RATIOS DIRECTIVE (IN THE 2 LATTER CASES WITH SOME COMITOLOGICAL LOOSE ENDS TO BE TIED UP BY COREPER). THE INSIDER DEALING DIRECTIVE WILL ESTABLISH MINIMUM REQUIREMENTS FOR LEGISLATION AGAINST INSIDER DEALING. THE SECOND BANKING DIRECTIVE PROVIDES THE ''SINGLE LICENCE'' UNDER WHICH A BANK AUTHORISED IN ONE MEMBER STATE CAN CARRY OUT BUSINESS IN ALL OTHER MEMBER STATES. THE SOLVENCY RATIOS DIRECTIVE ESTABLISHES MINIMUM STANDARDS OF CAPITAL ADEQUACY WITH WHICH BANKS MUST CONFORM - LEVELLING THE PLAYING FIELD FOR COMPETITION IN THE UNIFIED COMMUNITY BANKING MARKET. WHEN THESE 2 BANKING DIRECTIVES COME INTO FORCE (AND THEY HAVE FIRST TO GO THROUGH A SECOND READING IN THE EP) THE COMMUNITY WILL HAVE A BANKING MARKET WHICH IS IN PRINCIPLE MORE UNIFIED THAN THAT OF THE UNITED STATES.

2. ALL 3 DIRECTIVES WERE AGREED ON A BASIS ACCEPTABLE TO THE UNITED KINGDOM, WITH A NUMBER OF DETAILED POINTS GAINED TODAY ON THE PROTECTION OF THE DISCOUNT HOUSES AND OTHER SIMILAR INSTITUTIONS AND THE IMPLICATIONS OF THE BANKING DIRECTIVE FOR OUR ''FUNCTIONAL'' ARRANGEMENTS FOR PRUDENTIAL SUPERVISION OF FINANCIAL INSTITUTIONS.

3. THE AGREEMENT REACHED TODAY REFLECTED SUSTAINED AND DETERMINED EFFORTS BY THE SPANISH CHAIRMEN OF COREPER AND WORKING GROUPS OVER THE LAST FEW WEEKS AND CHAIRMANSHIP BY SOLCHAGA OF HIGH QUALITY TODAY.

4. THE COUNCIL ALSO APPROVED THE REWEIGHTING OF THE ECU, A COMMON POSITION ON THE REVISION OF THE FINANCIAL REGULATION, CONCLUSIONS BROADLY ENDORSING THE COMMISSION'S NEW COMMUNICATION ON THE ABOLITION OF FISCAL FRONTIERS AS A BASIS FOR FURTHER WORK, AND THE 18TH VAT DIRECTIVE: AND GAVE ITS APPROVAL TO AN AMBITIOUS COMMISSION WORK PROGRAMME FOR COMBATTING FRAUD AGAINST THE COMMUNITY BUDGET. ONLY ON THE PACKAGE OF 3 CROSS FRONTIER TAX MEASURES DID THE COUNCIL (PREDICTABLY) MAKE NO PROGRESS.

5. THE ECONOMIC SECRETARY, MR LILLEY REPRESENTED THE UNITED KINGDOM.

6. SUMMARY OF POINTS AGREED BELOW. ITEMS NOT RECORDED SEPARATELY MARKED (X).

A POINTS (X)

7. ALL AGREED AS IN DOC 7438/89, INCLUDING FINAL ADOPTION OF RESOLUTION ON IMPLEMENTATION OF EC STATISTICAL PROGRAMME 1989-92 AND DECISION ESTABLISHING A STATISTICAL PROGRAMME COMMITTEE.

REWEIGHTING OF ECU AND SPANISH MEMBERSHIP OF ERM

8. REWEIGHTING OF ECU FORMALLY AGREED. SOLCHAGA ANNOUNCES INCLUSION OF PESETA IN EMS EXCHANGE RATE MECHANISM.

SECONDING BANKING COORDINATION DIRECTIVE

9. COMMON POSITION REACHED BY QUALIFIED MAJORITY WITH GERMANY ALONE OPPOSING FOR TACTICAL REASONS ON COMITOLOGY. ALL UK POINTS SUCCESSFULLY COVERED INCLUDING CLARIFICATORY STATEMENT OF COMPETENT AUTHORITIES COVERING ALSO THE SIB, SROS ETC, INCREASED ''GATEWAYS'' IN THE PROFESSIONAL SECRECY PROVISIONS AND AMENDMENTS TO ENSURE THE MINIMUM OF REGULATORY GAP AS REGARDS NON-BANKS' SUBSIDIARIES OF BANKS BENEFITTING FROM THE ''SINGLE PASSPORT'' AUTHORISATION OF THEIR PARENT. SATISFACTORY SOLUTIONS ON RECIPROCITY: OTHER COMITOLOGY POINTS REMITTED TO COREPER.

SOLVENCY RATIOS

10. COMMON POSITION REACHED ON PRESIDENCY COMPROMISE WITH SATISFACTORY EXEMPTION FOR DISCOUNT HOUSES AND 10 PERCENT WEIGHTING ON LENDING TO DISCOUNT HOUSES. GEMMS AND SEMBS BUT WITH THE TIME LIMITS ON CONCESSIONARY RISK WEIGHTING ON FRENCH CREDITS BAIL AND LENDING BACKED BY MORTGAGES ON OTHER THAN RESIDENTIAL PROPERTY.

INSIDER TRADING

11. COMMON POSITION REACHED BY UNANIMITY WITH NETHERLANDS AND

GERMANY INSERTING UNILATERAL STATEMENTS TO CONFIRM, RESPECTIVELY THAT GENERAL INFORMATION IS NOT CAUGHT BY THIS DIRECTIVE AND THAT USE OF OTHER THAN ADMINISTRATIVE AUTHORITIES FOR CHECKING INSIDER DEALING OFFENCES IS POSSIBLE.

ABOLITION OF FISCAL FRONTIERS

12. PROCEDURAL RECOMMENDATIONS AGREED: AD HOC GROUP TO BEGIN WORK ON COMMISSION'S COMMUNICATION AND ALTERNATIVE APPROACHES IN JULY, REPORTING TO COREPER IN TIME FOR 9 OCTOBER ECOFIN.

DIRECT TAX MEASURES TO ENCOURAGE CROSS BORDER COOPERATION

13. GERMANY AND THE NETHERLANDS REMAIN UNABLE TO RECONCILE THEIR DIFFERENCES OVER WITHHOLDING TAX ON DISTRIBUTED PROFITS.

18TH VAT DIRECTIVE

14. COMMON POSITION AGREED.

FRAUD

15. SHORT STATEMENT BY SCHMIDHUBER SUMMARISING PROGRESS MADE BY COMMISSION SINCE MARCH ECOFIN. ALL DELEGATIONS THAT SPOKE EXPRESSED SUPPORT FOR COMMISSION'S WORK. PRESIDENCY TABLED CONCLUSIONS COVERING ALL KEY POINTS. BRIEF DISCUSSION OF HANDLING OF FRAUD AT EUROPEAN COUNCIL, BUT PRESIDENCY MADE CLEAR INFORMALLY THAT THEY COULD ACCEPT REFERENCE TO FRAUD IN EUROPEAN COUNCIL CONCLUSIONS.

FINANCIAL REGULATION

17. COMMON POSITION ON NEW FINANCIAL REGULATION ADOPTED, WITH NO CHANGES FROM PRESIDENCY COMPROMISE TEXT.

LUNCHTIME DISCUSSION: DEBT, TAXATION OF SAVINGS, MONEY LAUNDERING

18. NO SUPPORT FOR SPANISH IDEAS ON DEBT, BUT PAPER PROMISED FOR EUROPEAN COUNCIL. NO INDICATION AS TO HOW FRENCH PRESIDENCY WILL DEAL WITH TAX ON SAVINGS. INCONSEQUENTIAL EXCHANGE ON MONEY LAUNDERING.

19. FOR DETAILS SEE MY 11 IFTS.

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the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
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Department of Trade and Industry

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Direct line 215 5422
Our ref NP1AAV
Your ref
Date 19 June 1989

Dear Chancellor of the Exchequer

SECOND BANKING CO-ORDINATION DIRECTIVE

Thank you for your letter of 15 June in response to mine of 13 June.

I am grateful to you and your officials, and to Sir David Hannay and his staff, for a prompt response to my concerns over the ability of the SIB and SROs to act as competent authorities. I too understand that a suitable declaration by Council and Commission would be legally effective. I agree that we should regard the achievement of a suitable minutes entry as our priority.

My officials are in close touch with yours on our remaining joint concerns, the information channels provided in Article 14, and the need for effective powers to supervise the subsidiaries of banks authorised under their parents' passport through Article 16(2). I was glad to hear of the progress that has been made in establishing powers to promulgate and enforce conduct of business rules, through the amendment agreed to Article 19(5)a.

I am copying this letter to the Prime Minister, Geoffrey Howe, Sir David Hannay and Sir Robin Butler.

Yours sincerely

Ian Stewart.

(Approved by the Secretary of State + signed in his absence)

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Pt 42

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the department for Enterprise

The Hon. Francis Maude MP
Parliamentary Under Secretary of State for
Corporate Affairs

CONFIDENTIAL

Department of Trade and Industry

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The Rt Hon Nigel Lawson MP
Chancellor of the Exechequer
HM Treasury
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CPS 19/6

Direct line 215 4417
Our ref
Your ref
Date 16 June 1989

Dear Chancellor,

SECOND BANKING CO-ORDINATION DIRECTIVE AND THE INVESTMENT SERVICES DIRECTIVE

Thank you for your letter of ~~12~~ 9 June explaining the steps which your officials have taken to gain support for an entry in the Council Minutes on the coming into force of the Investment Services Directive at the latest by 1 January 1993.

I agree that the reserve should now be lifted.

I am copying this letter to the Prime Minister, Geoffrey Howe and Sir Robin Butler.

Yours sincerely

Andrew Hope

pp **FRANCIS MAUDE**

(Approved by the Minister and signed in his absence)

DLAABS

Recycled Paper

Europa : Budget. Art42

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Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

15 June 1989

Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry
1 Victoria Street
LONDON
SW1H 0ET

Dear Secretary of State,

SECOND BANKING CO-ORDINATION DIRECTIVE

Thank you for your letter of 13 June about the implications which you believe the Second Banking Co-ordination Directive may have for the UK's present regulatory structure.

I understand your concern about this, although I am less convinced than you are that the Directive would require major change in the structure, provided we can ensure adequate channels for information to pass between supervisors when required.

My officials have, however, in agreement with yours, been pressing for a suitable minutes entry to make it clear that the SIB and SROs are competent authorities. The wording we require has been discussed by officials, including legal advisers, and I understand that the text we are seeking to achieve would be legally effective. I hope you can agree that, if we can achieve it, this will meet your concerns. The alternative you propose of securing a change in the text of the definition in the Directive is bound to be more difficult to negotiate, and even the Commission, who are very supportive in principle, see problems in attempting to do so at this late stage.

For similar reasons I am very reluctant to seek yet another amendment to the Directive to allow for delegation of a competent authority's powers. At this stage of negotiations, we must have clear priorities in our objectives and I hope you will agree that the declaration about competent authorities should be our priority in this area.

I also think that we are in agreement on the need for adequate information channels between supervisors under Article 14 and for

improvement to Article 19(5)(a) to avoid casting doubt on powers to promulgate and enforce conduct of business rules. Our officials are in touch on this and I understand that here too progress is being made; indeed Article 19(5)(a) has, I gather, now been settled.

I am copying this letter to the Prime Minister, Geoffrey Howe, Sir David Hannay and Sir Robin Butler.

Yours sincerely,

Duncan Sparkes

p.p. NIGEL LAWSON

[Approved by the Chancellor and signed in his absence]

EURO POL: Budget Pt 2

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CEPD

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

15 June 1989

Andrew Heyn Esq
PS/Parliamentary Under Secretary
of State for Corporate Affairs
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

Dear Andrew,

SECOND BANKING CO-ORDINATION DIRECTIVE AND THE INVESTMENT SERVICES DIRECTIVE

The attached annex should have been appended to the Chancellor's letter of 12 June to Mr Maude. I apologise for this omission.

I am copying this letter to Paul Gray (No 10), Richard Gozney (FCO) and Trevor Woolley (Cabinet Office).

Yours sincerely,

Duncan Sparkes

DUNCAN SPARKES
Assistant Private Secretary

ANNEX A

Taking into consideration the elements linking the present directive and the proposed Directive on investment services the Council and Commission declare their intention to do everything to ensure the earliest entry into force of the investment services Directive and at the latest by 1 January 1993 as well as the "Coherence" between the 2 texts particularly as regards activities relating to the list in the Annex and their exercise by credit institutions, by financial institutions referred to in Article 16.2 and by investment undertaking referred to in the above mentioned draft directive. To this end and by means of the procedure in Article 20, the Council will adopt necessary measures as soon as the investment Services proposal had ben approved.

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

15 June 1989

DELORS REPORT

Sir Michael Butler came in to see the Prime Minister this evening on behalf of the European Committee of the British Invisible Exports Committee to discuss the Government's approach to the Delors Report and handling of it at the Madrid European Council.

Sir Michael said that there were concerns in the City over the possibility that, if the United Kingdom remained adamant in its objections to the Delors Report, other EC governments might decide to move ahead towards EMU without us. This could endanger the City's leading position and cause loss of business to other financial centres such as Paris and Frankfurt. His Committee emphatically did not believe that the government should endorse Stages 2 and 3 of the Delors report or the linkage established in paragraph 39. Overall they disliked the highly centralised approach which it represented. Their recommendation was that the government should agree to work on Stage 1, with implementation beginning on 1 July 1990 and thereafter proceeding in parallel with completion of the Single Market by end 1992 - which would incidentally be after the next elections in the United Kingdom. Later Stages would be left for study after 1992. Sir Michael noted that the Delors Report did not make membership of the ERM an absolute condition of Stage 1.

The Prime Minister said that her main concern was to see the other European governments fulfil their obligations to complete the Single Market by 1992. There was still a long way to go. The Germans for instance continued to impose a mass of restrictions on insurance, investment and public purchasing. The aim must be to get genuine fair competition in Europe. Her readiness to proceed with Stage 1 would be closely linked to the commitment of others to make progress in these areas. The two must proceed in parallel. Our position on membership of the ERM remained as expressed in the Conservative Election Manifesto: we would join when the time was right.

KK

Sir Michael was optimistic about progress on the Single Market and the extent to which Europe was becoming a genuinely capitalist free market. The Prime Minister thought him rather optimistic.

I am copying this letter to Stephen Wall (Foreign and Commonwealth Office), Neil Thornton (Department of Trade and Industry), and to Roger Lavelle (Cabinet Office).

(C. D. POWELL)

Alex Allan, Esq.,
HM Treasury.

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cc [illegible]

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

14 June 1989

Charles Powell Esq
10 Downing Street
LONDON
SW1

Dear Charles,

PRIME MINISTER'S MEETING WITH SIR MICHAEL BUTLER: 15 JUNE

You asked for briefing for the meeting Sir Michael Butler requested with the Prime Minister, which has been fixed for 15 June. Sir Michael is an Executive Director of Hambros Bank and Chairman of the European Committee of the British Invisible Exports Council.

Sir Michael has already put forward his ideas on the implications for the City of the development of a "two-tier" Europe at the European Committee of the British Invisible Exports Council. He is concerned about the risk of confrontation between the UK and other member governments on EMU and fears that, unless the UK can deflect the pressure by engaging in constructive discussion, other member governments may agree to a monetary treaty without the UK. He believes that the exclusion of the UK from European monetary arrangements would have damaging consequences for the City. Sir Michael concludes that the Government:-

(i) should join in the discussion on EMU in a constructive spirit;

(ii) attack the thesis that the decision to embark on the first stage of EMU is a decision to embark on the whole process (paragraph 39 of the Delors Committee Report) as neither sound nor pragmatic, and simply unnecessary for Stage 1;

(iii) express a readiness to work on proposals identified in Stage 1 of the Delors Committee Report, with a view to progressive implementation in parallel with the Single Market programme;

(iv) if necessary, argue that decisions on Stage 2 and 3 would be best made in the light of experience when Stage 1 is nearing completion; and

(v) the more controversial proposals for Stages 2 and 3 should be discussed further at the European Council in December 1992.

We assume the Prime Minister will wish to use this meeting primarily to discover Sir Michael's views in more detail, as representing those of a senior and respected City figure. She may like to ask him to elaborate on his thinking, particularly in relation to the implications he sees for the City which has established a pre-eminent position as a financial centre in the European time-zone. She might also invite Sir Michael to comment on the strength of competition that the City will, in any event, face from Continental centres in the 1990s and the appropriate response.

Sir Michael has expressed the view that the UK should show its willingness to work on proposals identified in Stage 1 of the Delors Committee Report. He will be aware that the UK has not only proposed practical measures to enhance monetary cooperation in Europe, but has taken measures ahead of other member governments. We removed exchange controls in 1979, launched a programme of Treasury Bills denominated and payable in ecu last autumn, and hold ecu and a variety of Community currencies in our reserves. The Prime Minister might like to ask Sir Michael what more he thinks we should do.

Specific ways in which the UK's approach to EMU could affect us include:-

(i) our influence over the shape of the Single Market in the financial services field; and

(ii) perceptions by overseas investors (eg Japanese companies) that the UK is a good country to invest in.

The Prime Minister might like to ask Sir Michael whether he thinks that the UK will in fact be affected in these and other ways.

Yours sincerely,

Duncan Sparkes

DUNCAN SPARKES
Assistant Private Secretary

PRIME MINISTER 14 June 1989

COMMUNITY COMPETENCE

The papers for OD make depressing reading. The analysis confirms all our worst fears about the Commission's determination to widen its role and powers, its relative success to date and its confidence about its future success.

We have unwittingly created a politicised bureaucracy which, in practice, has very little accountability to anyone. Its power of proposal, its closeness to the European Parliament and its ability to divide and rule among the Member States are a fiercely strong combination in practice. The Council itself is clearly in danger of gradual marginalisation.

The conclusions in the OD papers which Geoffrey Howe endorses are all useful. But they do not pretend to tackle the key problem which is how, as you said the other evening, to create "our kind of Europe". It is on the politics of this that you need to concentrate. A change of attitudes and perceptions on an heroic scale is needed. You have made a bold start. But the struggle will be uphill all the way.

There are two specific points which might be raised;

(i) **Enlargement**

The pressure for this will grow in the 1990s. Turkey is already in the queue. There is talk of Scandinavia, Austria, Cyprus and even Hungary. Over time, this might well be the best way - even the only way - of ensuring that the Community concentrates on real common-market issues, and that attempts at social legislation prove

unworkable in practice over such a wide area. I believe it is worth examining our stance on enlargement from this angle, although it is a long-term option. The benefits could outweigh the danger, which you yourself have identified, that enlargement would simply bring more socialist governments into the fold.

(ii) **Luxembourg Compromise**

I think the OD paper is too sanguine about the effectiveness of this as a long stop. The Compromise has never been tested in the qualified majority single market area. We need to assess very carefully how realistic its use would be in practice to block Social Charter-type legislation. That is a world apart from agricultural prices, etc, which is traditional Compromise territory. OD(E) needs to look at this urgently and with a critical eye.

CONCLUSION

So much has already been given away that only an immensely strong political stance, coupled with alert day-to-day performance on the ground in Brussels, will save us in the short term. The task at OD is to send out this message unequivocally throughout Whitehall so that strategy on individual policy issues can be planned accordingly.

BRIAN GRIFFITHS

Ref. A089/1557

PRIME MINISTER

Cabinet : Community Affairs

1. THE FOREIGN AND COMMONWEALTH SECRETARY will report on the Foreign Affairs Council which he attended on 12 June. Its main purpose was to prepare for the European Council. The Presidency confirmed their expectation that the two main working sessions at Madrid would concentrate on economic and monetary union and the social dimension. In the event preparatory discussion was brief with only the Germans and the United Kingdom contributing. On the Delors Report the Foreign Secretary underlined the wide ranging preconditions for EMU identified in the report itself and the issues of accountability to which no adequate answers have been given. On the other hand he judged that real and rapid progress might be possible on measures to be taken in stage 1. On the social dimension he said that the Community must recognise the validity of the diversity of national approaches. The doctrine of subsidiarity was particularly important in the social field. The United Kingdom could not accept a charter as put forward by the Commission.

2. THE SECRETARY OF STATE FOR EMPLOYMENT will report on the full discussion of the proposed social charter in the Labour and Social Affairs Council which he attended on 12 June. He deployed the full range of an argument against the draft charter, but was only supported by the Danes. Amongst other Member States there was a strong desire for clarification of the Commission's draft, particularly on the respective roles envisaged for the Commission and for Member States; but in the end ten Member States were able to accept Presidency conclusions which supported the principle of the charter. The Council also agreed the third in the sequence of poverty action programmes, with the United Kingdom successfully achieving the deletion of a tendentious definition of poverty

and restraining the total funds available. The United Kingdom blocked a draft presidency resolution on the sharing of work and family responsibilities on the grounds that this was not an area in which the Community should intervene.

3. THE SECRETARY OF STATE FOR THE ENVIRONMENT is likely to report on the Environment Council on 8-9 June at which the United Kingdom was represented by the Minister of State, Department of Environment, the Earl of Caithness. The main outcome was a definitive agreement on emission limits from small cars on a basis acceptable to the United Kingdom and to British motor producers. Though the dates for implementation of the new standards were brought forward from 1 January 1993 (to 1 July 1992 for newly registered cars and 1 January 1992 for new models) this was on the basis that there would no interim (1991) standard and that limits would be placed on fiscal incentives being granted by the Germans, the Dutch and the Greeks to offset the cost of conversion of engines to three-way catalysts. Our arguments on the drawbacks of the catalyst technology were formally acknowledged with a Commission promise that it would come forward with measures to limit CO_2 emissions and step up research on clean technology. The Council also agreed a resolution on the Greenhouse effect on terms acceptable to us and unanimously supported our initiative on the banning of imports of ivory.

4. The Internal Market Council is meeting on 14-15 June. There is to be an Economic and Finance Council on 19 June, an Agriculture Council on 19-20 June, a Research Council on 20 June, an Industry Council on 21 June and a Fisheries Council, also on 21 June.

F.E.R.B.

ROBIN BUTLER

14 June 1989

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PRIME MINISTER

MEETING WITH SIR MICHAEL BUTLER

You agreed to a brief meeting with Michael Butler tomorrow in his role as Chairman of the European Committee of the British Invisible Exports Committee. I enclose a copy of his letter.

He wants to talk about the Delors Report and the risks for the City if the other members of the Community start to move ahead towards EMU without us. His Committee recognise the drawbacks of the Delors Report, but hope agreement can be reached at Madrid to pursue work on Stage I only. This is not incompatible with the approach taken by the Chancellor at the informal ECOFIN, i.e. that the link between Stage I and the later stages must be broken, there is no call for Treaty Amendment on an Intergovernmental Conference but we are prepared to work on practical co-operation of the type envisaged in Stage I.

Probably overtaken by events

CD?

CHARLES POWELL

14 June 1989

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PRIME MINISTER

cc: Mr. Ingham

OD: COMMUNITY COMPETENCE

OD is to discuss Community Competence tomorrow. You have already seen the main papers: the European Secretariat's report, the minutes of the OD(E) discussions and the Foreign Secretary's minute, all of which are in the folder.

You originated this exercise to galvanise departments to be more alert to attempts to extend Community competence and bring new subjects within the ambit of Community law. The Policy Unit did a signal service in exposing some glaring examples of the Commission's activities.

The European Secretariat's paper is a good survey of the problem, of where we are likely to face particular difficulties, and the various options open to us oppose extension of competence. OD(E) has already done the detailed work. There is no need to go over it all again in this meeting. Rather the purpose should be:

- to drill into your colleagues at political level the need to take this problem seriously and to make sure that their departments are geared to spot attempts to extend competence at an early stage, and thoroughly infused with the Government's determination to stifle them where possible. One aspect we need to watch particularly is the tendency to slip seemingly harmless ideas into European Council Conclusions which then come back to haunt us;

- to discuss how we can best block attempts to extend competence. The paper argues that, more often than not, the most effective route is by arguing on policy rather than competence grounds, because we are more likely to pick up allies that way. The last resort is

the Luxembourg Compromise. It has to be used sparingly. But the chances are that we shall have to make use of it over the next year or two and need to choose our targets carefully. There is a useful analytical note by the Cabinet Office on the Luxembourg Compromise;

- to consider the broader policy issue of how we can secure our aims of opposing extension of Community competence and the broader tendency towards centralisation in Europe, without constantly appearing embattled, isolated and anti-European. To my mind, this means a much more active crusade for our sort of Europe, backed by specific initiatives. The Community agenda can only hold so much: and at the moment, it is chock full of other people's ideas, leaving us constantly on the defensive (in contrast to much of the last 3-4 years, during which our issues - above all the Single Market - dominated the agenda). You might encourage your colleagues to come forward with some initiatives, both valuable in themselves and as a diversionary tactic. This is not an easy task. They have to be in line with the Government's liberalising and deregulatory approach, and by definition should not involve new institutions or extension of Community competence. This points to the areas of the Environment, Trade and Industry (on the defeatist assumption that agriculture is a bit of a lost cause) and on the External side. I confess I don't have a specific idea (not today, anyway). But it might be worth opening it up with your colleagues.

C.D.P

CHARLES POWELL

14 June 1989

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MR GRAY 13 June 1989

SOCIAL DIMENSIONS EFFECT ON
UNEMPLOYMENT IN SPAIN AND IRELAND

The attached note by Patrick Minford uses the estimates of labour demand by a Spanish team and an LSE team respectively to measure the effect of raising wage costs on unemployment in Spain and Ireland. The results are noteworthy.

If Spanish employers' on-costs are raised to German levels, the rise could be over 50 per cent. This would induce a rise of unemployment levels by 15 percentage points, with output down by nearly 20 per cent. Clearly the social dimension is not cheap.

ALAN WALTERS

A note on the Social Dimension's possible effect on unemployment in Spain and Ireland

The social dimension would substantially increase employers' costs in Spain, Portugal and Ireland; these countries have low labour costs and to avoid the complaint of social dumping would have to enforce comparable social costs to those in West Germany for example. By raising these costs they would increase unemployment and lower GDP growth. It so happens that recent work allows us to estimate a lower bound on the unemployment effect of higher employer costs for Spain and Ireland. For Portugal we have no work available but there is no reason to believe the effect would be any different.

Spain: Dolado et al (1986) estimate a model which, holding demand factors constant, implies that a rise in employers' social costs by 10% of gross wages would raise the unemployment rate by 2.4 percentage points.

Ireland: Bean et al (1987) find a very similar coefficient for Ireland. The same 10% rise would raise the unemployment rate by 2.3 percentage points.

These results hold demand constant. But since demand would be reduced by the reduced labour competitiveness, they are an underestimate of the total effect. To gauge the possible extra effect from the demand contraction, we can use the UK estimates from Minford et al (1985) with and without demand effects. Without demand the UK figure comparable to the above is a rise in the unemployment rate (from the current 6.5%) of 2.8 percentage points for the same 10% rise in employer costs. With demand this becomes a rise of 3.4 percentage points, a fifth higher. The loss of output and demand in the UK model is 4% in this case.

So allowing for demand effects on top of the direct effect of higher costs we could well find that Spain and Ireland would experience some 3 percentage points extra unemployment (and some 4% loss of output) for every 10% addition to employers' costs, if we follow the estimates in this literature.

Detailed estimates of the rises in employer costs implied by the Social Dimension's possible provisions are beyond the scope of this note. As an illustration merely we may take the difference between the labour 'on-costs' claimed by German employers to be of the order of 80% (figures provided by Professor Gerhard Fels of the Institut der Deutchen Wirtschaft, Cologne) and those in Britain which are 9% (Spain's in 1983 were 26% according to Dolado et al). If these are any guide then a Social Dimension that raised employers' on-costs to German levels would imply rises in costs for the lower cost countries' employers of several multiples of the 10% benchmark. The burden could be an extra 50% or more, implying rises of

unemployment by as much as 15 percentage points (with output down by up to 20%)!

Clearly such numbers are too serious to be permissible, if fully appreciated, by these countries. Certainly they exceed by a large margin any conceivable compensation through the Regional and Social Funds of the EEC.

References

Bean, Charles, Richard Layard, and Stephen Nickell (1986) 'The rise in unemployment: a multi-country study' in The Rise in Unemployment, edited by the same authors, Blackwell, pp. 1-22.

Dolado, J.J., J.L.Malo de Molina, and A. Zabalza (1986) 'Spanish Industrial Unemployemnt: some explanatory factors', in the same volume cited above.

Minford, Patrick with Paul Ashton, Michael Peel, David Davies and Alison Sprague (1985), Unemployment- Cause and Cure, Blackwell; estimates shown in table 1.2, p.20.

Notes on the equations

Bean et al estimate a wage equation and a labour demand equation, Dolado et al also a price equation; Minford et al add an external balance equation in order to solve for permissible demand (assuming current balance). The resulting solutions for unemployment are:

Spain: Unemployment rate=0.244x(the sum of the tax rates on employers' labour costs, employees' income, and consumer sales) + 0.079 x the ratio of benefits to wages + 0.079 x firing costs + 0.017 x union power index + 0.010 x index of mis-match between jobs and vacancies + 0.073 x terms of trade (materials/output prices in manufacturing) + 0.023 x technical progress index - 0.184 x demand index + 0.017 x time + constant

Ireland: Unemployment rate= 0.23 x (sum of tax rates as above) - 0.153 x demand index + constant and terms in capital stock

UK: log Unemployment = 2.6 x log real benefits grossed up by direct tax rate + 5.3 x employers' labour tax rate + 4.9 x unionisation rate + constant (full affects, including demand effect).

Patrick Minford, June 1989.

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PRIME MINISTER

COMMUNITY COMPETENCE: ENLARGED OD DISCUSSION

Papers for discussion:

Foreign and Commonwealth Secretary's minute of 12 June
OD(E) (89) 9 Report by the European Secretariat
OD(E) (89)10 Departmental returns of current activity.

References: Minutes of OD(E) (89) 6th Meeting, 8 June

PURPOSE

To consider the nature of the Community competence problem and what to do about it.

Handling

The Foreign Secretary's minute of 12 June summarised the key points to emerge from the OD(E) discussion. The exercise so far has already significantly heightened Departments' awareness of the need to identify and tackle competence problems. The conclusions of your OD seminar will form the basis for formal guidance to Departments.

A possible structure for the seminar may be to identify a series of questions, broadly following the pattern of the basic report, and to invite answers from those most closely concerned. The attached notes follow that format, summarising (with references to the OD(E) discussion and relevant paragraphs of the report) the answers so far found.

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A. DIAGNOSIS

1. Why does pressure for extension of competence arise?

The report (paras 4-8) puts the source of the problem in the Treaty itself, views of member states on the role of the Community, and institutional pressures in the Commission and elsewhere.

[The Foreign Secretary, Chancellor of the Exchequer and Lord Young]

2. Which are the most sensitive areas and why?

The report identifies three broad areas: the social area, (paras 10-17) frontiers, (para 18) and to a lesser extent external competence (para 19). Frontiers and the social charter raise major strategic issues. Education (para 11), health (para 12), social security (para 13) and culture (para 16) raise more specific issues.

[Home Secretary, Chancellor of the Exchequer; Mr Fowler; Mr Clarke, Mr Baker, Mr Moore, Mr Luce]

3. What devices do the Commission and others adopt?

The report identifies (para 23) the problem of studies; expansion of the scope of Articles; resolutions and declarations; and discussion at informal Councils.

[Foreign Secretary, Mr MacGregor, Chancellor of the Exchequer, Attorney General and possibly others]

4. How far does the ECJ act judicially? Are references to it likely to be helpful or the reverse?

The report says (paras 20-22) that the court acts judicially but prefers expansive interpretations of the Treaty to restrictive ones.

[Attorney General]

B. PRESCRIPTION

1. Do we need to improve the data base?

The report makes five recommendations (para 30). It addresses in particular the problem of the junior Whitehall official attending meetings of "experts" in Brussels. It emphasises the need to find out Commission thinking at the earliest possible stage.

[Foreign Secretary, Mr Clarke, Mr MacGregor]

2. How can we best nip extensions of competence in the bud?

The report has eight recommendations (para 31). They cover in particular firmer guidance in a variety of situations, including attendance at study groups and in relation to conclusions from informal Councils and European Councils.

[Foreign Secretary, Chancellor, Mr MacGregor, Mr Moore]

3. Should there be a working presumption against any extension of competence in the social areas? What are the best techniques in "grey areas"?

The report recommends (para 32) a strong working presumption against concession of new competence in any social area. A prime technique in grey areas (para 33) involves alliance formation based on policy rather than competence considerations. The OD(E) discussion attached importance to further development of the subsidiarity doctrine as a more acceptable substitute for competence arguments. OD(E) also looked for clearer identification of the use of the circumstances in which to invoke the Luxembourg compromise.

[Foreign Secretary, Chancellor, Attorney General]

4. Do some issues have to be looked at strategically? What general strategic solutions can be found?

The report identifies frontiers and the social charter as areas requiring particular strategic responses (paras 34-35). Our effort to sell a practical line on frontier controls is making some headway. Our frontal assault on the Social Charter took place at the Social Council on 12 June. It remains desirable to work for recognition of the clear division between Community and national responsibilities, to displace present preoccupations with a charter. More generally one technique for keeping competence issues at bay is to find more worthwhile activities to occupy the Commission. Our single market strategy has had this in mind throughout. The lesson can be applied more widely.

[Mr Hurd, Mr Fowler, Mr Channon]

5. Can anything be done to correct the institutional bias in Community activities?

At the OD(E) discussion it was noted that it was very difficult to get amendments to existing legislation, given the Commission's power of proposal, or cut it back even when out dated. This point is to be looked at further by OD(E).

[Foreign Secretary, Mr Ridley]

Conclusions

Your may be able to conclude that:

- OD endorses the analysis in the Secretariat report and recommendations for action;

- The central message is increased vigilance by departments at all levels in identifying and combatting potential competence problems even if studies or proposals appear in line with domestic policy;

- the costs and benefits of intervention before the ECJ needs very careful assessment in each case;

- OD(E) should carry out further work on;
  - the use of the Luxembourg compromise;
  - development of the doctrine of subsidiarity
  - (in slower time) the extent of institutional bias in the Community.

- specific competence problems will need to be processed through OD(E) and in some cases OD.

THE LUXEMBOURG COMPROMISE

1. Against the background of the possible need to invoke the Luxembourg Compromise over EC social legislation, this paper reviews UK policy towards the Compromise, and its operation under the Single European Act (SEA).

2. Successive UK governments have regarded the ability to avoid being outvoted where very important national interests are involved as part of the basis on which we joined the Community. The importance of the Compromise has frequently been stressed in Parliament. The decision to accept, in the interests of achieving the completion of the Single Market, the SEA's extension of qualified majority voting has increased the range of measures on which we risk being outvoted, and might therefore need to consider resort to the Compromise. Social legislation is the prime candidate area: on tax issues the requirement for unanimity applies, and on trade issues the liberal northern blocking minority seems likely to hold, at least until the next FRG election.

UK position

3. Current Cabinet Office guidance (EQO (GUIDANCE)(86)19 of 6 October 1986) summarises UK doctrine on the Compromise as follows:

i) The Luxembourg Compromise applies to all Council decisions (whether or not they are based on Commission proposals);

ii) It is for the member state invoking the Compromise to determine its own very important national interests. The Council cannot impose its judgement of those interests on the member state concerned;

iii) Invocation of the Compromise cannot be overridden by

the need to carry forward Community business.

In line with these principles, the UK has consistently declined to participate in any Council vote which a member state has opposed on the grounds that its very important national interests were at stake, even where our own interests on the substantive issue in question would have argued in favour of a vote.

4. The UK has only twice invoked the Compromise - at the Fisheries Council in July 1978 to prevent a decision on fisheries agreements with Sweden and the Faroes, and at the Agriculture Council in May 1982 to block that year's price fixing package because of the effect on the net UK contribution to the Community Budget. On the former occasion the UK was supported by the French and the German Presidency concluded that the question could not be settled with a vote. But in 1982 the UK received support only from Denmark and Greece. This did not constitute a blocking minority, and the price fixing decisions were voted through. The French withheld support, arguing that national interests could only be invoked to prevent a decision if they were directly related to the subject under discussion.

Other member states' positions

5. Member states set out their attitudes towards the Luxembourg Compromise in minutes statements at the signing of the Stuttgart Declaration in June 1983. Denmark and Greece noted that, where very important or vital and essential national interests were at stake, discussion should continue until unanimous agreement was reached. France and Ireland stated that, where a member state sought to defend an essential national interest directly related to the subject under discussion, voting should be "postponed". The longstanding opponents of the Compromise - Belgium, Luxembourg, Italy and The Netherlands - stated that the Presidency must have recourse to voting where the Treaties so provide. Germany said the same, but subsequently

formally invoked the Compromise in June 1985 to stave off price reductions for cereals. (The Italians have hinted on several occasions that they too would be prepared to invoke the Compromise.)

6. While Spain's public line is that it does not subscribe to the Luxembourg Compromise, the Spaniards have twice made it clear to other member states that they would be prepared to invoke it, most recently over the air transport liberalisation package and Gibraltar (para 7). Portugal supported the 1988 Greek invocation (para 8) and came close to using Compromise language in the context of GATT negotiations in Geneva in April 1989 (para 9).

Recent developments

7. The possibility of Spanish invocation of the Luxembourg Compromise to block the air transport package, in order to prevent its application to Gibraltar, led to a reassessment of the UK doctrine in 1987. Following discussion with the Chancellor, the Foreign Secretary took the view that a Spanish invocation in these circumstances would be unjustified, since its purpose would be to thwart the enjoyment by another member state of its Treaty rights. He proposed that, if Spain invoked the Compromise, we should not support them and should press for a vote on the package. This view was endorsed by the Prime Minister and OD(E) colleagues. In the event, the issue did not arise as the package was adopted by consensus, following our bilateral agreement with Spain on Gibraltar airport. This refinement of the UK position has not therefore been revealed to partners.

8. The Greeks invoked the Luxembourg Compromise over the size of the green drachma devaluation in the 1988 CAP price fixing. Denmark, Portugal, Ireland, France and the UK accordingly indicated support for the Compromise and willingness to continue discussion. Italy and Spain simply indicated willingness to continue discussion. Belgium, the

Netherlands and Luxembourg stated that they did not recognise the Compromise but did not rule out further discussion. The FRG did not express a view. The Commission and the Greeks then negotiated bilaterally an increased green drachma devaluation which was agreed by the Council, but the Greeks subsequently disputed the Commission's interpretation of the deal, and indicated at official level that they would be prepared to use the Luxembourg Compromise again to block agreement. Ministers agreed in Cabinet that we should seek to ensure that the Greek interpretation of the deal did not prevail while not abandoning our view of the Luxembourg Compromise. Cabinet's objective was met, since the Commission (supported by most member states) held firm and the Greeks eventually backed down.

9. At the GATT Trade Negotiators Committee in Geneva in April 1989, where the Commission was negotiating for the Community on the basis of a mandate agreed by the Council, Portugal argued that the agreement on textiles did not fully reflect the mandate. In Geneva and in subsequent lobbying the Portuguese referred several times to their "vital national interests" but did not formally invoke the Compromise. Had they done so, we would have argued that invocation was not legitimate because:

i) the Commission had an agreed Council mandate from which it had not departed;

ii) the Geneva talks were not a Council discussion (and neither the Portuguese nor anyone else had called for Council discussion);

iii) there was therefore no specific decision on the table which required a vote.

UK policy objectives

10. The UK has two basic objectives:

i) to preserve the Luxembourg Compromise as a weapon of last resort; and, subject to that,

ii) to discourage unjustified or dubious use of the Compromise by other member states.

In one sense the two objectives are complementary, since frequent and in our view unjustified use of the Compromise would be likely to bring it into disrepute and destroy the support and/or acceptance which makes it operable. But to withhold UK support from what we considered unjustified invocations could, if done frequently, undermine the fundamental tenet of the Compromise that a member state must define its own vital national interest. This would in turn erode its effectiveness as a last line of defence when a vital UK interest was at risk. So objective (i) has been held to take precedence over objective (ii).

Are these objectives being met?

11. Objective (i) is clearly being met. The 1988 Greek episode served to confirm that the Luxembourg Compromise is still operational; revealed that Portugal is a new adherent; and confirmed the acquiescence of the majority of member states. Though we have not invoked it since 1982, there have been occasions - eg over the oils and fats tax, or lorry weights - when the threat, implicit or explicit, of a UK invocation may have contributed to steering the debate in an acceptable direction.

12. We may soon have to make a similar threat in respect of unacceptable provisions on worker participation in the draft Fifth Company Law Directive, or conceivably the European Company Statute if the Commission advance it on a QM legal base. Other QM-based legislative proposals could emerge from the Social Charter exercise. The Compromise has not previously been invoked in respect of social legislation. Some of its traditional supporters (Greece, France, perhaps Portugal) are strong advocates of such

legislation, and their acceptance of a UK invocation is not therefore certain. Furthermore, if the issue came to a head in late 1989/early 1990, it is a fine judgement whether holding the Presidency would make France and Ireland more or less inclined to assist a UK invocation. Much might depend on the precise issue: an invocation on the Fifth Directive (direct implication for UK law and practice) might secure more support than one on the ECS (optional for companies) or on a substantively harmless piece of social legislation opposed by the UK only on Competence grounds. In short, there can be no certainty that we would secure a blocking minority in support of a UK invocation in the social field: we would need to pick the issue, and prepare the ground, with care.

13. Objective (ii) can be said to be largely met over the last two years, since the Compromise has been invoked only once. The Greek 1988 invocation was dubious, but the Greeks did not fully achieve their objective, and did not repeat the tactic at the 1989 price fixing.

Possible refinements to our policy

14. Given Cabinet's concern at the new threats in the social area, Ministers might in current circumstances attach more weight to action to facilitate objective (i) than objective (ii).

15. It could be argued that, to increase the chances of a UK invocation succeeding, we should propose an alliance of Compromise-supporters who would undertake to support each others' invocations in all circumstances. But any such agreement would not be formal or legally-binding, and therefore would not in practice bring any more certainty than currently exists. (It would of course also conflict with objective (ii), by increasing the risk that one of our "allies" might invoke the Compromise for a purpose which we deemed illegitimate.) Rather than seeking concrete mutual commitments valid in all circumstances we might do better,

in the approach to a crunch decision, to make clear to normal Compromise-supporters that we saw a vital UK national interest at stake; that we would if necessary invoke the Compromise; and that inadequate support by others might colour our attitude to future invocations by them. This message would have to be conveyed bilaterally as well as in Brussels, and in Prime Ministers' offices and Foreign Ministries - where the importance of maintaining the Compromise would be recognised - as well as in the functional Ministries handling the particular issue in question.

16. If Ministers instead gave greater weight to objective (ii), we could consider going further than the (unpublished) 1987 decision (para 7) in narrowing our definition of a legitimate invocation. But the principle that a member state must define its own vital interests makes it difficult to go very far down this road. Nor is it evident that objective (ii) requires further initiatives at present, particularly as such initiatives could conflict with objective (i).

17. Nevertheless we could:-

(a) define as illegitimate, and refuse to support, any invocation which, if successful, would breach existing Community law. An example might be an invocation which would lead to a breach of the 1988 Budget Discipline Decision.

(b) withhold our support for invocations designed (as in the Greek case) to increase a member state's negotiated benefits, and support only those designed to avoid a member state being obliged to accept a change in the status quo which would be to its detriment, and which it regarded as intolerable.

(c) require a member state invoking the Compromise to

define clearly and publicly the national interest involved before they could expect UK support, so making dubious invocations more difficult; or

(d) require a member state after invoking the Luxembourg Compromise in any Council to justify its position at the Foreign Affairs Council.

18. Among these (a) looks the most promising, though - as with our 1987 decision (para 7) - it would be best not to promulgate the change unless and until it became clear that an invocation which would breach EC law was in prospect. It would be difficult to identify cases falling under (b) with sufficient advance clarity. (c) would achieve little. Opponents of the Compromise would be unlikely to agree to institutionalise it as at (d), and some supporters might have no interest in doing so. Moreover to raise any of these options might well be taken as demonstrating diminishing UK support for the Compromise, and would be unlikely to increase support for a UK invocation of it.

Conclusions

19. The conclusions of this review therefore are that:

(i) the Greek invocation of the Luxembourg Compromise in 1988 confirmed that it continues to command adequate supporters, now including Portugal;

(ii) But we cannot be certain that a UK invocation against unacceptable social legislation would succeed: to maximise the chances of success we would need to choose our ground with care, signal our intentions well in advance, and apply pressure bilaterally with other Compromise supporters;

(iii) the risk of abuse of the Compromise by others is unavoidable, but limited in practice; and we must maintain the view that it is for the member state

invoking the Compromise to determine its own vital national interest;

(iv) this did not prevent our deciding that use of the Compromise to deprive a member state of its Treaty rights should not be supported; and need not necessarily prevent our extending this to cover an invocation which would lead to a breach of Community law;

(v) but any wider or formally promulgated limitation of our support for others' invocations would endanger support for a UK invocation, and hence the deterrent value of the Compromise, the importance of which to us has been increased by the SEA.

FCO

31 May 1989

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PM/89/027

PRIME MINISTER

Community Competence

1. On 8 June OD(E) had a preliminary discussion of the paper on Community competence which Sir Robin Butler submitted to you on 31 May, and which will be discussed in OD on 15 June. We found it a valuable analysis of how competence problems arise, with helpful prescriptions for future action. I have sent you a separate minute on our parallel discussion of frontier controls.

2. The root of the problem, in our view, is that the Treaties provide many possible footholds for extensions of Community activity. We have on occasion been able to use this to our own advantage, for example in promoting our agenda for the Single Market despite the resistance of some other member states; and it can of course be greatly to our advantage when Treaty powers are used, eg to tackle other member states' state aids or to ensure that our exports of Nissan cars are not subject to discrimination. But OD(E) saw cause for real concern over Commission pressure to extend competence in areas such as industrial relations, social provisions, education and health.

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3. The issue is as much, if not more, political as legal: increased Community activity in areas of existing competence can also be unacceptable. In discussing Norman Fowler's paper on the proposed Social Charter, we agreed that a charter in the form put forward by the Commission could lead to some increase in competence, and would certainly encourage unwelcome new follow-up activity, and must be resisted on these grounds, as well as on its merits (or lack of them). Only rarely will legal argument suffice to rein in Commission ambitions: rather we need to find allies, and present our political case with skill. So we must wherever possible make our case primarily on policy rather than competence grounds. (It is already clear that reasoned presentation of our success in securing more jobs through less regulation of the labour market will be central to our efforts to counter the Commission's Social Charter proposal.)

4. We can also promote the doctrine of "subsidiarity", which the Commission preaches but rarely practises. M. Delors has publicly endorsed it and privately admits that the Commission produces too much draft legislation. The idea of "subsidiarity" is that the Community should stick to what is best done at Community level, with the rest left to member states. Articulating this principle, and getting it explicitly recognised in EC texts, would greatly strengthen our position: other member states are much more likely to be receptive if we resist proposals on well-argued grounds of subsidiarity than on competence.

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5. Subject to discussion in OD, we identified the following points for future action:

(a) the earliest possible warning of new proposals is essential, even at the stage when they are no more than "gleams in the eye". We need to be particularly vigilant in the social area. Early warning will enable us to influence Commission thinking (and that of other member states) at a formative stage. It will also make it easier for us to mobilise support from trade associations and other interest groups;

(b) an indirect way of curbing undesirable Commission activity can be to divert its efforts into areas of advantage to us. Fraud is a recent example: we have successfully pressed for more Commission activity. In the transport field we must press for more effort on liberalisation and less on unnecessary harmonisation, eg on road safety. There may well be other areas in which we can work up a positive approach of this kind;

(c) if all other arguments fail, we may need to rely more on the Luxembourg Compromise. It can be an effective deterrent weapon, though it can only be used sparingly and after careful preparation, for the success of every invocation cannot be guaranteed. I propose to circulate to OD(E) a paper on its present status and how best to strengthen it;

(d) similarly, the decision to mount an ECJ challenge needs equally careful prior examination. We must weigh the risk of a Court decision which leaves us worse placed;

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(e) though only the Commission can propose amending legislation, we need not accept that the quantum of such legislation can only grow. Possibilities for cut-backs, eg in areas where existing provisions are outdated and "subsidiarity" should apply, should be explored.

We also touched on various other ways of curbing, and even rolling back, growth tendencies in Brussels. Following your OD discussion I envisage the preparation of a set of guidelines for use by Ministers and officials in the conduct of Community business.

6. Perhaps the single most important message to emerge from our discussion was the need for all those in Whitehall Departments who deal with Community affairs to be alert to the ways in which pressure develops for increases in Community activity or Community competence. The fact that studies or proposals appear to be in line with domestic policy should never be taken as necessarily meaning that they can be regarded as acceptable in the context of Community policy. All too easily this can lead to acceptance - or even promotion - of wider Community competence or activity.

7. I am sending copies of this minute to all colleagues who will be at this week's OD meeting, and to Sir Robin Butler.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
12 June 1989

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Budget

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CCPC

Treasury Chambers, Parliament Street, SWIP 3AG

The Rt Hon John Cope Esq MP
Minister of State
Department of Employment
Caxton House
Tothill Street
London
SW1

CDP 12/6

12th June 1989

Dear John,

EC ACTION PROGRAMME ON THE IMPROVEMENT OF THE BUSINESS ENVIRONMENT AND THE PROMOTION OF THE DEVELOPMENT OF ENTERPRISES

Thank you for your letter of ~~5 June~~ May. I have also seen the responses of Geoffrey Howe, David Young, and John MacGregor to your original letter.

I am glad to hear that you are prepared to find offsetting savings to cover the UK share of the programme which is eventually agreed, and that you will be pressing hard, both to keep the size of the programme as small as possible, and for a type III management committee. You imply that the announcement represents a fait accompli as regards the extension of EICs. But this cannot be the case. At the very least there needs to be Council agreement on the overall level of funding (the so-called "amount deemed necessary"). Even then this figure would be no more than indicative. The Commission's spending, or its ability to enter into commitments, would be limited to the amounts provided in successive annual budgets. The Budgetary authority is not obliged to agree any particular level of provision and the Commission cannot therefore anticipate the availability of credits. It is important that the Commission should be left in no doubt of this; and that we do not allow ourselves to be bounced into accepting an extension of EICs for which there is little objective justification.

I am copying this letter to the Prime Minister and members of OD(E), and to Sir Robin Butler.

Yours Ever, John

JOHN MAJOR

Europa: Budaer Platz

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Prime Minister

This is the exercise on which you insisted, and very valuable it has proved. We have an agreed bottom line. But the problems will come on the Animal/Plant Health side which is subject to majority voting.

CDP 9/6

PM/89/026

PRIME MINISTER

Frontier Controls on Persons and on Animal, Plant, Fish and Food Products; The Bottom Line

1. You asked about the United Kingdom's "bottom line" in Community negotiations in two major areas: controls on cross-frontier movement of people and the goods they carry; and controls to protect animal, plant and fish health and food safety.

2. On 8 June OD(E) discussed the attached papers by Douglas Hurd and John MacGregor. We agreed that it is important not to lose the advantages of our island status, and we accepted the specific elements of the bottom line proposed in each area. But the negotiating contexts differ sharply.

3. In respect of persons and the goods they carry we can justifiably argue that:

- the movement of third country nationals is not covered by the Treaty and remains subject to national controls;
- we need to be able to check EC nationals' identity in order to ensure that third country nationals do not try to pass themselves off as the former;

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- illicit trade in drugs or firearms is a matter for enforcement agencies in every Member State;

- while disparities in excise rates remain, national action to control personal imports of alcohol and tobacco will be required;

- enforcement agencies must be able to operate wherever they can do so most effectively (the Commission appear to have recognised this by saying that frontiers cannot be regarded as no-go areas for them).

4. The Law Officers' advice has consistently been that as long as we operate continuing checks on persons and the goods they carry in a way that is specific and proportionate to the perceived risk our position is defensible. I do not expect difficulty on this at Madrid, for though most other Member States are more prepared than we are to rely on post-entry controls the group of "Coordinators" on frontiers issues set up at Rhodes have not got bogged down in dogma about a frontier-free Europe. Their work shows that there is considerable scope for resolving many of the important issues (eg asylum, visas, drug enforcement) on the basis of positive inter-government cooperation ie outside the Treaty.

5. By contrast, questions of controls on animal, plant and fish products and food are fully covered by the Treaty, and normally subject to decision by qualified majority.

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the Commission won the Hormones case in the European Court. CDP

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6. John MacGregor recognises that we shall have to negotiate hard and skillfully to convince the Commission and Member States - other than the Danes and the Irish who share our approach - that our bottom line requirements must be enshrined in Community legislation. Much will depend on whether we can convince them that our objectives are legitimate and not in any way protectionist or designed to impede trade. Our strongest card is that our reservoir of healthy stock, and our export trade, is an asset for the Community as a whole. At the operational level the Commission appear to recognise this, as they do our concerns on rabies. John MacGregor will be seeing Commissioner McSharry to discuss our requirements. Negotiations have scarcely begun on the long-term regimes on animal, plant and fish health.

7. We shall need to keep these assessments of our bottom lines up-to-date. In both cases the negotiating background will change, as it becomes clearer what may be on offer. Against this background OD(E) saw plain tactical advantages in avoiding any public declaration of our essential requirements at this stage.

8. I am copying this minute to Colin Walters (Home Office), Shirley Stagg (MAFF) and Michael Saunders (Law Officers' Department).

(GEOFFREY HOWE)

Foreign and Commonwealth Office
9 June 1989

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the department for Enterprise

CONFIDENTIAL

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Secretary of State for Trade and Industry

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Date June 1989

CDP 13/6

Dear Nigel,

SECOND BANKING CO-ORDINATION DIRECTIVE

Our officials have been considering the issue of institutional or functional supervision of banks. This has become urgent following reports that the Spanish Presidency with the support of the Commission and some other member states will be pressing for a common position on the Second Banking Co-ordination Directive at ECOFIN on 19 June. This may not be achieved since there are a number of unresolved differences between 7 member states. However we should not rely on this.

In my absence, Francis Maude wrote (at flap) to you on 26 May on the need to ensure that the Second Banking Co-ordination Directive came into force at the same time as the Investment Services Directive. I continue to attach considerable importance to that, but I am now writing to you on another point we need to address before ECOFIN.

I am therefore writing to let you know that I do not particularly welcome the prospect of major change to the regulatory structure given that we have comparatively recently established a system based upon self-regulation and functional supervision and at a time when we are even now refining that system. I understand too that the Commission has given assurances that they do not seek to change the regulatory framework in member states as a result of financial services directives.

the Enterprise initiative

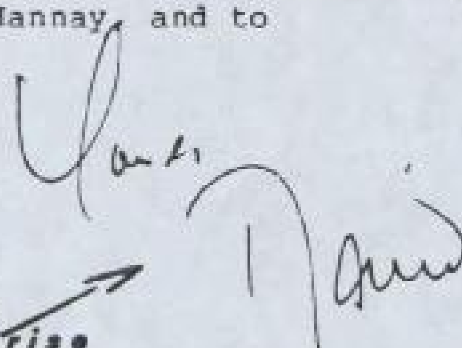
I should add that the impact on our present regime will be that much greater, given the ability provided under Article 16(2) of the Second Banking Co-ordination Directive for subsidiaries of credit institutions to benefit from their parents' passport under the directive. The amendments to Article 16(2) which our officials have agreed as the best we can hope for will not achieve their desired result without the other changes mentioned in this letter.

I understand that at present we have a reserve on the definition of "competent authority". I propose that we should continue to maintain this reserve, including at ECOFIN, while seeking the agreement of Sir Leon Brittan and the Presidency to provide an amendment that would put beyond doubt the inclusion of the SIB and the SROs as competent authorities. I suggest that we leave it to our officials to agree appropriate amendments to the texts.

If it does not prove possible to extend the definition of competent authority then,rather than be voted down in isolation, I would wish you to try another track, seeking to amend the Directive to provide that the competent authority could delegate its powers. Subject to your views I would intend that in the UK this would be exercised by giving the necessary powers to the Bank and providing in statute for the Bank formally to delegate them to SIB in relation to securities business carried out by banks. I would intend that SIB in turn would be able to recognise the SROs.

I think we are agreed on the need to achieve two other changes in the directive to ensure that the SIB and SROs can act effectively. These are especially important if a change to the definition of competent authority cannot be achieved. The first change concerns the power under Article 14 for competent authorities under the Second Banking Co-ordination Directive to pass information to other regulators. This is necessary to ensure that the SIB and SROs can receive the information they need to do their job. The second change is needed in Article 19(5), to recognise the ability of the SIB and the SROs to promulgate and enforce conduct of business rules. Our officials have agreed the line to take in Brussels to achieve these objectives and I understand that some progress has already been made.

I am sending copies of this letter to the Prime Minister, to Sir Geoffrey Howe,to Sir David Hannay, and to Sir Robin Butler.



Euro Pol: Budget
Pt 42

CONFIDENTIAL

MR A TURNBULL

OD 15 JUNE; COMMUNITY COMPETENCE

I attach a handling brief for the Prime Minister's seminar on Thursday.

The Foreign Secretary's minute of 12 June referred (para 5(c)) to his intention to circulate to OD(E) a paper on the present status of the Luxembourg Compromise.

His officials have prepared the attached up to date assessment which you may wish to include in the Prime Minister's papers.

R G LAVELLE

13 June 1989

chex.jp/ds/1 **CONFIDENTIAL**

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

12 June 1989

Hon Francis Maude MP
Parliamentary Under Secretary of State
for Corporate Affairs
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

Dear Francis

SECOND BANKING CO-ORDINATION DIRECTIVE AND THE INVESTMENT SERVICES DIRECTIVE

Thank you for your letter of 26 May, in which you express your concern that the Investment Directive may not be implemented at the same time as the Second Banking Co-ordination Directive.

I agree that it is desirable that the two directives should come into effect at the same time. My officials have emphasised this point in their dealings with the Commission and other member states and will continue to do so.

We would, however, have to think very carefully before making proposals which could ultimately have the effect of delaying the implementation of the Second Banking Directive or, more immediately, of casting doubt on the UK's commitment to the single market in financial services. The Banking Directive will bring benefits for UK banks with operations in other member states as well as for the City, and it would be very strange for the UK to argue for delay. Furthermore, I am not convinced that a delay in the implementation of the Investment Services Directive would have adverse consequences on a scale which would justify delaying the implementation of the Second Banking Directive. In any case, it is not at all obvious that it is going to be impossible to meet our objective of getting both directives implemented on time.

The French Treasury made two points to your and my officials; that delay in reaching a common position on the Insider Trading Directive under the Spanish Presidency would in turn delay working group meetings on the Investment Services Directive; and that the subject matter of the Investment Services Directive was so complex and novel to most member states that it might be impossible to

meet the 1 January 1993 deadline for implementation on the ground in each country.

The first point should be dispensed with if all goes well at ECOFIN on 19 June. On the second point, your suggestion that we should look for ways of amending the Investment Services Directive so that it can make faster progress is very sensible, and my officials will do all they can to assist in this process and to maintain pressure on our opposite numbers.

You have nevertheless suggested that we should press for amendments to the Second Banking Directive providing either that it could not be implemented before the Investment Services Directive or that securities business should be excluded from the passport provided under the Banking Directive until the Investment Services Directive comes into force.

Unfortunately, it seems virtually certain that such amendments would not obtain the agreement of other member states. My officials are indeed pressing for your third suggestion - to exclude securities business from the activities for which subsidiaries of credit institutions receive a Community passport under the Banking Directive on the basis that they will receive it under the Investment Services Directive when that comes into force - but even this limited proposal will not be easy to achieve.

My officials have made firm statements for the record in the Council Working Group that the UK attaches great importance to the simultaneous implementation of the two Directives. Partly as a result, the Presidency came forward with a proposal for an entry in the Council minutes recording the intention to achieve this objective. My officials naturally gave this strong support against initial criticism from the French and others.

After further discussion by attaches on 6 June, there was general agreement on the text at Annex A. Since this refers to entry into force of the Investment Services Directive at the latest by 1 January 1993 rather than simultaneously with the Banking Directive, my officials entered a reserve to enable you to consider it. But I hope you will now be able to agree that this reserve should be lifted. Given the evident concerns of other member states about the possibility that simultaneous implementation might mean delay in the Banking Directive, a declaration of intent to ensure the entry into force of the Investment Services Directive by 1 January 1993 is likely to be the most powerful lever we can secure to achieve that result.

I am copying this letter to the Prime Minister, Geoffrey Howe and Sir Robin Butler.

Yours
Nigel

NIGEL LAWSON

Euro Pol: Budget
Pt 42

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FRAME GENERAL

AMBASSADORS LUNCH WITH PRESIDENT OF THE COMMISSION: 8 JUNE

SUMMARY
1. DELORS TOOK THE OPPORTUNITY OF HIS LUNMCH WITH PERMANENT REPRESENTATIVES TO OFFER SOME WELCOME REMARKS ABOUT HIS CONCERN TO CURB THE PROLIFERATION OF COMMUNITY LEGISLATION AND ACTIVITIES IN PERIPHERAL AREAS. I WAS ABLE TO EXPLAIN OUR CONCERNS. IN REPLYING TO QUESTIONS ABOUT THE PROSPECTS FOR THE EUROPEAN COUNCIL HE UNLEASHED A FIERCE ATTACK ON THE CONCLUSIONS DRAWN BY THE PRESIDENCY AFTER THE INFORMAL FINANCE MINISTERS MEETING AT S'AGARO AND AN IMPASSIONED DEFENCE OF PARAGRAPH 39. THE PURPOSE OF THIS APPEARED TO BE TO RALLY THOSE MEMBER STATES OTHER THAN THE UK WHOSE DOUBTS ABOUT ENDORSING PARAGRAPH 39 HAD EMERGED AT S'AGARO. BY CONTRAST, ON THE SOCIAL DIMENSION DELORS EMPHASISED THE COMMISSION'S WISH TO ACCOMMODATE MEMBER STATES WHICH HAD PROBLEMS OVER THE DRAFT SOCIAL CHARTER. HE ALSO EXPRESSED CONCERN ABOUT THE PROSPECTS FOR REACHING MEANINGFUL CONCLUSIONS AT THE EUROPEAN COUNCIL ON MIDDLE INCOME DEBTORS.

DETAIL
2. DELORS OPENED THE DISCUSSION WITH A SURVEY OF CURRENT DEVELOPMENTS IN THE COMMUNITY. ON THE EXTERNAL SIDE HE REFERRED TO RELATIONS WITH THE EFTA COUNTRIES AND THE NEED TO FIND A THIRD WAY BETWEEN ENLARGEMENT AND COOPERATRION UNDER THE LUXEMBOURG AGREEMENT. HE WELCOMED THE EFFORTS BEING MADE TO TAKE AN OVERALL VIEW OF RELATIONS WITH THE EASTERN COUNTRIES: EUROPE'S UNDERSTANDING OF THESE COUNTRIES GAVE IT AN ADVANTAGE WHICH SHOULD STRENGTHEN ITS POSITION IN THE WORLD. TURNING TO THE INTERNAL DEVELOPMENT OF THE COMMUNITY HE EMPHASISED THE NEED FOR WORK IN FOUR MAJOR AREAS, IF THE SINGLE MARKET WAS TO BE COMPLETED: TRANSPORT, ENERGY, TELECOMMUNICATIONS AND CARS. HE WAS ENCOURAGED BY THE PROGRESS MADE IN THE FIELD OF RESEARCH AND DEVELOPMENT AND LOOKED FORWARD TO AN EVALUATION OF THE RESULTS UNDER THE FRENCH PRESIDENCY. ON THE SOCIAL DIMENSION, WORK UNDER ARTICLE 118A OF THE TREATY WAS GOING WELL IN THE COUNCIL. THE COMMISION WOULD FIRMLY RESIST EFFORTS BY THE PARLIAMENT TO GET THE LEGISLATION TO COVER MATTERS WHICH WERE

NOT WITHIN COMMUNITY COMPETENCE. THE COMMISSION'S PROPOSAL FOR A SOCIAL CHARTER HAD BEEN CRITICISED BY THE UNIONS BECAUSE IT DID NOT INVOLVE POLITICAL OR LEGAL OBLIGATIONS. ON THE ENVIRONMENT A CALM APPROACH WAS NEEDED, FOR EXAMPLE ON SUCH QUESTIONS AS THE EFFECT OF DEFORESTATION ON THE EARTH'S ATMOSPHERE. MORE EFFORT WAS NEEDED ON THE AUDIOVISUAL FRONT AND A DIFFICULT DECISION HAD TO BE FACED ABOUT WHICH COUNTRIES SHOULD BE INVITED TO THE PARIS CONFERENCE. ON FRONTIERS, EXCELLENT WORK HAD BEEN DONE BY THE COORDINATORS GROUP IN DISTINGUISHING BETWEEN ''ESSENTIAL'' AND ''DESIRABLE'' MEASURES.

3. FINALLY DELORS SAID HE WISHED TO RAISE TWO GENERAL IDEAS ON A PERSONAL BASIS. FIRST HE SAW A DANGER OF THE COMMUNITY PRODUCING TOO MUCH LEGISLATION. HE HAD INITIATED A DISCUSSION WITHIN THE COMMISSION ABOUT SUBSIDIARITY AND HE WAS DETERMINED TO PURSUE THIS BUT THE PROBLEM WAS THAT EACH COMMISSIONER WISHED TO PUT FORWARD HIS OWN PROPOSALS FOR LEGISLATION. THE SECOND IDEA HE WISHED TO PUT FORWARD WAS RELATED: SHOULD THE GENERAL AFFAIRS COUNCIL HAVE A GREATER COORDINATING ROLE OVER THE WORK OF AN INCREASING NUMBER OF SPECIALIST COUNCILS?

PROLIFERATION OF LEGISLATION

4. ON THE QUESTION OF PROLIFERATING LEGISLATION, I WELCOMED DELORS' EMPHASIS ON SUBSIDIARITY. THE PROLIFERATION OF PERIPHERAL ACTIVITIES AND THE PRODUCTION OF STUDIES AND LEGISLATIVE PROPOSALS ON AREAS NOT CENTRAL TO AGREED COMMUNITY OBJECTIVES CAUSED US SERIOUS CONCERN. DELORS SAID HE WAS IN COMPLETE AGREEMENT AND RECALLED THAT HE HAD ALWAYS HIMSELF SUPPORTED THE IDEA OF HAVING 12 RATHER THAN 17 COMMISSIONERS. THE PROBLEM WAS THAT SOME COMMISSIONERS FOUND IT IMPOSSIBLE TO REFUSE DEMANDS FROM MEMBER STATES OR FROM THE EUROPEAN PARLIAMENT FOR THE COMMISSION TO UNDERTAKE A STUDY. HIS AIM WAS TO ENSURE THAT THE COMMISSION CONCENTRATED ON THE CENTRAL ISSUES. AN OVERALL VIEW BY THE COUNCIL ON ITS PRIORITIES WOULD HELP, EVEN THOUGH THE LACK OF SUCH A VIEW WAS LESS APPARENT AT THE MOMENT BECAUSE OF CONCENTRATION ON THE SINGLE MARKET.

ROLE OF THE FAC

5. SEVERAL AMBASSADORS SUPPORTED THE IDEA THAT THE FOREIGN AFFAIRS COUNCIL SHOULD HAVE A GREATER COORDINATING ROLE. CALAMIA (ITALY) RECALLED THAT IN THE '70S THERE HAD BEEN A REGULAR REPORT AT EACH FOREIGN AFFAIRS COUNCIL ON THE WORK OF THE OTHER COUNCILS. ERSBOELL (SECRETARY GENERAL OF THE COUNCIL) POINTED OUT THAT THIS HAD BEEN ABANDONED BECAUSE IF HAD BECOME A FORMALITY. I POINTED OUT THAT THE COORDINATING ROLE HAD TO SOME EXTENT BEEN TAKEN OVER BY THE

EUROPEAN COUNCIL. DELORS RECALLED HIS PROPOSAL THAT EACH COUNTRY SHOULD APPOINT A DEPUTY PRIME MINISTER RESPONSIBLE FOR EUROPE. BUT THIS WAS FOR THE FUTURE.

EMU

6. AT THIS POINT A QUESTION FROM WEYLAND (LUXEMBOURG) ABOUT THE PROSPECTS FOR DISCUSSION OF EMU AT THE EUROPEAN COUNCIL PROVOKED A TIRADE FROM DELORS. THERE WERE TWO POSSIBLE APPROACHES TO THE ACHIEVEMENT OF EMU: AN OPERATIONAL APPROACH, WHICH DELORS COMMITTEE HAD REJECTED, AND AN INSTITUTIONAL APPROACH WHICH THEY HAD ENDORSED. THE CONCLUSIONS OF THE INFORMAL ECOFIN MEETING AT S'AGARO HAD TRIED TO MIX UP THE TWO APPROACHS. THIS WAS UNACCEPTABLE TO HIM AND IF THE EUROPEAN COUNCIL APPROVED A CONCLUSION ON THESE LINES HE WOULD DENOUNCE IT AS A SETBACK FOR EUROPE. IF THE COMMUNITY WANTED TO ADOPT THE OPERATIONAL APPROACH, SOMETHING STRONGER THAN STAGE ONE IN THE DELORS COMMITTEE REPORT WAS REQUIRED. THIS SHOULD INVOLVE THE SETTING UP OF A EUROPEAN RESERVE FUND BY THOSE PARTICIPATING IN THE ERM. A NEW COMMITTEE SHOULD BE SET UP TO MAKE RECOMMENDATIONS. THE DELORS COMMITTEE'S PROPOSALS FOR STAGE ONE HAD BEEN EXPLICITLY SET IN THE CONTEXT OF PROGRESS TO THE LATER STAGE AND TREATY CHANGE. HE COULD UNDERSTAND THE POSITION OF THE UK WHICH DID NOT ACCEPT THE FINAL OBJECTIVES BUT THE POSITION OF THE FOUR OTHER MEMBER STATES WHO HAD AT S'AGARO QUESTIONED THE DELORS REPORT'S APPROACH FOR ONE REASON OR ANOTHER WAS DISHONEST AND UNACCEPTABLE TO HIM. THE EUROPEAN COUNCIL COULD ACCEPT HIS COMMITTEE'S REPORT AND INITIATE PREPARATORY WORK OR IT COULD REJECT IT. BUT IF IT REJECTED THE LINK BETWEEN STAGE ONE AND STAGES TWO AND THREE THIS WOULD BE A MAJOR SETBACK AND HE WOULD SAY SO.

7. LYBEROPOULOS (GREECE) THOUGHT THE MADRID EUROPEAN COUNCIL MIGHT NOT BE THE TIME FOR A DEFINITE ''YES OR NO''. THERE WERE ELECTIONS IN SOME MEMBER STATES AND NOT ALL WERE READY TO GIVE AN ANSWER. DE SCHOUTHEETE (BELGIUM) RECALLED THAT MAJOR DECISIONS OFTEN WENT TO TWO OR THREE EUROPEAN COUNCILS. I SAID THAT IT WAS ALREADY CLEAR THAT THE EUROPEAN COUNCIL WOULD NOT ACCEPT THE REPORT AS A WHOLE, AND PARTICULARLY WOULD NOT ACCEPT THE APPROACH IN PARAGRAPH 39 WHICH, AS WE HAD TOLD THE COMMISSION BEFORE THE REPORT WAS PRODUCED, WAS NOT ACCEPTABLE TO THE BRITISH GOVERNMENT AND PARLIAMENT. HOWEVER, SOME MEMBER STATES SUPPORTED THE REPORT AND THERE WOULD NOT THEREFORE BE AGREEMENT TO REJECT IT EITHER. THE DISCUSSION ON EMU SHOULD BE TREATED PRAGMATICALLY, NOT AS A MATTER OF RELIGION. DELORS REPEATED THAT CONCLUSIONS OF THE TYPE AGREED AT S'AGARO WOULD BE UNACCEPTABLE TO HIM.

SOCIAL DIMENSION

8. DELORS SAID HE WAS MUCH MORE OPTIMISTIC ABOUT THE PROSPECTS FOR AGREEMENT ON THE SOCIAL DIMENSION. THE COMMISSION'S IDEAS ON A SOCIAL CHARTER HAD BEEN DRAFTED WITH GREAT CARE. IN HIS VIEW THE CHARTER WOULD HAVE A PSYCHOLOGICAL VALUE FOR WORKERS IN THE COMMUNITY. THE COMMISSION HAD BEEN CAREFUL TO LIMIT IT TO MATTERS RELATING TO WORK, NOT SOCIAL MATTERS GENERALLY. IT AMOUNTED TO NOTHING MORE THAN A SOLEMN DECLARATION AND DID NOT INVOLVE LEGAL OBLIGATIONS. HE WAS NOT ASKING FOR A DISCUSSION OF THE CHARTER AT THE EUROPEAN COUNCIL. THIS WAS SOMETHING FOR THE PRESIDENCY TO DECIDE IN THE LIGHT OF DISCUSSION AT THE SOCIAL AFFAIRS COUNCIL ON 12 JUNE. WESTENDORP (PRESIDENCY) SAID HE SAW DISCUSSION AT THE EUROPEAN COUNCIL AS INEVITABLE. I SAID THAT THE PROPOSAL FOR A SOCIAL CHARTER WAS SEEN BY BRITISH MINISTERS AS A RETURN TO THE LABOUR AND SOCIAL LEGISLATION OF THE 1970S. A CRUCIAL QUESTION WAS WHETHER THE CHARTER WAS TO BE A QUARRY FOR MANDATORY COMMUNITY-WIDE LEGISLATION. DESPITE WHAT THE PRESIDENT OF THE COMMISSION HAD SAID IT APPEARED TO US THAT THE CHARTER WAS A METHOD OF PROMOTING SUCH LEGISLATION. DELORS SAID THAT THE COMMISSION HAD HAD NO INTENTION OF IMPOSING ANY REQUIREMENTS WHICH CONFLICTED WITH THE PRACTICE OF DEMOCRATICALLY ELECTED COMMUNITY GOVERNMENTS. HE HAD HIMSELF DEVOTED A LOT OF EFFORT TO REFINING THE DRAFT TO ELIMINATE SUCH PROBLEMS. HE WAS DISAPPOINTED TO HEAR THAT HE HAD NOT SUCCEEDED. HE STILL THOUGHT THAT THIS WAS AN AREA WHERE AGREEMENT SHOULD BE POSSIBLE.

DEBT

9. DELORS SAID THAT HE WAS CONCERNED ABOUT THE HANDLING OF THE MIDDLE INCOME DEPT QUESTION. HE SAW A RISK THAT THE EUROPEAN COUNCIL WOULD BE UNABLE TO REACH ANYTHING BUT ANODYNE CONCLUSIONS. HE SAW A PROCEDURAL PROBLEM: FINANCE MINISTERS DID NOT APPRECIATE THE FULL POLITICAL BACKGROUND, WHILE FOREIGN MINISTERS WERE UNABLE TO DEAL WITH THE TECHNICALITIES. THE DISCUSSION IN OECD HAD SHOWN A WIDE DIVERGENCE IN POSITIONS AND HE WAS AFRAID THAT THE SAME DIVERGENCE WOULD APPEAR AT MADRID AND AT THE ECONOMIC SUMMIT AT PARIS. ONE SOLUTION MIGHT BE A ''JUMBO'' COUNCIL INVOLVING BOTH FOREIGN AND FINANCE MINISTERS TO PREPARE THE COMMUNITY'S POSITION AT SOME POINT BETWEEN THE TWO SUMMITS. SEVERAL AMBASSADORS SAID THAT THE HISTORY OF JUMBO COUNCILS WAS NOT A HAPPY ONE. I POINTED OUT THAT BOTH FINANCE AND FOREIGN MINISTERS WOULD BE PRESENT AT THE PARIS SUMMIT.

HANNAY

(2)

10 DOWNING STREET

Prime Minister

Single Market

You may like to see this very useful paper (OD(E)(89)14) setting out where matters stand on the Single Market.

Very useful CDP

ur 8/6.

cc Parkup

CONFIDENTIAL

PRIME MINISTER

Cabinet : Community Affairs

1. The Minister of Agriculture Fisheries and Food may report on the meeting of the Agriculture Council which he attended on 29-30 May. The main item agreed was a Forestry Action Programme. Amongst other things this underpins the United Kingdom's Farm Woodland Scheme and enables the Scheme to attract Community funds. Community expenditure on forestry under the Programme will be contained within the structural funds. The Council failed once again to come to a long term settlement on continued access for New Zealand butter and lamb to Community markets. The access for lamb depends on the revision of the Community's sheep meat regime - which is going slowly - and the butter arrangements have been linked with those for lamb. Accordingly current provisions for access of New Zealand butter were temporarily rolled forward by the Council.

2. The Secretary of State for Transport will report on the outcome of the Transport Council which he attended on 5 June. The most contentious issue was that of lorry weights. In the end he traded our current unlimited derogation on the weights of 5 and 6 tonne lorries to secure derogations for all weights of lorries with a common ending date of the end of 1998. (the Commission had proposed 1996). Until then no lorry exceeding our present maximum weight of 38 tonnes will be allowed on to our roads. An extensive programme of bridge strengthening is being carried out that will allow the maximum weight to be raised to 40 tonnes by the deadline. Against the opposition of the Netherlands and Mr Channon (who voted against the measure) the Council also decided to increase the permitted length of articulated lorries from 15.5 to 16.5 metres from 1 January 1991. On other matters the Commission and the Presidency maintained pressure for liberalisation in the areas of road haulage, shipping and aviation. In the face of French, Greek and German opposition to the next step in liberalisation of road haulage -

road cabotage - the Commission have threatened to take the issue to the European Court, a technique that has worked usefully in the road transport area before. The Council did agree on a further measure of liberalisation on inter-regional air services and on rules governing the access to computer reservation systems used by more than one airline. In the road safety area the United Kingdom, together with Germany and Denmark, prevented the adoption of draft directives on blood alcohol levels and seat belts on the grounds that the Community was not competent to take decisions in this area. But a directive requiring deeper minimum tyre tread levels than are currently legal in this country was voted through.

Can SofS say how, in practical terms, this will benefit air travellers? AT

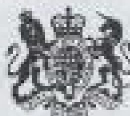
3. There is to be an Environment Council on 8-9 June, at which the greenhouse effect is to be discussed and agreement is likely to be reached on new standards for car emissions. There is to be a Foreign Affairs Council on 12-13 June, a Social Affairs Council on 12 June (at which the Commission's proposals for a Social Charter will be given their first airing) and an Internal Market Council on 14-15 June with a large agenda, including public procurement, the broadcasting directive and metrication (on which the Commission are proposing the unlimited derogations for the pint and the mile which we have been seeking).

Will it discuss using?

7 June 1989

R G LAVELLE

LS/AA/28 **CONFIDENTIAL**



Department of Employment
Caxton House, Tothill Street, London SW1H 9NF

Telephone 01-273 5804/5
Telex 915564 Fax 01-273 5821

Minister of State
The Rt Hon John Cope MP

The Rt Hon John Major MP
Chief Secretary to the Treasury
Treasury Chambers
Parliamentary Street
LONDON
SW1P 3AG

J June 1989

Dear John

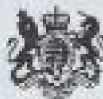
Thank you for your letter of 31 May in response to mine of 23 May to Geoffrey Howe about the Commission's SME activity. I am also grateful to Sir Geoffrey and John MacGregor for their responses.

Your officials had a word with mine in time for us to make urgent enquiries through UKREP on 30 May to see if the announcement of the European Information Centres could be postponed from 31 May, pending a more general agreement on the level of funding for the programme as a whole. It was confirmed however that the Commission did not consider that they needed a decision from the Council on the question of extending the European Information Centres per se, nor on the date of the announcement.

The Commission have in fact now gone ahead and announced the successful bids. At the Council meeting arranged for 21 June, the Commission plan to submit a communication about the extension but this will deal mainly with the operation of the tendering process and the criteria used to select the successful applicants.

The principle of start up funding for 3 years for the new Centres was included in the papers considered on 6 December, and subsequently in the legal tender documents. We were successful in securing agreement that the start up funding should be limited to 3 years. This part of the budget will therefore cease in 1993. We will insist that this question is

Employment Department · Training Agency
Health and Safety Executive · ACAS



not reopened through our involvement with the Committee, once we have one. We will also oppose any further extension of the number of European Information Centres; for which a small provision in the draft budget is included.

As to the overall budget, in view of what you say I am prepared to find the offsetting savings required although, as I have said, I will explore with other Departments whether they might accept part of the EUROPES responsibility for those areas in which they are involved.

On the other items within budget which are yet to be resolved, we will lobby hard the French and Germans. We certainly intend to make good use of the lever of Article 235 and we will press also for a type III management committee. Nevertheless the Southern Member States have already made it clear that too strong an emphasis on the budget might lead them to withdraw their tentative proposal to agree a type IIb committee rather than type I which is their first preference. Given the origins of the SME programme and task force I very much agree with ~~Sir~~ Geoffrey that to block the programme altogether would be an own goal.

Copies of this go to the Prime Minister, members of OD(E) and Sir Robin Butler.

yours ever

John

Euro Pol: Budget
A42

35g/mcu/sb3.26.5

R7-6

CF?

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

Overtaken. Wja.
CDP

CF to file?

Charles Powell Esq
Private Secretary
10 Downing Street
LONDON
SW1 2AA

2 June 1989

Dear Mr Powell

Thank you for your letter of 9 May to Duncan Sparkes enclosing a letter from Sir Michael Butler of Hambros Bank Limited 41 Tower Hill, London.

The Chancellor has received a similar request from Sir Michael and agreed to speak to him. In these circumstances, we do not think that a meeting with the Prime Minister is necessary.

I attach a draft Private Secretary reply, which I am also copying to Richard Gozney (Foreign and Commonwealth Office).

Yours sincerely

Julie Thorpe.

MRS JULIE THORPE
Private Secretary

35g.mcu/hi6.26.5

DRAFT LETTER TO:

Sir Michael Butler
Hambro Bank Ltd
41 Tower Hill
LONDON
EC3N 4HA

The Prime Minister was grateful for your letter of 8 May. She understands that the Chancellor of the Exchequer has already spoken to you and does not therefore think a meeting is necessary.

CHARLES POWELL
Private Secretary

dti

the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon John Cope MP
Minister of State
Department of Employment
Caxton House
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Direct line 215 5422
Our ref PB1BHZ
Your ref
Date 6 June 1989

Dear John,

Thank you for sending me a copy of your letter of 23 May to Geoffrey Howe about the two items of EC business concerning SMEs.

On the specific question of extending the network of European Information Centres, I agree with your proposal not to re-open this issue.

Also I agree with what you propose on the draft decision to provide a legal base and a budget for the new DGXXIII. Since we have consistently urged the Commission to greater efforts on deregulation, it is important that our strong support for the deregulation element of the proposed programme is made clear in Council discussions.

I am copying this letter to copy recipients of yours.

Yours, David

DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 01-210 3000

From the Secretary of State for Social Security

CONFIDENTIAL

Prime Minister

You should be aware of this. The line proposed is satisfactory, even though it may get us some bad publicity – just before the Euro-elections. DD 6/6

The Rt Hon Sir Geoffrey Howe QC MP
Foreign Secretary
Foreign and Commonwealth Office
Downing Street
London
SW1A 2AL

6 June 1989

Dear Geoffrey.

EC SOCIAL AFFAIRS COUNCIL

The Social Charter will clearly be the major issue for debate at next Monday's meeting of the Social Affairs Council. There are also social security items. In the case of some of these - the poverty programme, equal treatment and a minimum income for the elderly - I am advised that there is little prospect of a damaging resolution but, in the light of their sensitivity, I am concerned about the dangers of our position being misinterpreted in the current climate. I thought therefore that it would be helpful to colleagues for me to indicate the low-key way in which Peter Lloyd will be handling these issues.

The first of these items is the proposal for a third "poverty" programme - although the word "poverty" no longer appears anywhere in the draft decision. The Commission is promoting its social activities through this programme and presents it as a significant instrument for "combatting poverty". Despite the best efforts of officials, the draft decision still contains a definition which reflects the belief that it is possible to draw a poverty line and which will allow the Commission to prepare and promulgate further unacceptable statistics. Neither the definition nor the statistics flowing from it are sensible yet both will be used by our opponents in attempts to attack the Government. The Commission linked to the second programme what purported to be research analysis into the extent of poverty, producing the conclusion that there were 44 million poor people in the European Community. A leaked draft of the interim report on the second programme (which was never ratified) suggested that three fifths of the 5 million increase in the number of poor since the 1970s occurred in the UK. This was seized upon by the Opposition and the poverty lobby despite the fact that during this period the real incomes of all groups (ie, income bands in the population) increased significantly in the UK. For example, both the overall average increase in real incomes and the improvement in supplementary benefit incomes was 14% from 1975 to 1985.

E.R.

There has not yet been a full evaluation of the second poverty programme, but there is very little to demonstrate so far that the projects have had more than limited value in helping the more deprived to help themselves. It is clearly illogical to be setting up a third programme without learning and incorporating the lessons from the second. We have not yet seen the proposal which will be put to the Council - the Presidency is still working on it - but I gather that there will be some restriction which makes it clear that the proposed statistical work will be secondary to the actual projects, and will be restricted to what is necessary in order to implement them. The percentage of the budget to be spent on statistical work will be specified in the draft decision, and the best way to restrict the expenditure on this work will be to restrict the size of the overall budget.

I do not see how we can accept the programme unless the definition is removed from the draft decision. Without the definition, the programme would no longer promulgate the belief that a poverty line can be drawn, and the Commission would find it more difficult to extend the statistical programme beyond the actual projects. Restricting the overall budget as far as possible would also lead to a smaller budget for the statistical work, again reducing the prospects of statistical absurdities being promulgated. The difficulty is, of course, that I do not want to be seen (especially at the present time) to be blocking proposals that could mean extra help for less well-off people throughout the Community because of a disagreement over a definition. Moreover, any concession we can secure on the definition is likely to lead to expectations that we would not be difficult over the size of the budget for the programme.

I therefore propose that our initial stance should be to query the proposal to proceed with the programme at this stage when the second programme has not yet been fully evaluated. I would, however, be prepared to go along with a decision to proceed with a programme, with appropriate arrangements for evaluation, if the definition is dropped. This approach should also give us a more defensible public position if we are not able to reach agreement on the decision.

The second of these social security items is the Directive on Equal Treatment in Social Security, about which I wrote to you on 4 May. I propose to hold to our view that agreement on the Directive is not feasible at this stage. The Spanish Presidency have worked hard and made a number of changes to meet our concerns, but three key issues remain. Firstly survivors benefits are still included, and this we cannot accept; it does not make sense to extend to widowers the benefits currently available to widows. A number of countries have reservations on this and indeed the Spaniards are clearly resigned to dropping these benefits from the Directive. The position on the second issue, pension age, is more complex. The Government has made clear on many occasions, here and in Brussels, its commitment to the principle of equal treatment in pension age, whilst emphasising that further work is needed on the practicalities of

E.R.

how and when. The Spaniards have met our need for a long implementation period as to leave open our options on timing, since the Directive now gives no fixed period for completion of equalisation of pension age. However it also requires that legislation be in place within six years. I do not believe we can make a commitment of this kind to the EC, with all the public speculation to which that will give rise in advance of agreeing with colleagues here how to proceed on this issue, that is what age of equalisation we are aiming for and how shall we present that publicly. This will I know be unwelcome news to the Spaniards, who thought they had met all our requirements. Nevertheless we have never lifted our reservation on this Article and I do not think we can do so now. We understand that Belgium, Italy and Portugal also have problems with pension age equalisation, and Peter Lloyd will of course seek to build on the points they make in presenting our position. Finally, once we have a clear English text we will need to take legal advice at the highest level to ensure that there are no hidden traps. We are currently suffering from perverse interpretations in the European Courts of the two previous Equal Treatment Directives; for example good occupational schemes, like those of Mars, have to be restructured. We must not store up further trouble that could be prevented at the drafting stage.

Finally, although not major items, I think I should mention other social security items on the agenda. There are three minor proposals on the social security migrant worker regulations - where competence is not in doubt and there are links with the Single Market - on which we can take a positive line. And the Presidency want to discuss a proposal of theirs to have a resolution on the elderly. This has been discussed briefly at a COREPER working group when it received no support - even from the Commission. Whilst generally exhortatory the draft included the guarantee of a minimum income for the elderly and the right to a pension for those who do not satisfy the normal conditions. These are clearly matters for Member States and not for the community, raising serious questions of competence. We shall therefore oppose such a proposal being pursued. We shall not be isolated in this.

I am copying this to the Prime Minister, members of OD(E) and Sir Robin Butler.

JOHN MOORE

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CC:PF ②

Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister
CDP 5/6

5 June 1989

Dear Charles,

Financial Times Article on Community Legal System

I attach a brief analysis of the article by A H Hermann in the Financial Times of 17 May which the Foreign Secretary understands the Prime Minister saw at the time. The Foreign Secretary thinks three particular points of interest arise from it.

The Commission has the role of initiator of new legislation in the Community: this derives directly from the Treaty of Rome. But this does not mean that the Commission does not listen to signals from the Council, and the European Council, on the broad lines of policy which should be initiated. The Single Market programme is the obvious example, but recent Commission proposals on fraud, and their vigour in pursuing unfair subsidies, also indicate a responsiveness to Council pressure. For this reason, the Foreign Secretary does not feel that we are obliged to share Mr Hermann's view that the Commission's right of initiative gives it a dominant position, or that the Commission is thus able to set the pace for EC development: decision-making rests clearly with the Council.

The Foreign Secretary does not believe that the Article gives an accurate view of the role of the European Court. It is true that the ECJ interprets the Treaty in the light of its objectives and purpose and that we shall not always be happy with its rulings. But this does not mean (as Bill Cash MP for example suggests) that it has a policy of its own - nor that it is driven by the sort of bias which the Article suggests, hand-in-glove with the Commission. Britain has had repeated success in using Court action, or the threat of it, to head off unwelcome developments which are not compatible with the Treaties. We do not always win, of course. The recent ERASMUS decision (which the Law Officers are looking at carefully) was disappointing - though on budgetary, not competence grounds. But other cases have gone our way: German Beer (which stopped the Germans using recipe laws

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to restrict imports); Stephen Brown (no entitlement to a student maintenance grant for EC nationals); or the successful proceedings which we and others took against the Commission over a decision it made under Article 118 in respect of migration policies. This demonstrated the ECJ's willingness to strike down a Commission decision on the grounds that it had exceeded its competence.

It is also clear that the prospect of Court action was an important factor in persuading the French government to back down on Nissan. It was partly in order to improve the ECJ's capability for dealing with important matters like competition policy that we last year secured the establishment of the Court of First Instance, to relieve the main Court of much of its time-consuming procedural work.

The article rightly cites the Cassis de Dijon case as an important landmark in Community law. This judgement sets the liberalising framework under which considerable progress has been made in the Single Market by "new approach" directives setting only minimum standards. Recent examples range from toy safety to food law. We shall need to continue using the judgement as part of our armoury in contesting attempts to undermine the deregulatory character of the Single Market programme. It provided a practical, commonsense framework which has helped us to argue for greater liberalisation. We shall have to continue deploying the proposition vigorously in the course of policy arguments at Council meetings. The argument has at least as much importance there as it is likely to have in the courts.

Yours ever,

Richard Gozney

(R H T Gozney)
Private Secretary

C D Powell Esq
10 Downing Street

AGREE

The system requires "Common understanding of overall aims"
The Treaty provides a common legal framework. All member states contribute to the further development of EC policies, and to the setting of objectives, such as the creation of a Single Market.

ECJ takes its cue from US Supreme Court
It is true that the Treaty of Rome functions as a constitution for the EC and needs to be interpreted authoritatively. But the ECJ's overall scope and impact are more restricted than the US Supreme Court. If anything, we see a problem in the workload of the ECJ, which is why we supported creation of a Court of First Instance.

The SEA was "fudged" to accommodate contradictory aspirations of Member States
This is an ungenerous description of a reality: agreement among twelve requires give and take. We judged the SEA outcome as an important success for British interests.

Inability of Council of Ministers to agree is a problem
Yes. That is why we agreed to extend majority voting in certain areas.

"Cassis de Dijon" case means a new and more promising approach on health and safety standards
Yes. This ECJ ruling helped to make the Single Market possible. Its philosophy, providing for minimum common standards and then mutual recognition, underlies current work on standards. This is just the light regime we want.

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DISAGREE

EC legislation is adopted in secret proceedings without debate by national parliaments, "sometimes only by a majority vote"

Proceedings of the Council of Ministers, which takes decisions, are confidential. Mr Benn tried to have this changed in the 1970s, but failed. The Council is made up of Ministers, answerable to their Parliaments. Legislation is examined by both the EP and Westminster - where we are currently trying to improve the scrutiny system. Majority votes where appropriate (as on the Single Market) are to our advantage. Apart from Tobacco this week, we have only once voted against a single market directive, and that was because it did not sufficiently provide for the free movement of goods.

The system requires a decentralised judiciary, as in US

The Article does not acknowledge the growing role of national courts in applying EC law. It is difficult to see how major questions of Community Law can be authoritatively and consistently decided other than by a superior court - a function analogous to the US Supreme Court, as Mr Hermann recognises. The use, or threat, of recourse to a high legal authority serves our policy interests - eg Nissan.

ECJ is biased, not intellectually independent

It is important not to exaggerate. As the Attorney General said (in his letter of 2 May) "the Court often demonstrates a "Communautaire" bias. Nevertheless we have achieved some valuable successes before it". In fact, of 15 cases we have taken against Community institutions, we have won 9, been partially successful in 1, lost 2, withdrawn 1 and await the result of 2 more.

In line with the legal systems of most member states the ECJ adopts a "purposive" approach to questions of interpretation. It is, however, a court of law and there is no reason to believe that it interprets the Treaty in anything other than an objective and principled manner. As the Prime Minister said in her letter of 6 April to William Cash, MP. "I do not however agree that the Court of Justice is ready to condone "blurring legal lines" for federalist motives. There have as yet been no European Court of Justice (ECJ) decisions on the interpretation of the Single European Act, but the Court has to work within the legal confines of the Treaty. It certainly does not always decide in favour of the Commission. Nor is there any evidence of its looking for ways of acquiescing in, or extending, the Commission's competence."

Community supports cartels and prevents competition

The Community is a valuable ally in promoting competition. The Treaty of Rome gives a sound legal base for so doing. The Commission is on our side in cutting subsidies and tackling abuse of the rules.

The Commission's approach to distributorship, franchises etc, has been to grant exemptions for anti-competitive arrangements only when there are good reasons for doing so. Mr Hermann puts it the other way round, saying that the Commission hits pro-competitive arrangements: but are car dealerships or the current brewer/pub relationships pro-competitive?

The Article claims US-style private anti-trust actions would be a better approach. But the US system has acknowledged weaknesses (cases which remain unresolved for years, costs). No member state has adopted this approach.

The Elimination of State aids is a field where lawyers might easily overreach themselves: state aid may be necessary to shield tender industries.
We strongly believe that EC rules on state aids and subsidies should be applied across the board. The UK provides the lowest aid per employee in the EC, and we want the playing field levelled.

The Commission is not subject to democratic control
Commissioners are appointed by elected governments and can be sacked by the European Parliament. They only make proposals. The Council of Ministers, whose members are answerable to their Parliaments, take the legislative decisions.

Community rules hamper exploitation of intellectual property
Community rules are designed to prevent abuse of intellectual property rights as non-tarrif barriers to trade. Sensible Community reforms are being held up by Member States' political squabbles over eg, the site of the Community Trade Mark Office.

Commission and Court cannot shape law in a way that meets the varied needs of Member States
On the contrary: it is the Council that legislates. Its long negotiations are long precisely because they have to take account of Member States' needs.

In preparation for its decisions the ECJ normally looks carefully at approaches adopted in national laws.

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FILE KK

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

4 June 1989

Dear Clive,

EC SOCIAL CHARTER

The Prime Minister has seen your Secretary of State's paper for OD(E) on the UK Response to the Commission's draft Social Charter. She has commented that one tactic would be to draw up our own version of a charter, based on our law and opportunities, and the social services - including income support and family credit - which we provide for our own people. The purpose would be to spread the notion that the best way forward lies in mutual recognition by EC countries of each other's schemes rather than attempts at standardisation which are bound to fail. OD(E) may like to consider to what extent this is a feasible approach.

I am copying this letter to the Private Secretaries to members of OD(E) and to Mr. Lavelle (Cabinet Office).

Yours sincerely,

Charles Powell

(C. D. POWELL)

Clive Norris, Esq.,
Department of Employment.

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41, TOWER HILL,
LONDON, EC3N 4HA.

2nd June, 1989

CDP 5/6

Charles Powell, Esq.,
Private Secretary,
10, Downing Street,
London SW1A 2AA

Dear Mr. Powell,

Sir Michael Butler has asked me to thank you for your letter of ~~31st~~ Map May and to say he will be there at 1700 on 15th June.

Yours sincerely

Margaret Lobb (Mrs)

Margaret Lobb
Secretary to Sir MichaelButler

EuroPol. Budget Prih.

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10 DOWNING STREET

Prime Minister

Social Charter

You may like to see this OD(E)(89) 8 paper on the Commission's draft Social Charter.

CDP

I suggest we draw up a 'Social Charter' for Britain based on our own opportunities coupled with our social duties. [illegible]

FCS/89/111

MINISTER OF STATE FOR EMPLOYMENT

SME Task Force

1. Thank you for your letter of 23 May. I have seen John Major's comments.

2. I agree that we should maintain a positive approach to the SME programme, particularly in its work on deregulation. Establishment of the SME Task Force follows the Prime Minister's deregulation initiative at the March 1985 European Council, and we have always supported its work. We must ensure that the balance of the proposed programme gives more emphasis to deregulation.

3. I share your view that a budget of 135 mecu is too high. The requirement for unanimity gives us a certain leverage. But I also agree with you that if we lose even French support for a radical reduction, it may make sense to settle for a figure some way above 75 mecu. To block the programme altogether would be an own goal.

4. Copies of this minute go to the Prime Minister, membrs of OD(E) and Sir Robin Butler.

GEOFFREY HOWE

Foreign and Commonwealth Office

2 June 1989

Enio Pl

Budget Pt 41

Sir Michael Butler

~~23/5~~
5/6

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

1 June 1989

I wrote to you on 9 May about the letter to the Prime Minister from Sir Michael Butler. The Prime Minister will be seeing Sir Michael on 15 June and I should be grateful for some briefing for the meeting.

+ draft reply

CHARLES POWELL

Duncan Sparkes, Esq.,
H. M. Treasury.

PART ~~B~~ 41 ends:-

FERB to PM 31.5.89

PART 42 begins:-

~~FCS to [illegible] 2.6.89~~

CDP to HMT 1/6/89.

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