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PREM 19/2975

Part 15

Confidential Filing

The Community Budget
Developments in the European Community

EUROPEAN POLICY

Part 1: May 1974
Part 15: March 1990

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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.

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Cmnd 1059 – STATEMENT ON THE 1990 COMMUNITY BUDGET
Presented to Parliament by the Economic Secretary to the Treasury by Command of Her Majesty, April 1990
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Signed J. Gray Date 20/8/2016

PREM Records Team

Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

27 April 1990

The Hon Francis Maude MP

Tim Eggar Esq MP
Minister of State
Department of Employment
London
SW1H 9NF

Dear Tim

PRESENTATION OF UK POLICY TOWARDS THE EC

Many thanks for your letter of 10 April, which we discussed at our Europe Group meeting on 18 April.

As I make clear in my letter today to Peter Lilley, I agree that the next step is to write to posts, seeking to involve them in drawing up a strategy to put across our approach to the 'social dimension' and the other priority areas. Officials are already in touch on a suitable draft on employment issues, which I hope can include training and health and safety.

I look forward to seeing you on 14 May.

I am sending copies of this to those who received your letter.

Yours

Francis Maude

Europol: Budget Plus

CCPC (2)

Prime Minister

CDP 27/4.

Prime Minister

I have read with interest Douglas Hurd's paper of 11 April on EC Institutional Reform.

I agree with the general thrust of his analyses and, in particular, that if we cannot prevent an IGC or a study group leading to an IGC, we must be willing to participate constructively in all its discussions.

On the overall question of the future of the Community my own view is that we have not yet taken on board sufficiently the significance of the collapse of communism in Eastern Europe and the likely emergence of pluralist democracies and market economies. This must have profound consequences for the future of the European Community at least as important as the defence and wider foreign policy implications.

If parliamentary democracy and a capitalist economy becomes established in Czechoslovakia, Hungary and Poland it is inevitable that they will apply for full Community membership and consider themselves eligible for it. The imminent accession of the GDR to the Community as a result of German unification and the likely consequential rapid growth in East German prosperity will increase the pressure from its neighbours.

Some years ago we agreed to Spanish, Portuguese and Greek membership not because of any likely economic benefits but because involvement in the Community would help entrench their new democratic and Western identity. These considerations are also relevant to the new Central European democracies.

In practice, full membership for Czechoslovakia, Hungary and Poland (I exclude Romania and Bulgaria as being in a quite different and far more difficult category) and perhaps Yugoslavia could not come about for a good few years as their present economic structure is woefully inadequate to permit them to accept the responsibilities of Community membership. I very much agree, therefore, with the proposal for Association agreements with them at this stage.

For the longer term a greatly enlarged Community including both them and EFTA countries is inevitable and this would be to the United Kingdom's advantage. We have consistently argued against the aspirations of Delors and others for some kind of United States of Europe. A European Central Bank, a single European currency, a greatly strengthened Commission or Parliament have been seen as antithetic both to our interests and to our vision of Europe. Instead we see as a virtue a single economic market co-existing with political, cultural and national diversity. Such a Community is more probable the lower the Community grows.

The larger the Community the less likely it would be for others to seek to move towards a central government and a central parliament. They would have to take into account that it would be much more difficult for any single member state to expect to influence and help determine the decisions of a central government or parliament and there would be greater erosion, therefore, of national sovereignty and national sensitivity. A Community of 6 or even 12 is small enough for each member state to assume that its government could play a decisive role in protecting national interests when issues were being discussed or determined by a more powerful Brussels or Strasbourg. With a Community of 20 in a highly centralised Europe a powerful Commission and Parliament would be able to ignore individual national governments, even those of the larger member states, unless they could act together. Even France or Germany could see themselves constantly outvoted in such a situation and would be less enamoured by federalist ideas.

I suggest, therefore, that we should press for any analyses by the Commission or others of future institutional options to be taken forward on the basis that the Community is likely, within a generation, to incorporate all the democratic market economies of Europe and that institutional proposals should take that into account.

On certain of the specific proposals in Douglas's paper I would agree that the Commission should be encouraged to seek further powers to investigate fraud and that the Parliament's aspirations for an enhanced role should be accommodated by increasing its responsibility for scrutinising the way in which resources have been used and policy

implemented. The development of a role similar to that of the PAC at Westminster would be a valuable, worthwhile (and safe) extension of its powers that would be both desirable in itself and an alternative to its more ambitious ideas.

I am copying this minute to Cabinet colleagues, the Attorney General, the Chief Whip and Sir Robin Butler.

Ian Lang

pp M R

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

Scottish Office
27 April 1990

EURO POL: Budget P145

NOTE

ENTIAL

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

The Rt Hon Douglas Hurd CBE MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON
SW1A 2AL

27 APR 1990

Dear Douglas,

EC INSTITUTIONAL REFORM

You sent me a copy of your minute to the Prime Minister of 11 April and the associated FCO paper.

I am broadly content with the line taken in the paper and particularly welcome the emphasis in sections V and VI of the paper on improving implementation and enforcement procedures and financial accountability.

It is implicit in the paper that we should resist all extensions of Community competence, and I am content with that, in particular as regards any pressure there might be for extension in the field of education. But the paper does not explicitly address the question of whether there are areas where other Member States might press for or be prepared to support extensions of competence. I should be glad to have your views on that.

I find most difficulty in assessing the advantages and disadvantages of different forms of Treaty recognition of the principle of subsidiarity. Annex D recognises that it is particularly important to get our position right in relation to areas that at present fall outside the Treaty, like education, where there is continuing Commission pressure to blur the distinction between action under the Treaty and informal cooperation between Member States outside the Treaty. Once the Law Officers have been able to consider the questions raised by the paper I should welcome some collective discussion of this issue.

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Finally, I should like to comment particularly on paragraph 4 of Annex C. The recent decisions of the ECJ which have the effect of allowing significant expenditure programmes to be adopted by simple majority under Article 128 took many of us by surprise and are clearly anomalous in relation to the scheme of the Treaty as a whole. My Department has the impression that Commission officials at least are almost embarrassed by the power this gives and might well be prepared to recommend acceptance of a move to qualified majority voting if this were part of a wider package of changes. I hope that we shall pursue the possibility as energetically as we can.

I am copying this letter to the Prime Minister, other Members of the Cabinet, the Attorney General, the Chief Whip and Sir Robin Butler.

Yours ever,

JK

Euro Pol. Budget pr 45

Foreign and Commonwealth Office

London SW1A 2AH

26 April 1990

From The Minister of State

The Hon Francis Maude MP

Peter Lilley Esq MP
Financial Secretary
HM Treasury
Parliament Street
London
SW1P 3AG

Dear Peter,

MINISTERS' EUROPE MEETING, 14 MAY

At our meeting on 18 April we agreed that the next step was for Departments to work up detailed plans with the FCO in order to influence debate in each Community country on the six priority areas.

I therefore suggest that Departments should, before our next meeting on 14 May, provide our EC Planning Unit with a draft letter to EC posts covering each subject area. I would be grateful for these by 9 May. We are already working here on letters on institutional and external issues. (On the first of these, you and others will want to look at Douglas Hurd's paper circulated to members of the Cabinet on 11 April.) The Department of Employment are drafting a letter on employment, training and health and safety. It would be useful also to have a text on other social issues, covering health, education and social services, and I should be grateful if these

Departments could contribute material for the EC Planning Unit to pull together. The Department of Environment and DTI would produce drafts on environmental issues and the Single Market. The Home Office might contribute a section on frontiers to the latter. You are reflecting on the timing on EMU presentation.

The letters should, as did Tim Eggar's very useful letter of 10 April, set out the broad objectives of Government policy and Whitehall ideas for lobbying in other member states; and go on to ask posts to identify for that particular subject a series of individual and group targets for lobbying, particularly those outside government. Our Unit will then start a data bank to store this information in London. Part of the programme would be for each post to pursue, but visits by Ministers and senior officials will play an important part.

Each letter should also explain the sort of material being worked up in London - articles, statistical material etc; and it would be good if each Department, in addition to producing stock texts, could have material suitable for use in individual countries too. Posts will be able to add local points themselves. We should also, as agreed on 18 April, ask posts to identify inward visitors to the UK; and to report regularly on how the programmes, once set up, are being implemented, though it would be unrealistic to expect smaller posts such as Lisbon or Luxembourg to report as often or in as much detail as the larger ones.

Agenda for next meeting

I do not think our next meeting on 14 May will need to look in any detail at these draft letters; but we should take stock of them generally, and compare notes on forthcoming visits and speeches. I think it would be very useful if we had before us a comprehensive list of all EC inward and outward Ministerial visits and major speeches on EC themes until the end of July. I would be grateful if Private Secretaries would let Nicola Brewer have information on this for your Department by 9 May. We agreed last time that speeches in EC capitals should highlight failures of implementation and compliance in other member states.

We might also, on 14 May, look ahead, as we have at previous meetings, to future Councils and presentational opportunities and problems. (The three icebergs ahead sighted at our last meeting were:

a) slow progress on the Single Market under the Irish Presidency, and the consequent risk that the 1992 programme might well not be completed on time;

b) East European students would increasingly want to come to Britain, including under the Tempus programme; if charged full cost fees (unlike EC members) there could be criticism of HMG; additional government funds might have to be found to facilitate East European scholarships;

c) we faced High Court action in June on equal treatment of pensioners, in a challenge by the Equal Opportunities Commission; this might be referred to the ECJ for non-compliance with the relevant Community obligations.)

We have taken up with UKREP Michael Portillo's suggestion of making better use of 'A' points: they will be on the look out for them, but Departments should also of course be on the look out for such opportunities. Departments will also want to consider, particularly in the run-up to Councils but more generally too, whether it is better to brief journalists in London or Brussels. Press Officers should keep in close touch with UKREP about this. What cannot be done in Brussels is to brief leader writers, where we suspect a more pro-active effort in London would be productive.

I look forward to seeing you and other colleagues on the 14th. Could your Private Offices let mine know whether you will be able to attend?

I am copying this letter to Tristan Garel-Jones, Malcolm Caithness, David Curry, Tim Eggar, Eric Forth, David Heathcoat Amory, Douglas Hogg, Gloria Hooper, Robert Jackson, Peter Lloyd, Michael Portillo, John Redwood and Gillian Shephard, and to Charles Powell at No 10.

Francis Maude

Euro BC: Budget P45

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Department of Employment
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Secretary of State

CDP 26/4.

The Rt Hon Douglas Hurd CBE MP
Foreign Secretary
Foreign and Commonwealth Office
LONDON
SW1A 2AH

26th April 1990

Dear Douglas

EC INSTITUTIONAL REFORM

I read with great interest your letter and its enclosures proposing a strategy for the run up to the Inter-Governmental Conference at the end of this year.

Of the many matters raised, that which is of most immediate concern to me is the possibility of extending further qualified majority voting within social policy. Paragraph 15 of your paper observes that there will be no advantage to us in making changes on social policy. I agree. Indeed there would be considerable disadvantage. We have to face the possibility that there will be substantial pressure to proceed with the social action programme proposals, and in due course other proposals, which would involve the imposition of considerable burdens on employers in a way which would tend to destroy rather than create jobs. We may well therefore need to retain our veto in this field if we are to resist the damaging consequences of such proposals. Nor do I think that the extension of the cooperation procedure to the European Social Fund is acceptable.

However we should take advantage of any attempt to extend qualified majority voting in the meantime to point out that any such proposal to make a change implies that unanimity is needed for social measures at present (apart of course from the limited exceptions specified in the Treaty).

As to the role of the European Parliament I wholeheartedly agree with the conclusion set out in paragraph 4 of your paper that we should reject demands to increase its control over the Council. But I also agree that there would be considerable benefit in

offering the Parliament a greater role in achieving better financial accountability of the Commission as suggested in paragraph 30. In that context I think there is a good deal to be said for the proposals contained in paragraph 32 of the paper. Indeed if one wanted to make further suggestions for enhancing the role of the Parliament, it might be possible to include a specific role in scrutinising the extent to which the Commission's programmes provide value for money. In practice this would probably not go very much further than the effects of the suggestions made in paragraph 32 but it might have presentational attractions.

It may also be worth considering whether the Court of Auditors should have more of a role in this area. While I am not suggesting that the National Audit Office necessarily provides an ideal role model, it may be possible to include something of its flavour into the Court of Auditors. Perhaps this idea might be included in any work that is taken forward by your Department and the Treasury in accordance with your proposal in paragraph 34.

The paper touches at paragraph 26(d) on the role of the Parliament in the area of implementation and compliance. Although this may appear to have some superficial attractions I think that the practical applications might very well work to our disadvantage. I cannot believe, for example, that the painstaking negotiations with the Commission which eventually led to a resolution of our differences over the implementation of the Drinking Water Directive in the context of the Water Act would have been helped had such an explicit role been accorded to the Parliament in these matters.

On the subject of control mechanisms, we might also look at the Committee structures within the Commission. In the employment field, the Commission has considerable discretion over the management of funds once agreed, for example, for training programmes and for the European Social Fund. Where committees exist they are often ineffective, either because they are purely advisory, or because their membership includes representatives other than Governments who are not sympathetic to our views. A review of institutions could therefore also consider the structures and powers of these committees.

On subsidiarity I agree that we must now explore how the doctrine may best be formalised. As you know, I think that the principle is fundamental to what we can and should accept in the employment field. But others, including the Commission, have tended to interpret the principle as allowing the Community to propose some kind of framework, within which member states are free to

implement action. In practice, this has meant that even where other countries are prepared to support us on the principle of subsidiarity - and there is a widespread distrust of the Commission - they have still subscribed to declarations of one kind or other on topics on which we believe the Community should have no say at all.

I also agree we should look more closely at implementation and enforcement. I have already secured Commissioner Papandreou's agreement that the Commission will report regularly on member states' record of implementation of those social measures already agreed, along the lines already practised on the Single Market Programme. However the problem is complex; and I would want us to reflect further on where our advantage lies before committing ourselves to a more interventionist role for the Commission.

I am copying this letter to the Prime Minister, Cabinet colleagues, the Attorney General, the Chief Whip and to Sir Robin Butler.

Yours ever

Michael

MICHAEL HOWARD

Euro Pol : Budget Plus

Ref. A090/986

PRIME MINISTER

Cabinet: Community Affairs

The Foreign Secretary will report on the informal meeting of EC Foreign Ministers on 21 April. Main EC points were:

- on German unification, general agreement with the Foreign Secretary's view that the 28 April summit should set clear procedures, but not become involved in detail. The Foreign Secretary stressed the need for the Council to be consulted through the negotiations;

- a Presidency suggestion that political union should be discussed over lunch at the 28 April summit, by Heads of Government alone. The Foreign Secretary sounded a note of caution: the main subjects of the 28 April meeting were Germany and Eastern Europe, and it would be a mistake to seek to cover too much other new material;

- the French tried to settle the site and director of the EBRD over dinner; several member states objected; Presidency to reflect on future handling.

2. The Chancellor may report on the 23 April ECOFIN Council. The main points were:

- useful discussion of the EBRD: the Presidency confirmed that only Paris and London commanded sufficient support to be considered as serious candidates for the site. Main French concern is that Attali should be President;

- the Chancellor, with Commission support, called on ECOFIN colleagues to give a clear message to

agricultural Ministers about the need to keep the budgetary costs of the CAP price-fixing in check;

- further explanation by Herr Waigel, adding little to published information, about plans for German economic and monetary union.

3. Future meetings are:

- Agriculture Council, 25-27 April
- informal meeting of Social Security Ministers, 26-27 April
- informal European Council, 28 April.

F.E.R.B.

ROBIN BUTLER

25 April 1990

Mr Kerr
PS
PS/Mr Maude
Mr Weston
Mr Bayne
Mr Gordon
ECO(I)
ECO(E)
WED
Planners
News
special advises

dti
the department for Enterprise

CONFIDENTIAL

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

Department of Trade and Industry
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MGW 25/4

The Rt Hon Douglas Hurd CBE MP
Foreign and Commonwealth Office
Downing Street
LONDON SW1

Direct line 01 215 5622
Our ref PB3AMI
Your ref
Date 25 April 1990

Dear Douglas

EC INSTITUTIONAL REFORM

1. I have read with great interest the papers attached to your minute of 11 April to the Prime Minister. I welcome this preparatory work. There is a dilemma in participating actively in the sort of discussion now likely to take place on institutional reform : the more we make proposals, the more we are assumed to accept the ultimate objective of political union. But, given the vagueness of that concept, and the fact that other member states disagree with each other about what it means, I am sure you are right to signal our willingness to put forward our own ideas as alternative solutions. Indeed, there is much to be said for launching these soon so as to maximise our chances of forming alliances with other member states such as France and Luxembourg who - on some issues at least - may share our views. You may like to have a preliminary reaction to your paper before this weekend's Summit, though I understand that the discussions there are likely to be largely procedural, and that we will have a further opportunity to consider the issues you raise.

2. Before commenting on the detail of your paper, I think we need to have clearly in mind the sort of ~~the~~ Community we want to see and the institutions we believe necessary to achieve it. In my view, we should now be more open in saying that we favour an enlarged Community after 1992, forming an effective and open Single Market and responsible for its commercial policy with third countries. Within that enlarged Community groups of member states could, if they wished, go further in integrating e.g. in social policies, currency management and economic union. I would see this as a variable geometry rather than formal two-tier

system : it would be important in our relations with non-EC countries that the basic unit is seen as the wider Single Market EC.

3. With that background objective in mind, I believe the fundamental issue we need to tackle is subsidiarity. The Community must have the clear power to deal effectively with all issues relating to the creation of the Single Market and with our commercial relations with third countries, as well as with ongoing Community Business (agricultural markets, state aids etc). Other issues are for the member states acting singly or, if they wish in collaboration. I recognise that this means we must be firmer in insisting on a definition of subsidiarity : as we have seen the Commission are often able to find Single Market justifications for their ambitions in e.g. health policy. The subsidiarity clauses must therefore be very carefully drafted : I hope the Law Officers can scrutinise them closely. The draft should offer limited powers to the EC, not define general powers the EC allows national governments to operate.

4. If we could confine the role of the Community by suitable clauses, I would be more relaxed about finding ways of making the Community both more accountable and more effective. I am increasingly struck by the lack of accountability at the heart of the system. The Commission, unelected to start with, is not properly accountable to anyone; the Parliament is in the irresponsible position of being able to spend money while having no responsibility for raising it; individual members of the Council are accountable to their national parliaments, but this control is exercised weakly in most member states and can, in any case, be over-ridden by qualified majority voting. One result is that all of the central institutions of the Community are centralising in tendency and there are none of the checks and balances that exist in national constitutions - whether federal or not.

5. My last general point is that, if we fail to tie the basic Community as much as we would like to an economic/commercial role, our second line of defence should be to put more obstacles in the way of the Community's legislative activity. Once the current reforming thrust is over, I think this will be in our interests. Further development of the Single Market will depend much more on effective exercise of the Commission's quasi-judicial function (state aids, competition policy etc), and on an open trade policy than on new legislation. I am not suggesting that we can or should stop legislation entirely - but we can slow

it down by making the process more deliberative and accountable, (and can dress this up in language acceptable to our partners about quality of legislation and accountability).

6. To summarise, then, I believe we should now cease to be so reticent about EC enlargement, and should be prepared to accept the development of variable geometry within the basic, wider, Community; we should use this opportunity to restrict the legislative role of the EC to its genuine Single Market functions; if we succeed in this, we should be willing to look for ways of increasing accountability at the European level; but if we fail, or only partly succeed, we should look for devices to make the Communitys legislative activity more deliberative, while leaving a free hand for the Commission in its quasi-judicial capacity.

7. On the specific points in your paper, I have the following comments and suggestions. I am not putting these forward as hard and fast proposals but suggest they could be examined in more detail by officials.

Decision Making

8. I think it would be a pity not to put forward any ideas for making the Commission more accountable to the Council. In particular, would it not be possible to institute a more formal monitoring by the Council (or sub-groups of it) of Commission administrative actions? I think this could be more effective than increasing the Parliament's role in financial accountability: after all, it is the members of Council who raise the money, not Parliament.

9. I am not convinced by your arguments on the Commission's right of initiative. Depriving them of this should also enhance the Council's role. Would it not be possible to take away their exclusive right i.e. allow the member states to put forward their own proposals as well as the Commission? I can see the snags, but, on the other hand, a more general right of initiative would make the Commission less over-bearing. I envisage that such a right would be limited to new legislative proposals, and that the Commission would retain their existing prerogatives on current business (e.g. external trade). The right could perhaps be restrained a little by requiring the general principle of any member state proposal to be approved by QM (or unanimity when appropriate) and then to treat it as a mandate to the Commission to produce detailed proposals.

10. On similar ground, I wonder if we might propose giving the Council power to amend a Commission proposal by QM instead of by unanimity, as at present? This too cuts both ways, but would again clip the Commission's wings without hamstringing them too much.

11. I think we might also make proposals relating to the quality of EC legislation, a point which we have raised in the deregulation context. The speed of Community decision-making is now such that issues sometimes do not get properly considered and genuine concerns are ignored. The result is unclear or conflicting legislation. I have two suggestions:

i. a formal requirement on the Commission to consult interested parties on particular proposals; to say who they have consulted; and to record the results of the Consultation. (If this was coupled with abolition of the Economic and Social Committee, so much the better, but this may not be practical politics);

ii. a requirement, once the Ministerial level is reached, for all proposals for amendments to be submitted in advance in writing, so making Council legislative procedure more akin to our own Parliamentary Bill procedure.

12. Both would slow the legislative process down, but as I have said above, I do not think that is necessarily a bad thing - and there ought to be a real prize in improved and clearer legislation. They should also work to UK advantage as we tend to be better prepared than other member states.

Accountability

13. This is a most difficult issue. I am sceptical about how far national parliaments, acting at a national level, can call EC institutions - particularly the Commission - to account. It might be salutary for Commissioners to be called to answer questions in our own Parliament or before our Select Committees, but elsewhere in Europe they would probably be egged on to greater excesses! I am doubtful therefore about your idea of a Solemn Declaration. Again, so much depends on how far we manage to tie the Community's role down through an effective subsidiarity clause. But as I mentioned at paragraph 8 above I think the best way to improve the situation would be to have officials, sitting in Council Subcommittees, monitor and question Commission representatives on a permanent basis, reporting any inadequacies to the Council for action.

dti
the department for Enterprise

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Implementation and Enforcement

14. I do not disagree with your ideas, but I doubt if they will be very effective. A more credible sanction might be withdrawal of EC benefits (perhaps after failure to comply with an ECJ judgement). I hope officials can give further thought to ways of increasing pressure on this important issue.

15 I am copying this letter to the recipients of your minute.

Recycled Paper

47a/2 pmg.vd/docs/powell **CONFIDENTIAL**

CC (2)

PAYMASTER GENERAL

Treasury Chambers, Parliament Street, SW1P 3AG

C D Powell Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON SW1

24 April 1990

Dear Charles.

STATEMENT ON THE 1990 COMMUNITY BUDGET

The Treasury is committed by an undertaking to the PAC to publish an annual White Paper on EC Budget each year. I attach a final draft of the 1990 edition, which we intend to publish on 26 April.

The main points to note are:

(i) the UK's net contribution to the 1989 Budget was £2315 million, around £350 million more than forecast in last year's White Paper. (This years contribution is estimated to be £2175 million). The fact that the figure has topped £2 billion for the first time is likely to attract comment in the press and at Westminster. Detailed briefing is in hand;

(ii) the 1990 Budget procedure was dominated by developments in Eastern Europe. This is likely also to be the case as regards the 1991 Budget. The Financial Perspective (which sets out Budgetary ceilings) will be revised to allow for increased expenditure on aid to Eastern Europe;

(iii) because of underspending on agricultural support in 1989 there will be no need to call upon the new GNP-related fourth resource in 1990. Further underspending on agriculture is in prospect this year;

(iv) by the end of 1990, the cumulative value of our abatement under the Fontainebleau mechanism will have reached about £7½ billion.

I am copying this letter and the draft to the Private Secretaries to the Foreign Secretary, Minister of Agriculture, the Lord President and the Chief Whip, and to Bernard Ingham and Sir Robin Butler.

Yours sincerely,

MALCOLM BUCKLER
Private Secretary

Statement on the 1990 Community Budget

Presented to Parliament by the Economic Secretary to the Treasury by Command of Her Majesty

1990

The 1990 Budget of the European Community

Following a recommendation by the Public Accounts Committee (28th Report, 1979–80 Session), the Government agreed to present an annual statement giving details of each European Community Budget, both after its adoption and after the outturn was known. This White Paper, the tenth in the series, covers the adopted Budget for 1990, subsequent amendments to that Budget and the outturn for 1989 and 1988. The statement also provides information on the United Kingdom's gross and net contribution to the Community Budget over the years 1987 to 1990. The latest Public Expenditure White Paper (Cm 1018, Chapter 20) provides similar information, but on a UK financial year basis.

2. The Community's budgetary terminology is explained in the annex.

Budgetary discipline

3. The 1990 Budget was the second to be subject from the outset to the arrangements for budgetary discipline agreed at the Brussels European Council in February 1988, and to the Inter-Institutional Agreement (IIA) of June 1988 between the Council, the Commission and the European Parliament. An integral part of the IIA is the financial perspective incorporating annual ceilings for commitments and payments over the period 1988–92, and sub-ceilings for commitments relating to six broad categories of expenditure.

4. The following table compares the ceilings and sub-ceilings in the financial perspective with the corresponding levels of provision in the 1990 preliminary draft Budget (PDB) and the Budget as finally adopted.

million ecu (mecu)

	Financial Perspective	1990 PDB	1990 adopted Budget
Commitments			
Agricultural guarantee[1]	30,700	26,858	26,522
Structural actions	11,555	11,520	11,533
Multi-annual policies	2,071	2,067	2,071
Other policies	3,128	2,069	3,005
Repayments/administration	4,530	4,779	4,696
Monetary reserve	1,000	1,000	1,000
TOTAL	53,285	48,903	48,827
Payments			
TOTAL	51,491	46,792	46,698

5. In terms of commitments, the adopted Budget is 4,458 mecu (£3.184 million*) below the overall ceiling in the financial perspective and 76 mecu (£54 million) below the PDB. In terms of payments, the shortfalls are 4,393 mecu (£3.138 million) and 94 mecu (£67 million) respectively.

* Paragraph 6 of the annex explains the exchange rate assumption.
[1] Includes an element of set-aside.

1990 budget procedure

6. The PDB, proposed by the Commission on 15 June 1989, provided for commitments of 48,903 mecu (£34,931 million), payments of 46,792 mecu (£33,423 million) and for an own resources call-up rate equivalent to 0.99 per cent of Community GNP. the annual sub-ceiling for 1990 in the Own Resources Decision of June 1988 (Cm 419) is 1.18 per cent of Community GNP.

7. The Budget Council established a first reading draft Budget on 28 July 1990. Commitments totalled 48,194 mecu (£34,424 million) and payments 46,139 mecu (£32,956 million). Around half of the reduct on by comparison with the PDB was in provision for obligatory expenditure on agricultural guarantee. Almost all of the remaining reduction was in provision for non-obligatory expenditure on research and development and other policies. The draft Budget was then sent to the European Parliament.

8. In advance of the Parliament's first reading, the Commission issued two Letters of Amendment to the PDB:

—the first provided for assistance of 200 mecu (£143 million) towards the economic restructuring of Poland and Hungary. The Commission took the view that this expenditure should be a top of the relevant ceiling in the financial perspective and accordingly included in the Letter of Amendment a negative reserve of 200 mecu. This was a stop gap, enabling the expenditure to go ahead pending a formal revision of the perspective. The Commission's original intention was to propose such a revision in February 1990. In the event, an earlier and bigger revision was agreed (paragraph 13 below);

—the purpose of the second Letter of Amendment was to budgetise, or bring to account, savings of around 800 mecu (£571 million) in agricultural expenditure in 1989 which had been transferred to the monetary reserve. This reserve, which was agreed as part of the 1988 financing package, is symmetrical in operation. It allows for expenditure on agricultural support of up to 1,000 mecu (£714 million) above the financial guideline if (and only if) this is needed as a result of the ecu appreciating against the dollar by more than a specified amount. Conversely, Budget appropriations of up to 1,000 mecu which are no longer needed following an appreciation of the dollar against the ecu must be transferred to the reserve. This latter situation arose in 1989, leading to a surplus which, when carried forward to 1990, has the effect of reducing member states' contributions to the Budget for that year.

9. The first Letter of Amendment was established at the ECOFIN Council on 9 October. The Council declared that it would in due course agree to the proposed revision of the financial perspective for 1990 as long as this was confined to the amount of the aid package for Poland and Hungary.

10. The second Letter of Amendment was not considered by the Budget Council until November. Before then, on 26 October, the Parliament gave its first reading to the draft Budget. The Parliament voted for amendments and modifications adding around 1,202 mecu (£859 million) in commitments and 993 mecu (£709 million) in payments to the draft Budget. Particular amendments were an increase of 100 mecu (£71 million) in the package of economic assistance for Poland and Hungary (bringing the total to 300 mecu (£214 million)); the removal of the negative reserve of 200 mecu to which the ECOFIN Council had agreed on 9 October; and the introduction of what the Parliament called an "operational reserve" of 185 mecu (£132 million) above the relevant ceiling in the financial perspective. In effect, the Parliament was bidding for an early revision of the perspective to accommodate expenditure of around 485 mecu (£346 million) above the ceiling for "other policies" in category 4.

11. At its meeting on 14 November the Budget Council agreed to increase the aid package for Poland and Hungary to 300 mecu and reaffirmed its intention to accept a corresponding revision of the financial perspective. But the Council removed the Parliament's operational reserve of 185 mecu, thereby signalling

that, in relation to the 1990 Budget, it was not prepared to accept a revision of the perspective for any purpose other than aid to Eastern European countries. The Presidency was given a mandate for negotiations with the Parliament under the process of co-decision provided for in Article 203(9) of the Treaty of Rome.

12. As regards the Second Letter of Amendment, the November Council decided to bring to account the whole of the estimated surplus for 1989, not just that part of it which stemmed from the transfer of agricultural appropriations into the monetary reserve. The figure proposed by the Commission was accordingly increased from 800 mecu ~~(£571 million)~~ to 1,800 mecu (£1,286 million). Member states' contributions to the 1990 Budget were correspondingly reduced. However, even the Council's estimate understated the actual surplus and a further amount has since been brought to account in a supplementary Budget (paragraph 16 below).

13. Negotiations between the Council and the Parliament took place in the margins of the Parliament's second reading of the Budget on 13 December. The eventual deal involved an immediate increase of 300 mecu in the relevant ceiling of the financial perspective to cover expenditure on aid to Poland and Hungary; an increase of around 160 mecu (£114 million) in the total of non-obligatory expenditure to which the November Budget Council had agreed; and, at the Parliament's insistence, a negative reserve of 38 mecu relating to category 4 of the perspective. (£27 million)

14. The Council approved this package by qualified majority. The UK voted against because it could not accept the negative reserve. The reserve will be extinguished in the course of 1990 and therefore will not enable higher expenditure than would otherwise have been the case. The Government nonetheless took the view that recourse to a negative reserve (which is provided for in the Community's Financial Regulation) was not appropriate as regards expenditure needs which could have been foreseen when the financial perspective was drawn up in 1988.

15. The 1990 Budget as adopted provides for commitments of 48,827 mecu (£34,876 million) and payments of 46,698 mecu (£33,356 million). Obligatory expenditure is 31,917 mecu (£22,798 million) in commitments and 31,891 mecu (£22,779 million) in payments. Non-obligatory expenditure is 16,929 mecu (£12,092 million) in commitments and 14,826 mecu (£10,590 million) in payments. The own resources call-up rate is equivalent to 0.90 per cent of Community GNP, some 12,782 mecu (£9,131 million) below the amount implied by the sub-ceiling of 1.18 per cent of Community GNP.

Supplementary Budgets

16. Two supplementary Budgets have been presented for 1990:

—the first (already adopted) inscribes a token entry covering a Community guarantee for the first tranche - totalling 350 mecu (£250 million)—of a borrowing programme to provide medium term financial assistance to Hungary;

—the second (likey to be adopted soon) completes the process of budgetising the 1989 surplus. The outturn figures for the surplus is 5,115 mecu (£3,654 million). Of this, 1,800 mecu (£1,286 million) was brought to account in the 1990 Budget procedure (paragraph 12 above); the supplementary Budget covers the remaining 3,315 mecu (£2,368 million).

Revision of the financial perspective

17. The Commission has proposed a further increase in the relevant ceiling of the financial perspective to cater for expenditure on aid to Eastern Europe in 1990. The increase totals 200 mecu on top of the 300 mecu agreed during the 1990 Budget procedure. The proposal is being considered by the Council and the Parliament.

Community expenditure

18. Tables 1 and 1A show commitments and payments for the years 1987–90 in ecu and sterling: the figures for 1987 and 1988 are based on outturn information and have been taken from the Court of Auditors' annual reports and the Commission's audited accounts. The figures for 1989 and 1990 are taken from the relevant adopted Budgets. In summary, provision for payments in 1990 is as follows: –

	million ecu	£million	% of total budget
Agricultural guarantee (1)	26,452	18,894	56.6
Structural funds	9,675	6,910	20.7
Administration	2,362	1,687	5.1
Stock depreciation	1,470	1,050	3.1
Research and investment	1,412	1,009	3.0
Refunds to Spain and Portugal	803	573	1.7
Development aid	1,454	1,039	3.1
Monetary reserve	1,000	714	2.1
Miscellaneous	1,971	1,479	4.4

Community revenue

19. Tables 2 and 2A show estimated gross contributions to the 1990 Budget after allowing for the UK abatement. Customs duties (including duties on coal and steel imports) and agricultural levies, net of the 10 per cent deducted by member states to cover collection costs, are estimated at 13,633 mecu (£9,738 million). The UK's share is some 21.4 per cent. Total VAT contributions taking account of the capping of the VAT base at 55 per cent of GNP are 27,646 mecu (£19,747 million).

20. The UK's VAT abatement in 1990 is 2,285 mecu (£1,697 million) comprising 2,302 mecu in respect of the 1989 Budget, corrections of 6 mecu and 15 mecu due to overpayment of abatement in respect of 1986 and 1987 respectively and an adjustment of 4 mecu to offset the UK's contribution to transitional refunds to Spain and Portugal in respect of their contributions to the UK's abatement. As a result of the abatement the UK's VAT contribution rate is some 0.72 per cent compared with a uniform (or average) rate in the Community as a whole of around 1.22 per cent. The UK's share of total VAT contributions is 12.0 per cent compared with 25.6 per cent for Germany, 22.4 per cent for France and 16.9 per cent for Italy.

21. Contributions under the GNP - based fourth resource will not be needed in respect of the 1990 Budget.

22. The UK's share of total contributions (after abatement) is 15.1 per cent compared with 26.0 per cent for Germany, 19.8 per cent for France and 15.0 per cent for Italy.

UK net contribution

23. Table 3 shows the UK's contribution to and receipts from the Community Budget in the years 1987 to 1990. The figures for 1990 are estimates. In contrast with the budget figures in Tables 1 and 2, the figures in Table 3 are on a "payments" or "cash flow" basis, representing the actual sums contributed or received by the UK during the years in question, not simply the contributions and receipts associated with the budgets for those years.

24. On these assumptions Table 3 contains an outturn figure of £2,315 million for the UK's net contribution to the Community Budget in 1989. This compares with the estimate of £1,966 million in last year's White Paper (Cm 680). The following table summarises the main differences between forecast and outturn. Table 4 gives further details.

£million

		Forecast in Cm 680	Outturn	Difference
Contributions				
1.	Levies and duties	1,755	1,829	+74
2.	VAT/GNP related payments	3,541	3,445	−96
3.	VAT/GNP adjustment	237	31	+74
4.	Abatement	1,187	1,154	+33
5.	Total contribution	4,346	4,431	+85
Receipts				
6.	Agricultural guarantee	1,289	1,176	−150
7.	Structural funds	412	803	99
8.	Other	182	167	−15
9.	Total receipts	2,361	2,116	−264
Net contribution		1,985	2,315	+349

25. On the contributions side, higher than expected payments of levies and duties (line 1 of the table) largely reflect buoyant domestic demand and imports. The VAT/GNP adjustment (line 3) relates to the 1988 Budget and was made in the light of outturn information on the actual level of the VAT and GNP bases in the UK and other member states. Again, the buoyancy of the UK economy accounts for the higher than expected adjustment.

26. As regards receipts, the shortfall in respect of agricultural guarantee (line 6 of the table) reflects two main factors: lower than forecast expenditure by the Commission (which will mean that the UK's contribution in 1990 will be lower than otherwise); and exchange rate movements which served to reduce the UK's share of agricultural receipts in the fourth quarter of 1989. The shortfall in respect of the structural funds (line 7 of the table) relates mainly to the European Regional Development Fund and is largely a function of timing. Receipts which had been expected in 1989 have slipped into 1990.

27. The UK's net contribution in 1990 is expected to be £2,175 million, some £140 million lower than in 1989. The main factors are:

(i) the absence of GNP-related payments under the fourth resource. This is because the surplus carried forward from the 1989 Budget reduces the need for new contributions in 1990 (see paragraph 16 above);

(ii) higher receipts, due partly to the unwinding of the timing factors mentioned in paragraph 26 above;

(iii) a higher abatement, mainly because the 1989 Budget – to which the abatement paid in 1990 relates – was considerably bigger than the 1988 Budget;

(iv) a partly offsetting increase in VAT-related contributions resulting from the buoyancy of the UK economy.

Table 1

Expenditure from the Community Budget Commitments and Payments by Institution and Type of Expenditure

Million ecu

	Commitments				Payments			
	1987	1988	1989	1990	1987	1988	1989	1990
COMMISSION								
Administration	1,120	1,264	1,416	1,515	1,190	1,254	1,416	1,515
Agricultural Guarantee	22,950	26,400	26,741	26,452	22,952	26,390	26,741	26,452
Set-aside and Income Aid	0	0	100	295	0	0	100	295
Agricultural Guidance	941	1,180	1,413	1,666	863	1,142	1,369	1,648
Common policy on fisheries	232	125	361	455	158	200	309	376
Regional Development Fund	3,062	3,427	[illegible]	[illegible]	2,535	3,095	3,920	4,705
Social Fund	3,524	2,871	3,387	4,075	2,715	2,299	2,950	3,322
Energy	153	142	[illegible]	58	90	131	117	132
Research and Investment	1,067	1,172	1,441	1,727	720	963	1,197	1,412
Industry and Transport	147	162	[illegible]	235	88	125	134	309
Integrated Mediterranean Programmes	194	267	284	[illegible]	116	151	255	303
Own resources refunds*	700	143	[illegible]	1	788	542	0	0
Transitional refunds to Greece	0	0	0	0	0	0	0	0
Transitional refunds to Spain	670	1,022	1,032	714	670	1,022	1,032	711
Transitional refunds to Portugal	130	107	131	[illegible]	130	107	131	89
Financial compensation to Spain	0	30	44	[illegible]	0	30	43	55
Financial compensation to Portugal	0	3	[illegible]	[illegible]	0	3	6	7
Repayment of advances	0	502	251	1	0	502	251	0
Development aid	1,265	[illegible]	1,241	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Stock depreciation	0	1,240	[illegible]	[illegible]	0	1,240	1,449	1,470
Monetary reserve	0	0	1,000	1,000	0	0	1,000	1,000
Miscellaneous	1,074	[illegible]	[illegible]	[illegible]	1,021	359	568	[illegible]
Reserves	0	0	[illegible]	[illegible]	[illegible]	0	0	0
Total Commission	37,891	42,684	[illegible]	[illegible]	[illegible]	40,633	44,104	45,851
OTHER INSTITUTIONS								
Parliament	338	[illegible]	[illegible]	[illegible]	322	370	406	448
Council	192	203	236	[illegible]	194	204	230	[illegible]
Court of Justice	44	44	[illegible]	67	44	47	60	67
Court of Auditors	25	27	31	54	25	26	31	54
Total other institutions	599	654	[illegible]	[illegible]	585	646	736	847
TOTAL BUDGET	38,490	[illegible]	[illegible]	[illegible]	[illegible]	41,279	44,841	[illegible]

* Under the agreement of future financing of the community own resources refunds were abolished. Member states pay over only 90 per cent of agricultural levies and customs duties to the community, retaining 10 per cent to cover collection costs. The amount shown for 1988 is a residual payment in respect of 1987 contributions.

Notes

1. Miscellaneous expenditure in 1987, both commitments and payments, includes an amount of 120 mecu in respect of the deficit carried over from the 1986 budget.
2. "Common policy on fisheries" includes EAGGF measures to improve fisheries structures.
3. Because of rounding the column totals do not necessarily equal the sum of the individual items.

Table 1A

Expenditure from the Community Budget Commitments and Payments by Institution and Type of Expenditure

£ Million

	Commitments				Payments			
	1987	1988	1989	1990	1987	1988	1989	1990
COMMISSION								
Administration	789	853	951	1,052	774	833	951	1,052
Agricultural Guarantee	16,173	17,541	17,964	18,834	16,175	17,533	17,964	18,894
Set-aside and Income Aid	0	0	67	211	0	0	67	211
Agricultural Guidance	663	784	939	1,180	608	759	920	1,177
Common policy on fisheries	163	216	243	325	111	173	261	269
Regional Development Fund	1,581	2,543	3,959	5,863	1,786	2,055	2,633	3,360
Social Fund	2,483	1,987	2,275	2,911	1,913	1,527	1,982	2,373
Energy	108	92	89	82	63	87	79	94
Research and Investment	752	770	964	1,234	587	640	884	1,089
Industry and Transport	104	116	127	156	62	82	93	129
Integrated Mediterranean Programmes	137	177	171	246	82	100	171	216
Own resources refunds*	536	293	0	0	555	360	0	0
Transitional refund to Greece	0	0	0	0	0	0	0	0
Transitional refund to Spain	472	679	693	510	472	679	693	510
Transitional refund to Portugal	92	71	86	63	92	71	88	63
Financial compensation to Spain	0	20	29	39	0	20	29	39
Financial compensation to Portugal	0	2	4	5	0	2	4	5
Repayment of advances	0	333	108	0	0	333	108	0
Development aid	891	839	1,038	1,238	561	692	943	1,038
Stock depreciation	0	824	973	1,050	0	824	973	1,050
Monetary reserve	0	0	672	714	0	0	672	714
Miscellaneous	757	208	407	537	720	225	381	496
Reserves	0	0	0	457	0	0	0	0
Total Commission	26,703	28,349	32,961	41,877	24,481	26,997	29,628	37,751
OTHER INSTITUTIONS								
Parliament	238	253	272	320	227	246	272	320
Council	135	135	162	198	137	135	162	198
Court of Justice	31	33	40	48	31	31	40	48
Court of Auditors	18	18	23	29	18	17	31	39
Total other institutions	422	438	497	605	412	429	505	605
TOTAL BUDGET	27,125	28,787	33,458	42,482	24,893	27,426	30,133	38,356

u.c.

* Under the agreement on future financing of the Community own resources refunds were abolished. Member states pay over only 90 per cent of agricultural levies and customs duties to the community (previously 10 per cent was retained to cover collection costs). The amount shown for 1988 is a residual payment in respect of 1987 contributions. u.c.

Notes:

1. Miscellaneous expenditure in 1987, both commitments and payments, includes a repayment of £708 million in respect of the deficit carried over from the 1986 budget.
2. "Common policy on fisheries" includes EAGGF measures to improve fisheries structures.
3. Sterling figures are derived from the corresponding ecu amounts in Table 1 converted at the appropriate annual average exchange rate (see annex, paragraph 6).
4. Because of rounding the column totals do not necessarily equal the sums of the individual items.

Table 2

Community Budget Revenue

Million ecu

	Agriculture and sugar levies				Customs Duties				VAT/Financial Contributions			
	1987	1988	1989	1990	1987	1988	1989	1990	1987	1988	1989	1990
Belgium	354	215	269	184	529	555	572	630	703	850	872	888
Denmark	54	54	55	57	194	195	212	213	576	560	555	570
Germany	549	481	442	420	2,618	2,692	2,858	3,231	6,218	6,901	6,982	7,087
Greece	23	24	28	39	92	107	126	148	215	228	368	364
Spain	139	265	224	241	385	574	472	506	1,195	2,040	2,175	2,545
France	581	488	466	473	1,213	1,240	1,506	1,539	5,557	6,150	6,167	6,179
Ireland	38	18	20	16	112	130	135	143	208	154	190	199
Italy	578	503	456	407	876	893	972	1,120	3,738	4,030	4,324	4,680
Luxembourg	0	0	0	0	7	7	8	9	66	62	58	58
Netherlands	223	98	189	179	818	852	980	1,008	1,326	1,442	1,306	1,425
Portugal	42	37	66	45	94	95	108	122	206	215	282	323
United Kingdom	569	323	248	232	2,002	2,138	2,295	2,680	3,226	1,891	3,310	3,330
Total	3,050	2,606	2,462	2,283	8,937	9,300	9,954	11,350	23,315	24,523	26,778	27,646

	Intergovernmental Agreements				Fourth Resource Payment				Totals			
	1987	1988	1989	1990	1987	1988	1989	1990	1987	1988	1989	1990
Belgium	0	214	0	0	0	1	124	0	1,703	1,834	1,836	1,702
Denmark	0	147	0	0	0	0	90	0	845	956	910	840
Germany	0	1,461	0	0	0	0	968	0	9,385	11,535	11,267	10,738
Greece	0	71	0	0	0	1	53	0	340	430	575	941
Spain	0	426	0	0	0	1	263	0	709	3,105	3,135	3,291
France	0	1,218	0	0	0	0	794	0	7,330	9,095	8,723	8,191
Ireland	0	36	0	0	0	0	24	0	358	328	369	358
Italy	0	1,189	0	0	0	0	950	0	5,192	6,615	6,322	6,208
Luxembourg	0	12	0	0	0	0	7	0	74	82	74	67
Netherlands	0	304	0	0	0	0	186	0	2,366	2,796	2,671	2,611
Portugal	0	53	0	0	0	0	35	0	342	400	491	490
United Kingdom	0	932	0	0	0	0	717	0	5,728	5,324	6,650	6,243
Total	1	6,061	0	0	1	4	4,063	1	35,749	42,498	43,268	41,279

Notes

1. The figures for 1987 and 1988 are derived from the Court of Auditors Report. The figures for 1989 are taken from the supplementary and amending budget (No. 1), those for 1990 from the draft supplementary and amending budget (No. 2).
2. Miscellaneous items of revenue and carry-forwards of surpluses and deficits from previous years account for the differences between total budget expenditure given in Table 1 and the revenue figures given in Table 2.
3. The figures for 1990 in Table 2 are the most up-to-date estimates of what are called actually payable in a year and may be different from the budget figures shown in the table.
4. The figures for VAT contributions are after abatement.
5. The figures for 1990 do not include VAT and 4th resource adjustments.
6. From 1988 onwards the figures for agricultural and sugar levies and customs duties are after deduction of 10 per cent collection costs. The customs duties from 1988 also include ECSC duties on imports of coal and steel.
7. Because of rounding the column totals do not necessarily equal the sum of the individual items.

Table 2A

Community Budget Revenue

Ecu/lion

	Agriculture and sugar levies				Customs Duties				VAT/Financial Contributions			
	1987	1988	1989	1990	1987	1988	1989	1990	1987	1988	1989	1990
Belgium	296	143	181	131	373	368	384	450	552	565	566	534
Denmark	52	36	37	40	137	140	142	152	416	372	373	407
Germany	387	320	297	300	1,845	1,797	1,920	2,300	4,362	4,585	4,690	5,062
Greece	22	16	19	21	65	71	85	106	153	151	247	260
Spain	92	176	150	172	270	249	317	361	842	1,355	1,461	1,818
France	395	324	313	338	855	824	871	1,000	3,916	4,086	4,143	4,114
Ireland	13	12	14	11	79	80	91	102	146	103	127	142
Italy	407	334	305	291	617	594	653	800	2,634	2,678	2,905	3,342
Luxembourg	0	0	0	0	5	5	5	6	47	41	39	41
Netherlands	157	131	127	128	536	566	605	720	934	958	937	1,018
Portugal	29	25	44	32	60	63	73	87	145	143	189	231
United Kingdom	352	214	166	166	1,411	1,448	1,542	1,914	2,274	1,257	2,291	2,379
Total	2,183	1,731	1,654	1,631	6,298	6,186	6,987	8,107	16,430	16,293	17,989	19,747

	Intergovernmental Agreements				Fourth Resource Payment				Totals			
	1987	1988	1989	1990	1987	1988	1989	1990	1987	1988	1989	1990
Belgium	0	142	0	0	0	0	83	1	1,208	1,218	1,214	1,215
Denmark	0	97	0	0	0	0	60	1	595	635	611	680
Germany	0	971	0	0	0	0	662	9	6,614	7,664	7,569	7,670
Greece	0	47	0	0	0	0	36	1	240	286	386	386
Spain	0	283	0	0	0	0	280	1	1,214	2,063	2,119	2,351
France	0	909	0	0	0	0	533	9	5,166	6,043	5,860	5,651
Ireland	0	24	0	0	0	0	16	0	278	218	248	256
Italy	0	790	0	0	0	0	917	9	3,659	4,395	4,381	4,434
Luxembourg	0	8	0	0	0	0	5	0	52	54	49	48
Netherlands	0	202	0	0	0	0	125	0	1,568	1,857	1,794	1,865
Portugal	0	35	0	0	0	0	24	0	241	266	310	350
United Kingdom	0	619	0	0	0	0	182	0	4,037	3,537	4,481	4,459
Total	0	4,027	0	0	0	0	2,731	31	24,911	28,236	29,063	29,985

Notes

1. The figures for 1987 and 1988 are derived from the Court of Auditors Report. The figures for 1989 are taken from the supplementary and amending budget (No. 1) whose for 1990 from the draft supplementary and amending budget. (No. 2
2. Miscellaneous items of revenue and carry-forwards of surpluses and deficits from previous years account for the differences between total budget expenditure given in Table 1 and the revenue figures given in Table 2.
3. The figures for 1990 in Table 1 are the most up-to-date estimates of what we shall actually pay this year and may be different from the budget figures shown in this Table. 3
4. The figures for VAT contributions are after abatement.
5. The figures for 1990 do not include VAT and 4th resource adjustments.
6. From 1988 onwards the figures for agricultural and sugar levies and customs duties are after deduction of 10 per cent collection costs. The customs duties from 1988 also include ECSC duties on imports of coal and steel.
7. Sterling figures are derived from the corresponding ecu amounts in Table 2 converted at the appropriate annual average exchange rate (see annex paragraph 6).
8. Because of rounding the columns totals do not necessarily equal the sums of the individual items.

Table 3

United Kingdom contributions to and receipts from the Community Budget

	Million ecu				£ Million			
	1987	1988	1989	1990	1987	1988	1989	1990
GROSS CONTRIBUTION								
Agricultural and sugar levies	502	522	280	210	354	214	192	150
Customs duties	2,088	2,175	1,349	2,382	1,415	1,445	1,638	1,773
VAT own resources (including VAT adjustments and before abatements)	4,871	4,931	5,058	5,132	3,433	2,866	3,398	3,834
United Kingdom abatement of VAT	−1,636	−2,399	−1,319	−2,282	−1,153	−1,594	−1,154	−1,697
IGA contributions	0	923	0	0	0	613	0	0
Fourth Resources Payments	0	0	533	0	0	0	358	0
Total Contribution	5,746	6,334	5,956	6,549	4,049	3,544	4,431	4,760
RECEIPTS								
Receipts other than refunds	3,140	3,167	3,140	3,619	2,213	2,106	2,116	2,685
Own resources refunds	165	116	0	0	116	77	0	0
Total Receipts	3,303	3,284	3,140	3,619	2,329	2,182	2,116	2,685
NET CONTRIBUTION	2,442	3,050	2,816	2,930	1,721	1,362	2,315	2,175

Notes

1. For all years sterling figures reflect actual payments made during the year not accounts closed in respect of particular budgets. The corresponding ecu figures are converted from sterling at the appropriate annual average exchange rate (see annex, paragraph 6).
2. The UK payments to the fourth resource in 1989 and VAT own resources in 1990 include contributions to the monetary reserve.
3. The figures for contributions of agricultural and sugar levies and customs duties in 1990 are based on projections underlying the 1990 estimates statement. They represent a more up-to-date forecast than the contributions foreseen in the 1990 budget as contained in Table 2.
4. Because of rounding the column totals do not necessarily equal the sum of the individual items.
5. The figures for VAT own resource and fourth resource payments include adjustments for previous years.

Table 4

United Kingdom Net Contribution to the 1989 Community Budget: Forecast and Outturn

£ millions

	Forecast in the 1989 Statement	Outturn	Difference
CONTRIBUTIONS			
Agricultural and sugar levies	194	192	−2
Customs duties	1,561	1,667	+76
VAT own resources	3,231	3,143	−88
Fourth resource	310	302	−8
VAT and Fourth resource adjustment	237	311	+74
Abatement	−1,187	−1,154	+33
Total Contribution	4,346	4,431	+85
LESS RECEIPTS			
EAGGF Guarantee	1,286	1,135	−150
Stock depreciation	118	114	+1
EAGGF Guidance	68	63	−5
European Regional Development Fund	429	347	−82
European Social Fund	415	406	−9
Other	84	68	−16
Total receipts	2,380	2,115	−264
NET CONTRIBUTION	1,966	2,315	+349

ANNEX

European Community Budget

The rules which define the structure and implementation of the Community Budget are in the main to be found in Part 5, Title II of the Treaty of Rome and the revised Financial Regulation of 13 March 1990.

2. There are several important differences between the Community's budgetary process and that of the UK. The UK presents its public expenditure plans in a multi-annual form, while the Community's Budget relates only to a single year and includes a statement on revenue. The Community's financial year runs from 1 January to 31 December.

Commitment and payment appropriations

3. The Budget distinguishes between appropriations for commitments and appropriations for payments. Commitment appropriations are the total cost of legal obligations which can be entered into during the current financial year for activities which will lead to payments in the current and future financial years. Payment appropriations are the amount of money which is available to be spent during the year arising from commitments entered into the Budgets for the current or preceding years. Unused payment appropriations may, in exceptional circumstances, be carried forward into the following year.

Obligatory and Non-obligatory expenditure

4. Community expenditure is regarded as either "obligatory" or "non-obligatory". Obligatory expenditure is expenditure resulting from the Treaty of Rome or from acts adopted in accordance with the Treaty. It mainly includes agricultural guarantee expenditure – including stock depreciation and the monetary reserve – some agricultural guidance expenditure and rebates of VAT and national financial contributions for Spain and Portugal. Non-obligatory expenditure includes expenditure on the regional development and social funds along with some other items. In the course of the budget procedure, the Council has the last say in fixing the total of obligatory expenditure and, within limits laid down in the "maximum rate" provisions of the Treaty of Rome, the Parliament has the last say in determining the amount and pattern of non-obligatory expenditure.

5. Differences arise between the Council's and the European Commission's classification of obligatory and non-obligatory expenditure. The figures at paragraph 15 of the main text are on the basis of the Council's classification.

Sterling figures

6. The sterling figures for 1987 to 1989 in this White Paper are based on actual sterling cash receipts or payments where these took place and are known; elsewhere the appropriate average annual sterling/ecu exchange rate has been used to convert ecu figures into sterling*. In tables 1 and 2 the 1990 figures have been converted into sterling using the rate of £1 = 1.4 ecu. Payments during 1990 in respect of VAT net of abatement will be made in sterling using the exchange rate on the last working day of 1989 (29 December) when the rate was £1 = 1.3463 ecu. In table 3 this rate has been used to convert the amounts for VAT own resources and abatement so as to reflect actual payments due. Elsewhere in the table the rate of £1 = 1.4 ecu has been used.

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*The annual average rate for 1987 is £1 = 1.41 50 ecu.
The annual average rate for 1988 is £1 = 1.3581 ecu.
The annual average rate for 1989 is £1 = 1.3863 ecu.

agreements of 1984, 1985 and 1988, almost exclusively by "own resources". Under the terms of the new Own Resources Decision agreed by the Council on 24 June 1988 (Cm 419) these are:

—agricultural levies and customs duties, including duties on imports of coal and steel products from third countries. Member states pay over to the Community 90 per cent of the amounts collected, retaining 10 per cent to cover collection costs;

—sugar levies, which are taxes on the production and sales of sugar;

—VAT own resources, the product of applying a uniform rate to a harmonised expenditure base (which must not exceed 55 per cent of the GNP of any member state). The uniform rate is determined by subtracting from the yield of VAT at 1.4 per cent the gross amount of the UK abatement i.e. broadly the amount of additional expenditure that could be financed if there were no abatement;

—a fourth resource based on member states' shares in Community GNP. The rate of the fourth resource is whatever is required, given all other revenue, to balance the Budget.

The overall own resources ceiling is 1.2 per cent of Community GNP. There are also annual sub-ceilings rising gradually from 1.15 per cent in 1988, 1.17 per cent in 1989, and 1.18 per cent in 1990 to 1.2 per cent in 1992.

The Fontainebleau abatement system

8. The UK's Fontainebleau abatement is calculated according to the formula set out in the new Own Resources Decision. It is equal to 66 per cent of the difference in the previous year between, on the one hand, what we would have paid if the Community Budget had been financed entirely by VAT (but leaving out of account our contribution to the Community's aid budget) and, on the other our receipts from the Budget.

9. From 1989 onwards the UK's Fontainebleau abatement has been adjusted to take account of the effects of the capping of our VAT base and the introduction of GNP contributions by comparison with what we would have paid with uncapped VAT contributions and an increase in the VAT ceiling. The intention is that we should end up no better or worse off than we would have been with a continuation of uncapped VAT financing and an unadjusted Fontainebleau abatement system.

10. From 1988 onwards contributions to the abatement are based on shares in Community GNP though Germany will have to pay only two-thirds of its normal financing share. These contributions will be added to member states' VAT payments up to a VAT rate of 1.4 per cent. Any additional contributions will be added to payments of the fourth resource.

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Barry

We spoke.

All the attached are out of date, though the piece on balancing items has attached to it some updated material.

On "hidden" exchange controls, I attach 2 papers, one dealing with obstacles to free competition in financial services (a related topic) and one with German controls. Michael Scholar would happy to discuss both on Monday.

Duncan

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FOLLOWING FROM PRIVATE SECRETARY

MEETING OF FOREIGN MINISTERS OF THE TWELVE: DUBLIN: 21 APRIL: POLITICAL UNION

SUMMARY

1. IN A DISCUSSION PARTLY IN PLENARY AND PARTLY BETWEEN MINISTERS ALONE OVER DINNER WELL-KNOWN POSITIONS ON EC INSTITUTIONAL QUESTIONS WERE REHEARSED. A NEW ELEMENT WAS A PRESIDENCY SUGGESTION THAT ON 28 APRIL HEADS OF GOVERNMENT SHOULD DISCUSS POLITICAL UNION OVER LUNCH, WITHOUT FOREIGN MINISTERS PRESENT. HE STUCK TO HIS GUNS WHEN OPPOSED BY OTHER FOREIGN MINISTERS. NOR WOULD HE ACCEPT IN ADVANCE THAT THE MEETING ON 28 APRIL WOULD NECESSARILY TAKE A DECISION ABOUT THE NEXT STEPS.

DETAIL

2. EYSKENS (BELGIUM) GAVE A STRAIGHTFORWARD PRESENTATION OF THE MAIN CONTENTS OF THE BELGIAN PAPER ON POLITICAL UNION AND COMMENDED IT AS A QUOTE PRAGMATIC ENSEMBLE UNQUOTE. HE ALSO WELCOMED VERY POSITIVELY THE KOHL/MITTERRAND LETTER WHICH HAD CORRECTLY IDENTIFIED THE POLITICAL OBJECTIVES, THE ATTENDANT URGENCY AND A SENSIBLE PROCEDURE FOR GETTING THERE.

3. DUMAS (FRANCE) SUMMARISED THE KOHL/MITTERRAND MESSAGE TO HAUGHEY, EMPHASISING THE NEED FOR DECISIONS BY THE EUROPEAN COUNCIL ON 28 APRIL, ITS COMPATIBILITY WITH THE BELGIAN INITIATIVE AND THE NEED FOR A SECOND IGC IN PARALLEL WITH THAT ON EMU. FOR THE TREATY ON POLITICAL UNION TO ENTER INTO FORCE BY 1-1-93 WORK WOULD HAVE TO BE COMPLETED BY THE END OF 1991. IT WAS RIGHT FOR FOREIGN MINISTERS TO UNDERTAKE THE PREPARATORY WORK.

4. GENSCHER (FRG) SPOKE BRIEFLY IN SUPPORT, STRESSING THAT GERMAN UNITY REQUIRED A MORE DETERMINED EFFORT TO PROMOTE EUROPEAN INTEGRITY IN THE SENSE OF BOTH EMU AND POLITICAL UNION.

PS TO PRIME MINISTER
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5. THE SECRETARY OF STATE THEN INTERVENED TO SAY THAT:

- WE RECOGNISED THAT IT WAS NATURAL FOR THE COMMUNITY TO LOOK FROM TIME TO TIME AT THE BALANCE OF ITS INSTITUTIONS AND HOW TO IMPROVE THEIR EFFICIENCY.

- THOUGH THE SINGLE EUROPEAN ACT HAD BEEN IN FORCE FOR LESS THAN THREE YEARS, WE ALSO RECOGNISED THAT MANY FELT THE TIME FOR A FURTHER REVIEW WAS NOW APPROACHING.

- WE WERE, HOWEVER, SCEPTICAL ABOUT ATTEMPTING THIS IN 1992, WHEN THE COMMUNITY ALREADY HAD ENOUGH ON ITS PLATE, WITH SIX KEY CHALLENGES TO MEET (GERMAN UNIFICATION, 1992, THE DECEMBER CLIMAX OF THE URUGUAY ROUND, THE EC/EFTA NEGOTIATIONS (ALSO DUE TO END BY DECEMBER), THE EMU IGC PREPARATIONS (AGAIN WITH A DECEMBER DEADLINE), AND THE MAJOR TASK OF DEVISING THE RIGHT NEW FORMS OF ASSOCIATION FOR EASTERN EUROPE). IF THE COMMUNITY ROSE TO ALL SIX CHALLENGES, IT WOULD BE GREATLY STRENGTHENED.

- NEVERTHELESS, IF MOST OTHERS WANTED TO LOOK AGAIN NOW AT NON-EMU INSTITUTIONS, WE WOULD CERTAINLY NOT WISH TO HOLD OUT AGAINST THE IDEA, AND WOULD HAVE OUR OWN SUGGESTIONS TO CONTRIBUTE.

- BUT WE DID NOT AGREE WITH KOHL/MITTERRAND THAT WE SHOULD PRE-EMPT THAT PREPARATORY WORK BY DECIDING IN ADVANCE THAT AN IGC WOULD BE CONVENED: THAT WAS A QUESTION FOR DECISION WHEN THE ANALYSIS HAD BEEN DONE. SO TO TALK NOW OF A SECOND IGC WAS PREMATURE - TREATY AMENDMENT REQUIRED PRIOR CONSENSUS ON SUBSTANCE, AND THE RIGHT DECISION FOR THIS SUMMER WOULD BE TO COMMISSION THE COLLECTION OF MEMBER STATES' IDEAS, AND SET IN TRAIN THEIR COLLECTIVE ANALYSIS.

- WE AGREED WITH THE KOHL/MITTERRAND MESSAGE THAT THE RIGHT PEOPLE TO CONDUCT SUCH AN ANALYSIS WOULD BE FOREIGN MINISTERS, IN THE GENERAL AFFAIRS COUNCIL.

6. VAN DEN BROEK (NETHERLANDS) COMMENDED THE BELGIAN AND THE FRANCO/GERMAN INITIATIVES. BUT WHAT EXACTLY DID THE EXPRESSION QUOTE POLITICAL UNION UNQUOTE MEAN? IT WAS TIME TO THINK OF WAYS OF STRENGTHENING THE EC INSTITUTIONS. BUT THE NUB OF THE AFFAIR WAS: WOULD THERE BE A COMMON OR COMMUNITY FOREIGN POLICY, AND HOW MUCH WERE NATIONAL GOVERNMENTS READY TO GIVE UP? HE LOOKED FORWARD TO BEING ENLIGHTENED BY FRANCE AND THE FRG ON THIS.

7. DE MICHELIS (ITALY) AGREED THAT THE EUROPEAN COUNCIL ON 28 APRIL

SHOULD DISCUSS THE INSTITUTIONAL REFORM OF THE COMMUNITY AND THAT THERE SHOULD BE TWO IGCS WORKING IN PARALLEL. HE UNDERSTOOD OUR WORRY ABOUT OVERLOADING THE CIRCUITS, BUT THE URGENCY OF THE TIMETABLE WAS DICTATED BY THE PACE OF EVENTS IN EUROPE. WORK MUST START NOW.

8. FERNANDEZ-ORDONEZ (SPAIN) SAID POLITICAL UNION WAS INDEED THE OBJECTIVE AND SPAIN COULD ACCEPT THAT THIS REQUIRED A COMMON FOREIGN POLICY INCLUDING SECURITY, AS WELL AS REINFORCEMENT OF THE COMMUNITY INSTITUTIONS. HE AGREED THAT THE EUROPEAN COUNCIL ON 28 APRIL SHOULD SEND A CLEAR MESSAGE, IF CONSENSUS EXISTED, AND THAT FOREIGN MINISTERS SHOULD DO THE PREPARATORY WORK THEREAFTER.

9. DEUS PINHEIRO (PORTUGAL) SAID HE AGREED WITH THE FRENCH/GERMAN AND BELGIAN APPROACHES BECAUSE THERE WAS REALLY NO ALTERNATIVE ON THE TABLE. THE PRINCIPLE OF SUBSIDIARITY WAS HOWEVER VERY IMPORTANT. THE REST OF THE WORLD WOULD NOT WAIT UPON EVENTS IN EUROPE. THE WORK SHOULD THEREFORE START NOW AND FOREIGN MINISTERS SHOULD BEGIN IT.

10. POOS (LUXEMBOURG), IN A HELPFUL INTERVENTION, SAID THAT ALL MEMBER STATES ACCEPTED POLITICAL UNION AND LUXEMBOURG ACCEPTED A WIDE DEFINITION OF IT. IT WAS THE SEVENTH LABOUR OF HERCULES. POOS WAS NOT SURE THAT ALL SEVEN LABOURS COULD BE TACKLED SIMULTANEOUSLY. HERCULES HAD HIS PRIORITIES AND SO SHOULD THE EC, NAMELY COMPLETING THE SINGLE MARKET AND EMU. THE IDEAS IN THE BELGIAN PAPER WERE REALISTIC, BUT WERE STILL EMBRYONIC. WORK WAS NEEDED OVER THE COMING MONTHS IN COREPER AND THE FAC OR, PERHAPS, A SPECIAL COMMITTEE. THE COMMUNITY WOULD NEVER HAVE AGREED THE SINGLE EUROPEAN ACT WITHOUT SOUND PREPARATION. HE NOTED THAT ALTHOUGH A SIMPLE MAJORITY WAS SUFFICIENT FOR CALLING AN IGC, UNANIMITY WAS NEEDED FOR ITS CONCLUSION. IT WOULD NOT BE LIKE THE TOUR DE FRANCE: FOR EVERYONE HAD TO FINISH, INCLUDING THE 12 NATIONAL PARLIAMENTS WHOSE MEMBERS WERE RATHER DIFFERENT FROM THE MEMBERS OF THE EUROPEAN PARLIAMENT.

11. CHRISTODOULOU (GREECE) SPOKE OF THE UNITED STATES' INTEREST AND THE RISK OF MISINFORMATION IN WASHINGTON. THE COMMUNITY MUST NOT ISOLATE THEMSELVES FROM THE US. IN GREECE THE ATTITUDE TOWARDS POLITICAL UNION WAS FAVOURABLE, ALTHOUGH THERE WAS NOT MUCH INTELLIGENT DEBATE ABOUT IT. HE THOUGHT PREPARATION SHOULD BE IN THE HANDS OF FOREIGN MINISTERS.

12. GENSCHER (FRG) THOUGHT THAT THE SUBSTANCE OF EC/US/CANADA

RELATIONS NEEDED TO BE TACKLED. HE WONDERED ABOUT THE EC MAKING A DECLARATION (HE DID NOT GIVE DETAILS) AND SAID THAT THE ATLANTIC MUST NOT BE MADE ANY WIDER.

13. ELLEMANN-JENSEN (DENMARK) DID NOT KNOW WHAT POLITICAL UNION MEANT, AND THOUGHT THAT MITTERRAND AND KOHL HAD NOT BEEN TOO PRECISE EITHER. PERHAPS IT WAS JUST A NICE HEADLINE UNDER WHICH A NUMBER OF IDEAS FOR POLITICAL COOPERATION COULD BE PURSUED. POLITICAL UNION DID CONVEY AN IMPORTANT MESSAGE, WHICH HE SUPPORTED, BUT WHICH WAS DIFFICULT TO EXPLAIN TO COLD-BLOODED AND PRAGMATIC DANES. THEY THOUGHT IT WOULD MEAN THAT THE QUEEN OF DENMARK WOULD HAVE TO ABDICATE - THERE WAS A PROBLEM OF PRESENTATION. HE WONDERED WHY THERE NEED BE TWO IGCS, RATHER THAN ONE WITH SEVERAL ITEMS ON THE AGENDA.

14. VAN DE BROEK (NETHERLANDS) ANSWERED HIM: EMU NEEDED ACCELERATION AND SHOULD NOT BE HELD UP BECAUSE IT WAS TIED TO A RESULT ON POLITICAL UNION.

15. DEUS PINHEIRO (PORTUGAL) WAS ALSO IN FAVOUR OF TWO IGCS BECAUSE THEY ADDRESSED DIFFERENT ISSUES, ALTHOUGH THEY WOULD INTERREACT.

16. DUMAS (FRANCE) SAID HE HAD TOLD BAKER THAT QUOTE EUROPE WAS GROWING UP UNQUOTE AND NEEDED A NEW RELATIONSHIP WITH THE UNITED STATES. THE AMERICANS NEEDED ASSURANCE AND THE COMMUNITY SHOULD FIND NEW WAYS OF DEALING WITH THEM.

17. COLLINS (PRESIDENCY) SAID THAT ON 28 APRIL THE PRESIDENCY PLANNED TO TAKE POLITICAL UNION OVER LUNCH, WITH DISCUSSION BETWEEN HEADS OF GOVERNMENT ONLY. HE SOUGHT TO JUSTIFY THIS ON THE GROUNDS THAT HEADS OF GOVERNMENT WOULD NOT HAVE DISCUSSED THE ISSUE EARLIER. VAN DEN BROEK (NETHERLANDS) THOUGHT THAT WOULD BE QUITE WRONG. DE MICHELIS (ITALY) THOUGHT A DOCUMENT WOULD BE NEEDED.

18. THE SECRETARY OF STATE SAID THAT THE 28 APRIL MEETING HAD BEEN CALLED BY THE TAOISEACH TO DISCUSS GERMANY AND EASTERN EUROPE. THAT WAS RIGHT. NEW MATTER HAD NOW BEEN INTRODUCED, LATE IN THE DAY, AND NOT DISCUSSED BY MINISTERS UNTIL THIS MEETING IN DUBLIN. IT WOULD BE A MISTAKE TO TRY TO ACHIEVE TOO MUCH ON THE 28TH. COLLINS (PRESIDENCY) AGREED: BECAUSE IT WOULD BE THE FIRST DISCUSSION AT HEADS OF GOVERNMENT LEVEL, HE FORESAW MORE OF A BRAIN-STORMING SESSION THAN AN ATTEMPT TO REACH DECISIONS. DUMAS (FRANCE), DEUS PINHEIRO (PORTUGAL) AND DE MICHELIS (ITALY) THOUGHT THERE MUST BE A DECISION, ESPECIALLY AFTER THE MITTERRAND/KOHL

INITIATIVE. COLLINS (PRESIDENCY) HEDGED AND THOUGHT THE QUESTION OF A DECISION SHOULD DEPEND ON PROGRESS MADE BY DISCUSSION ON THE DAY. THE SECRETARY OF STATE SAID HE WAS CONFIDENT THAT THE TAOISEACH WOULD FIND A WAY OF HANDLING DISCUSSION WHICH WAS BOTH SERIOUS AND COURTEOUS.

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From the Private Secretary

19 April 1990

EC INSTITUTIONAL REFORM

The Prime Minister spoke to the Foreign Secretary this morning about his minute of 18 April on EC institutional reform, and the line which she might take with Mr Haughey and the Foreign Secretary himself should follow at the EC Foreign Ministers meeting on 21 April. The Prime Minister said that she was generally content with the line proposed, particularly the strong emphasis on the existing challenges facing the Community. It was very important that these should be satisfactorily met before embarking on new ventures.

C. D. POWELL

Stephen Wall, Esq.
Foreign and Commonwealth Office

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cc PC (2)

PM/90/021

PRIME MINISTER

Prime Minister

Re Foreign Secs would like to discuss this approach with you tomorrow, or his bilateral.

CDP. 0814.

EC Institutional Reform

1. Mr Haughey sees institutional reform as the prime candidate for a Presidency "achievement" at the Dublin Summit on 28 April. I would welcome a word with you tomorrow about what you might say to him on the subject on 20 April, and what I should say at the preparatory meeting of Foreign Ministers in Dublin on 21 April.

2. We want to try to deflect him back to the better ground of German unification/CSCE/Eastern Europe described in his original agenda for the Summit. We can argue that in all three areas he can expect to score solid "achievements" on 28 April in the form of sensible conclusions reached without rancour. But he will no doubt say - and I think it is true - that all the other participants on 28 April will also want something said about non-EMU institutional reform. Those who want to speed up the EMU IGC process (e.g. the French and Italians) are starting to recognise the likelihood of defeat, and want something on institutional reform instead, while Kohl, who is determined not to accelerate the EMU timetable, believes he needs something on institutional reform to demonstrate that his Community credentials are unaffected by unification.

3. For the reasons in para. 3 of my earlier minute to you, I see no point in taking this head-on so far as procedure is concerned. Procedural decisions in the Community can be taken by a simple majority, and the votes for a decision on a second, or widened, IGC, or a Preparatory Committee along the lines of the 1985 "Dooge

Committee", are certainly there. My suggestion is that we should not dig in against any procedural decision on 28 April, but should instead seek to ensure that if one becomes inevitable, it is modest and sensible.

4. The best from our point of view might be a remit to Foreign Ministers in the General Affairs Council to collect ideas for further institutional reforms which would improve the efficiency of the Community's institutions; to sift and winnow them; and to report back to the European Council in, say, December. The emphasis on improving efficiency would match the ideas in the paper I sent you with my earlier minute; and would keep off the divisive ground of political union. Moreover, the process of analysis in Council would usefully bring out the conflict between the ideas of those (e.g. the Italians and Belgians) who want to increase the powers of the Commission and the Parliament, and those (e.g. the French and possibly the Spanish) who would like to go in the opposite direction, increasing the Council's powers vis-à-vis the Commission. It would be logical, and suit us well, for such analysis to precede decisions on an IGC.

5. If you agree, I suggest that your line with Haughey (and mine in Dublin on Saturday) might be as follows:

(a) we recognise that it is natural for the Community to look from time to time at the balance of its institutions and how to improve their efficiency;

(b) though the Single European Act as been in force for less than three years, we also recognise that many feel the time for a further review is now approaching;

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Asst Secretary
Haughey

(c) we are, however, sceptical about attempting this in 1990, when the Community already has enough on its plate, with six key challenges to meet (German unification, 1992, the December climax of the Uruguay Round, the EC/EFTA negotiations (also due to end by December), the EMU IGC preparations (again with a December deadline), and the major task of devising the right new forms of Association for Eastern Europe). If the Community rises to all six challenges, it will ipso facto be greatly strengthened;

(d) nevertheless, if most others want to look again now at non-EMU institutions, we would certainly not wish to hold out against the idea, and would have our own suggestions to contribute;

(e) but our ideas would differ from those already tabled by the Belgians, just as Mitterrand's are clearly very different from Kohl's or Andreotti's. So talk now of a second IGC would be premature: Treaty amendment requires prior consensus on substance, and the right decision for this summer would be (as at Hanover on EMU in June 1988) to commission the collection of Member States' ideas, and their collective analysis;

(f) the right people to conduct such an analysis would be Foreign Ministers, in the General Affairs Council. [If Haughey talks of an ad hoc Preparatory Committee: for such a wide-ranging remit, far better to stick to the General Affairs Council, as in the 1987/88 Budget/Agriculture/ Structural Funds negotiation. There could be a subsequent role for a Preparatory Committee,

analogous to the 1989 Guigou Committee on EMU.]

(g) if it becomes clear, following analysis, that an IGC would be right, it should be separate from, and should follow, the EMU IGC.

6. Briefing on other issues which Mr Haughey may raise on Friday is coming to you separately.

DH.

(DOUGLAS HURD)

Foreign and Commonwealth Office
18 April 1990

Ref. AO90/904

PRIME MINISTER

Cabinet: Community Affairs

There have been no Council meetings since Cabinet last met.

2. Forthcoming EC meetings are:

- Your meeting with Mr Haughey (20 April)
- Informal meeting of Foreign Ministers (21 April)
- Informal meeting of Environment Ministers (21-22 April)
- ECOFIN (23 April)
- Agriculture Council (25-26 April)
- Informal Summit Meeting, Dublin (28 April).

FRB.

ROBIN BUTLER

18 April 1990

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PM/90/020

PRIME MINISTER

EC Institutional Reform

1. We discussed the need to prepare ourselves for the coming French and German proposals for a discussion on EC institutions. That need is now even more urgent, as the Foreign Affairs Council meeting on 2 April made clear. It is now less likely that you will be seriously pressed in Dublin on 28 April to advance the opening date of the IGC on EMU. But it is virtually certain that you will be faced with a proposal in some form for an IGC on institutional change, or at least for a study group leading to such an IGC.

2. The case for further general institutional change so soon after the Single European Act has not been made out. I share your view that arguments based on German unification are fallacious. The Community has enough on its plate for the present in coping with the challenges of unification, EMU preparations, and the 1992 programme, devising the right forms of Association for Eastern Europe, the requirements of the end-1990 deadlines for the GATT Round and the EC/EFTA negotiations. If the Community rises successfully to all six of these challenges, it will ipso facto be strengthened: failure on any of them would be serious. Tinkering with institutions is a divisive and damaging distraction. This is what I said at the Foreign Affairs Council on 2 April.

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EURO POL - Budget PP 75

3. But I take it as axiomatic that:

(a) we cannot block such a discussion. Even the Danes are now in favour;

(b) it would be foolish to boycott such a discussion;

(c) it would be almost as foolish to sit at such a discussion without ideas of our own. (This does not mean we need to decide now on whether to put forward a worked-up UK package.)

A purely negative reaction at any of these stages would harm us domestically, in Europe, and with the Americans. There would be no gain anywhere that counts.

4. We have to resist the argument that the reference to "an ever closer union among the peoples of Europe" in the original Treaty of Rome, or the reference to "political union" to which you subscribed at Stuttgart in 1983 leads inevitably to central institutions controlled by a central Parliament. Some of the small countries may want this, but France certainly does not, and whatever Kohl may say now it would not suit the new Germany. It is certainly not for us. But to resist that argument is not to stand pat where we are now. Nor is there any point in putting forward British proposals which would be ridiculed by all, or almost all, our partners as negative and backward looking. We need to work up ideas which make sense to us and can be made reasonably persuasive to others. At the same time we need to say that while we are sceptical about timing, we shall of course take part with our own ideas in any discussion of these themes.

5. I enclose an FCO paper drawn up against this background which you and I have discussed and which commands your general approval. I should be grateful for comments from other colleagues who may want to contribute their own ideas. It is important that we build up fairly quickly a positive set of ideas with a view to discussion in the first half of May.

6. I should also be grateful if the Law Officers would consider the subsidiarity issue identified in paragraphs 18-24 and Annexes D and G.

7. Annexed to the paper is a note on the recent IEA paper which you have read, and on part of which we have drawn.

8. I am copying this minute to Cabinet colleagues, the Attorney General, the Chief Whip and Sir Robin Butler.

(Approved in draft by the Foreign Secretary)

(DOUGLAS HURD)

Foreign and Commonwealth Office
11 April 1990

EC INSTITUTIONAL REFORM

I INTRODUCTION

1. We want the Inter-Governmental Conference (IGC) to focus only on EMU. Other member states are already suggesting that the agenda be broadened to include wider institutional reform, which some (eg the French) claim will be necessary to counterbalance the increased weight of a united Germany. In practice broadening may be unavoidable. If so, we would not want the agenda to be wholly dictated by others. This paper examines institutional changes - including (at Annex F) to EPC arrangements - which we might propose, because they would advance UK interests. It does not cover EMU-related changes, or wider changes which others might advance and we would oppose.

2. Our view of the Community opposes the idea that its success depends on the strength of its central institutions. It focusses on the nation-state, the protection of diversity, and the entrenchment of subsidiarity. In considering changes which would advance our interests we have identified four basic principles. We want:

a) a more efficient Community which keeps up its impetus;

b) restraints on Commission empire-building;

c) a fairer Community, with a level playing field;

d) improved accountability in Community finances.

3. The basis for this analysis is a Community of 12 member states. However, the Community could well grow, perhaps to some 20 member states, by the end of the century. The

institutional reforms proposed in this paper would in our view be in the UK interest whether or not enlargement takes place. But they would be more necessary in an enlarged Community. Section II of this paper examines the likelihood of enlargement, while Annex A assesses the pros and cons for the UK.

4. Most of those in the Community who want institutional change want to increase the European Parliament's powers in the field of legislation. We disagree: our guiding principle is that national governments remain accountable to national parliaments, including for the decisions they take in Council discussions in Brussels. So we firmly reject calls, such as the Belgians', to increase the European Parliament's control over the Council. Sections III and IV of this paper consider what changes in the EC legislative process would be consistent with our guiding principle and could therefore be countenanced.

5. The area where in our view the need for reform is most obvious, in the UK interest, is in the operation of the Community. Improving implementation and enforcement of EC legislation is dealt with in Section V. Section VI suggests proposals to improve financial control and accountability for public money.

II ENLARGEMENT

6. Pressure to enlarge the Community will increase. Turkey and Austria have formal applications on the table; Malta and Cyprus are poised to apply. Detailed EC/EFTA negotiations to apply the single market to EFTA countries are proceeding; if they fail, and perhaps even if they succeed, Scandinavian and perhaps Swiss membership applications will be likely. The emerging democracies of Eastern Europe hope for closer links with the Community, and some contemplate eventual EC membership.

7. Member States and the Commission take the view that, at least until 1993, the Community should concentrate on consolidation and completion of the Single Market. In London, Ministers have agreed that Turkish membership would not be in the UK interest, and that for the time being we need not take a formal position on the Austrian (or any other possible EFTA) application; instead we should actively support the present EC/EFTA dialogue, to which all the EFTA countries, including Austria, are currently committed.

8. The Community has concluded agreements with Poland and Hungary (and the USSR), and similar agreements are envisaged by end June with the GDR, Czechoslovakia, Bulgaria and Romania. We have suggested that the Community consider second generation Assocation Agreements with all East European countries implementing comprehensive reform. The forms of these Association agreements will vary with individual countries, but will provide for closer commercial and economic cooperation, some financial assistance, and enhanced political dialogue. While the ultimate aim should be free movement of goods, services, capital and people, these countries are unlikely, for the foreseeable future, to be able to fulfil the requirements (particularly the economic requirements), of EC membership. But Hungary and Czechoslovakia have already shown interest in EC membership, and over a 10-year period applications are likely.

9. All other member states are determined not to take decisions on existing or future applications, or to open accession negotiations, before completion of the Internal Market at end 1992. Looking further ahead, Turkish membership will probably still find no supporters, and strong Greek opposition, but Austria may have Italian and German support; and Denmark will continue to advocate wider Nordic membership. The French have said little; they oppose enlargement but do not want to be seen to close doors.

President Mitterrand's suggestion of a European Confederation may be an attempt to square the circle.

10. The benefits to the UK of further enlargement are considered at **Annex A**. The budgetary implications of enlargement to the North would be favourable to the UK, but enlargement to the East or South would be costly. The main institutional consequences would be increased difficulty in decision-taking, at least where consensus is necessary, although EFTA votes would sometimes work in our favour. Community law would need to be enforced across a wider territory. Former EFTAN Member States would be likely to be good implementers, but in an enlarged Community more action would nevertheless be necessary by the enforcement agencies (Commission and Court), thereby reinforcing the power of the centre.

11. Conclusion: There will by the mid-nineties be several applications for accession some of which are likely to succeed. It therefore makes sense to consider the UK interest in institutional reforms not only in a Community of Twelve, but also in a Community of perhaps 20.

III EC DECISION MAKING

12. The 1992 programme has set the EC, at last, on the path towards a liberal, deregulated, internal market. We shall want further liberalisation pursued after 1992 in the main EC policy areas, both through further legislation, and more effective action on implementation and enforcement. A protectionist EC would not be in our interest. Council decisions will still be needed simply to run the Community. Furthermore we shall want:

a) Continuing Single Market work to level the playing field further (competition policy, non-legislative barriers etc). Enlargement would make the need even greater, as the ex-EFTA countries would bring to the

Community relatively closed and regulated markets. On many areas (eg transport), where the current aim is to secure a deregulated structure, the future requirement will be for an effective Community role to enforce it;

b) Environment standards to be applied uniformly throughout the Community. In some areas we may want additional EC legislation to tackle cross-border environmental problems;

c) Further CAP reform, which will be essential irrespective of the Uruguay Round outcome, though a good outcome will make it less difficult to achieve. The problems of securing greater discipline on the CAP would grow if ex-EFTA countries, who are agricultural protectionists, proved hostile to CAP reform: surmounting them would be even more important in the event of accessions by East Europeans;

d) Further liberalisation in EC international trade policy, post Uruguay Round. Protectionist pressures within the Council would grow if fragile East European free market economies were to join the Community.

13. In order to achieve our policy goals in such areas, we shall continue to need EC institutions which work. None of these policy requirements necessitates any change to the current inter-institutional balance, where the Council takes the final decisions, but substantial enlargement might make the machinery clog up. In certain policy areas - eg increased social legislation - this would work to our advantage, but paralysis in decision-making would also prevent progress in the areas where we want action. On balance our interest will probably be served best by the Council's decision-making procedures working effectively.

Furthermore, paralysis might lead to greater executive action by the Commission at the expense of the Council's dominant role as decision-maker.

14. The case for and against removing the Commission's exclusive right of initiative is considered in **Annex B**. The conclusion is that such a change would work <u>against</u> our interests. Running it would not attract any support, and would jeopardise our case on other points because we would be accused of spoiling tactics.

15. The reaction of most member states to problems in Council decision-making will be to urge greater use of qualified majority (QM) voting. This has clearly helped UK interests in the Single Market area, both in expediting decisions, and in removing protectionist blockages. However the main areas where unanimity is still required are ones where the UK interest argues <u>against</u> change. We clearly want unanimity to continue to apply on issues of fiscal policy, free movement of people, revenue raising, and decisions about the EC institutions. We may face particular pressure to extend QM voting to social policy and the environment. There is certainly no advantage to us in making further changes on social policy (some measures can be decided by QM already). But on the environment, QM voting might improve decision-making, in particular removing obstacles thrown up by less environmentally conscious Southerners. We should explore this further. The case for extending Qualified Majority is analysed in detail at **Annex C**.

16. Where QM voting was introduced by the Single European Act, the so-called "Co-operation procedure" was established with the European Parliament to strengthen its role in the legislative process. Under this procedure the European Parliament has a second reading and unanimity is required in the Council to overturn its amendments if the Commission accept them. Some Member States (eg Belgium) now propose

giving the EP real, if limited, powers of co-decision with the Council. In order to head off such pressure we might want to consider as a tactical move limited extension of the "Co-operation procedure" into new areas where QM voting already exists. This too is considered at **Annex C.**

17. Conclusion: We want the Council to remain the dominant decision-making body, and our interest (with or without further enlargement) lies in it being effective. This means our opposing giving the European Parliament any real new powers vis à vis the Council. If the Community enlarged, effective Council decision-making might become more difficult, but even then the UK interest would not be served by extending QM voting significantly.

IV SUBSIDIARITY

18. We want to avoid unnecessary EC legislation. In particular we shall want to restrain the Commission tendency to expand its role. Achieving real restraint may be more important and more difficult if the Community expands, given the centripetal impact new enlargement might have - and previous enlargements have had - on the power of the Brussels institutions. The best weapon to counteract Commission expansionism may be the Commission's own new doctrine of subsidiarity - namely that decisions should only be taken at the Community level when they cannot better be taken at a lower level: the closer to the citizen the better. We must ensure that this principle is only applied where Community competence already exists, ie as a further limitation on central decision-making. Delors, among others, has already argued that subsidiarity should be incorporated into the Treaty.

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19. There are three ways in which this could be done:

a) incorporate a general principle. This could be done in a preamble to the Treaty; in one of the general articles eg Article 5, (which is a general requirement to fulfill the obligations of the Treaty, and/or Article 145 (which defines the powers of the Council); and/or in Article 155 (which defines the role of the Commission and could be amended to place an obligation on the Commission to consider subsidiarity when acting under the Treaty). The argument <u>against</u> a general reference is that it imposes a test which would be justiciable, but on which the ECJ's ruling would be binding. If the ruling went against us in a specific case, our position would worsen; per contra, a ruling in our favour would reinforce national powers; much would depend on our securing Treaty language which incorporates a presumption of action at a national level as the norm;

b) incorporate specific references. This would mean following the Single European Act precedent of Article 130r (Environment), and inserting similar specific references to subsidiarity in different parts of the Treaty. The main candidates are social policy (in the widest sense), economic and monetary policy, and research and development. There are dangers in writing a list, however comprehensive, which is not complete, and there is the risk of the ECJ finding that subsidiarity did <u>not</u> apply in areas <u>not</u> specifically covered;

c) a combination of both general and specific references. This looks on balance best.

20. Annex D contains illustrative draft Treaty language to provide both general and specific provisions. Giscard is preparing a report for the European Parliament on subsidiarity. He will recommend that it should apply unless a clear transfrontier element of policy is at stake, and there is a general agreement that common policy action is necessary and desirable. Both these points are useful ones for us, and are reflected in the language at Annex D. (A point to watch is that in negotiating texts, we must guard against language which would imply that decisions not taken at Community level should not be taken at national level either, but instead be devolved to the sub-national level; we do not want to get involved in arguments about central and local government powers.)

21. There are several advantages in making such a proposal at the IGC. Securing such a text should help discourage unnecessary Commission proposals and EC legislation. On certain (eg social) policy issues, subsidiarity should also help us to avoid bruising debates where we believe matters can be adequately, if not better, regulated at national level. Reference to subsidiarity in the Treaty would reinforce the political point that democratic accountability should be exercised primarily at the national level. A favourable ECJ ruling would serve to limit Community activity. We could be confident of a reasonable reception for UK proposals on subsidiarity. Indeed other governments, including the Belgians, have similar ideas.

22. But there are potential disadvantages too. In particular:

a) the test is primarily a political one. It may not always help us to have it defined precisely, in a form which is justiciable. Unsatisfactory ECJ interpretative rulings could open the way to increased EC legislation. But as para 19(a) above shows, this argument works both ways;

b) other Member States might try to use subsidiarity to mount a legal defence of local laws or practices which are market-distorting in effect;

c) other Member States advocate subsidiarity because they see this partly as a compensation for the greater centralisation of power which they envisage taking place through institutional reform at the next IGC; we would need to resist this centralising approach, both by refusing to pay a price for the principle of subsidiarity, and by ensuring that the Treaty language incorporates the presumption of de-centralisation (as the texts at Annex D do). But most political leaders in the EC are now signed up to the principle of subsidiarity in any event, and we should seek to exploit this.

23. A different approach would be for lists of subjects suitable to be dealt with at Community level to be drawn up, perhaps in the form of "compacts" between Council and Commission. Anything not on the list would be for member states. Delors himself has suggested this, though in the reverse, more dangerous, format. There are difficulties and dangers in this approach, but it is worth considering.

24. Conclusion: Incorporating subsidiarity in the Treaty has strong political attractions and we can turn to our advantage the general Community support for the principle. The options are either specific Treaty references, or a general provision, or both. The drafting would be crucial and the Law Officers will need to be involved.

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V IMPROVED IMPLEMENTATION AND ENFORCEMENT PROCEDURES

25. With the growing body of legislation and an increasingly open market, we must ensure the playing field is level, ie that the Community is run effectively. Few Member States implement obligations as rigorously as we do. Proper implementation and enforcement of policy is therefore a key UK aim. If the Community grew larger, the need for adequate enforcement would be even greater.

26. There is a role here for all the main institutions:

a) in the Council we should work for regular reviews of implementation. Where Member States fall behind on their obligations, transparency is probably our best lever. No Treaty change is necessary to achieve such reviews, but a proposal for Treaty change to make them obligatory could be tactically advantageous;

b) we must make sure the Commission use their existing powers under the Treaty to enforce a level playing field. In particular we want them to enforce a liberal competition policy (eg tackling German and Italian state aids), and to take prompt action (infraction proceedings) against Member States who do not comply. There is a case for increasing Commission powers in the area of enforcement, eg autonomous investigative powers to combat fraud. This might require Treaty change;

c) European Court of Justice. We need the judicial process to work quickly, not least to avoid distortions of competition (eg the protectionist result of long lead times for anti-dumping cases, which is why we want the Court of First Instance

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now to tackle these). We may also want the ECJ to impose sanctions, eg fines, against Member States for persistent non-compliance with obligations. The Court could be given such powers either by regulation under Article 172, or by further Treaty amendment;

d) European Parliament. Our main interest will be in using the Parliament to achieve greater transparency, through regular debates about implementation and compliance. But the Parliament could also play a key role in scrutinising how Community money is spent (see Section VI below).

In some cases Treaty change may not be essential to achieve our objectives, but there might well be both tactical and substantive advantage in securing the institutional changes we want through Treaty amendments tabled at an IGC.

27. Conclusion: There is a strong UK interest, which would grow with enlargement, in achieving improved enforcement and implementation. Few of the changes necessary would require Treaty amendments. But securing them by Treaty change could be useful both tactically in an IGC, and substantively.

VI ACCOUNTABILITY

28. In the UK, while ministers are accountable to Parliament for policy, accounting officers are accountable to the Public Accounts Committee for how money is spent.

29. In the UK view, EC political accountability is already achieved through members of the Council answering to their national parliaments. We should encourage others to improve their scrutiny procedures, as we are doing. There are already welcome signs of growing links between national

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parliaments, and with Strasbourg. But we should not try to enshrine these procedures in a new Treaty article, for it would be very dangerous to appear to accept that Westminister's role could be defined, and therefore changed, by EC legislation. (For the same reason we should reject proposals - eg the idea of a second Strasbourg Chamber on US Senate lines - for direct Westminister involvement in the European Parliament.) Instead this could be enshrined in a Solemn Declaration by the Member States or (perhaps preferably) by the Presidents of the national Parliaments. Alternatively, a reference to the essential role of national parliaments might be included in the preamble to the Treaty. A UK proposal along these lines might mobilize useful support from national politicians in other member states.

30. But there would be considerable benefit - both substantive and tactical - in offering the European Parliament a greater role in achieving better EC financial accountability. Accountability in the Public Accounts Committee sense is at present inadequate in the Community, and we might aim to replicate there the NAO/PAC arrangements here. UK proposals for Treaty revision to achieve this could be presented as a positive UK counter-initiative to the various proposals likely from other member states for extending EP powers in the legislative area. And others would have difficulty opposing UK ideas for improved mechanisms to ensure financial propriety.

31. Our main goal should therefore be to achieve greater accountability of the Commission to the European Parliament for the execution of policy, in particular spending EC money. The necessary Treaty amendments fall into two parts:

a) Changing Article 205a, 206a and 206b to enhance European Parliament scrutiny of the budget, strengthening its role in budget control, and turning the existing Budgetary Control Committee into the real equivalent of our PAC;

b) Using Article 206a to give the Court of Auditors a role vis-a-vis the Budgetary Control Committee, akin to that of the National Audit Office.

32. The Budgetary Control Committee is at present required to "discharge" the budget two years after the relevant financial year. Its actual influence, currently minimal, could be strengthened by:

- giving it the power (which the PAC here has) to summon particular Commission officials (the Commission now choose who to send);

- requiring it to obtain monthly in-year monitoring reports on budget expenditure; (this would improve transparency and provide early warning of overspending);

- giving it power to request anti-fraud reports on specific fraud cases in member states;

- giving it a formal role in clearing CAP accounts, now the preserve of the Commission and member states;

- giving it power to apply sanctions if dissatisfied with budget Commission management.

(The Chairman of the Budgetary Control Committee is an EDG MEP (Peter Price).)

33. In this area it would be important to reinforce, not undercut, the role of the Court of Auditors (ECA). It already examines the accounts for the Community, but at present only conducts a sample survey. We want its role strengthened, eg through:

- an explicit requirement in the Treaty that the Court should ensure full coverage of the budget, without which the "discharge" would not be given;

- requiring the ECA to come to an overall judgement of the Community accounts, including professional working methods and standards, before they are certified accurate and reliable (the current audit is partial and does not certify the account);

- requiring audit certification to be part of the ECA's Annual Report, and their part of the formal process of clearing the Community accounts;

- possibly reorganising the Court, reducing the number of full-time national members and letting Finance Ministers elect the President, to make it operationally sharper and more like the European Investment Bank in structure.

34. Conclusion: The frontiers of Political Accountabilty should not be changed. But the case for improving financial accountability is clear, even in a Community of 12. Enlargement would mean a bigger budget, and all the more reason to ensure better assurance of financial propriety. Further work with HM Treasury would be needed to give these ideas Treaty form.

VII CONCLUSIONS

35. Our four main targets are to make the Community decision making efficient; to restrain Commission expansionism; to ensure fair competition; and to improve financial control. In all four respect, Treaty amendments could be helpful; and enlargement would reinforce the case for reform. (Our analysis is consistent with the IEA's: see Annex G.)

36. Whitehall work should accordingly start on possible UK Treaty amendments which would:

a) maintain effective decision making, perhaps with very limited extension of QM voting, in the Council;

b) ensure systematic application of the principle of subsidiarity to EC legislation;

c) stimulate more effective enforcement of EC commitments; and

d) introduce greater accountability of the Commission to the European Parliament on administration, value for money and financial propriety.

Work should also be undertaken on the non-Treaty possibilities at para 23 on subsidiarity and at para 29 on accountability to national parliaments.

37. The tactical decision on whether to table such amendments (eg in a prospectus similar to that now tabled by the Belgians) need not of course be taken now. The principle of an IGC considering non-EMU Treaty change need not yet be accepted. But it makes sense to press on with Whitehall preparations.

EC INSTITUTIONAL REFORM ANNEX A

UK INTEREST IN ENLARGEMENT

1. The first wave of enlargement would probably be from EFTA. Politically, it would be difficult to reject EFTA candidates. Doubts about neutrality have assumed less importance, and holding out against the Austrian application after 1993 might be difficult. By 1995 at least Norway and Sweden are likely to have applied for membership. Their accession would help counter the greater Germanophone influence.

2. Economically, EFTA membership of the EC (or full EFTA participation in the Single Market through a successful outcome to the current EC/EFTA negotiations) would marginally increase EC economic growth. All current EFTA members except Iceland would be net contributors to the budget of an enlarged Community. Their combined net contributions (which on 1992 forecast data and unchanged EC policies might be some 5 becu) might reduce the UK's net contribution (after abatement) by some 400 mecu.

3. All would be comfortable colleagues with whom to do business. But their EC membership could also bring attendant disadvantages, including pressure for increased spending on structural funds, aid, the environment and social policies, and the budgetary consequences of further brakes on agricultural reform. (Such offsetting disadvantages would only arise from full membership, not from a successful outcome to the current EC/EFTA negotiation.) Against this, except Austria, they are all likely to be sympathetic to our own non-federalist approach. It is difficult to envisage Norway, Sweden or Switzerland embracing the notion of political union with any enthusiasm.

4. Realistically, any East European accessions are long term prospects. Sustained economic growth, and total reform of economic structures, would be necessary before they could sustain the obligations of membership. Even so their membership would be expensive in budgetary terms. All are prospective heavy claimants on the structural funds. Their current income per head is probably below that of Spain and Ireland (just over $7000) and, in some cases, Greece and Portugal ($3-5000) as well. (The data is uncertain: for example, estimates of Hungarian income per head range from $2240 to $8660, with the realistic figure probably below $5000.) If the present level of, and criteria for, structural funds support were extended to all East Europeans, the EC Budget cost might be some 15 becu a year. Moreover, several are substantial agricultural producers and would expect to be substantial FEOGA recipients as well. On the basis of present production levels and prices this would add another 2.5 becu a year to the net budgetary cost, (but CAP benefits, with privatisation of the collective farms, would doubtless further stimulate agricultural production.) These costs would fall to the richer existing Member States: maintenance of the Fontainebleau abatement arrangements would however restrict annual additional UK costs to perhaps under 1 becu. However, these figures are only illustrative; trade patterns, relative incomes and Community policies are bound to change substantially over the decade. But enlargement has hitherto always led to greater centralisation of decision making and added authority for the Brussels institutions. It would be unwise to assume that a further major enlargement round would not have a similar effect.

5. It is difficult to predict how spending pressures might develop in an enlarged Community. Southern Member States would still want increased Structural Fund expenditure, as would any East Europeans. Although Germany, France and new

EFTA members might want more CAP expenditure, they would all be net contributors to the EC budget. Since they do not have the benefit of Fontainebleau, the impact of increased spending on each would be three times as great as on us.

6. Politically, rejecting apparently qualified East European candidates would be difficult and the prospect of eventual Community membership could be beneficial in East European countries, encouraging economic adjustment, political reform and the rule of law. It would make nationalistic confrontations with neighbours less likely. East European democracies would not float in Central Europe, but would be anchored to the Community by the prospect of membership. Association Agreements without the long-term prospect of membership would do this less effectively.

7. For the moment, the Community is not ready to contemplate accession by Turkey, and instead envisages an extension of the existing Association Agreement. Accession by others would encourage Turkish expectations, making it harder to rebuff them. If Turkey were in the end admitted democracy and economic progress there would no doubt be consolidated. But there would be strong economic, budgetary, cultural, demographic and political disadvantages. Turkish accession would also make it difficult to resist the membership of Malta and Cyprus. It is difficult to foresee circumstances when the admission of any of these would be advantageous.

8. This issue will need further study. Meanwhile, there is no pressure for early decisions on enlargement, or for us to signal now that we envisage a larger Community post 1993. Indeed to do so would not be welcome to EFTA governments, (apart from Austria) whose current policy is to secure, through the EC/EFTA negotiations, access to the Single Market without paying the membership price. (It would also be counter-productive in current intra-EC debate. Our

strong support, at the 18 November Elysee dinner, for the pre-93 Moratorium on accession negotiations, took the wind from our critics' sails.)

9. Our pre-Strasbourg framework paper on future EC relations with Eastern Europe deliberately left open the question of future EC membership. This is reflected in current Commission thinking about future Association Agreements. The long-term possibility of membership is probably beneficial. But we should not encourage expectations in East Europe that membership is a realistic prospect in the short/medium term.

EC INSTITUTIONAL REFORMS **ANNEX B**

THE CASE FOR AND AGAINST REMOVING THE COMMISSION'S EXCLUSIVE RIGHT OF PROPOSAL

1. The Commission's exclusive right of proposal derives from Article 155, and is reflected explicitly at numerous places in the policy chapters of the Treaty. Should we remove it? If so, to whom should it be transferred?

2. The arguments for removal are:

   a) restrict expansionism by the Commission, in particular avoid new Community activity in unwelcome areas (social policy, health);

   b) reduce Community activity more generally; work for "steady state" Community once Single Market programme complete;

   c) prevent Commission strengthening its de facto power at the centre, particularly in an enlarged Community, through choosing in which areas the legislative agenda should be set.

3. The case against is:

   a) we would lose the liberalising thrust of Commission proposals in the Single Market area, including in follow-up legislation going beyond the White Paper (eg on barriers to takeovers);

   b) the Community might grind to a halt, leaving aside policy areas where we want progress. Simply running the Community requires continuing proposals on which the Council decides (eg CAP or budget); a "steady state" Community would not be in HMG's interest;

c) in the absence of a Commission initiative, the European Parliament might try to seize the initiative; the EP would be far more protectionist and interventionist;

d) or the Council might try to take the initiative; here too, protectionist forces (eg France on trade or Germany on farm support) would have greater opportunities for setting the Council agenda than at present; the Community would be at the mercy of successive Presidency whims;

e) loss of the Commission's right to initiate compliance proceedings, (of major importance in ensuring a level-playing field); if every member state felt free to initiate ECJ proceedings against another whenever compliance was in question, the ECJ would grind to a halt, leaving the offender unhindered by an ECJ ruling; the Commission's pre-Court role as policeman derives partly from its right to initiate infraction proceedings.

4. Conclusions.

(a) a more feasible way of avoiding excessive use of the Commission's power of initiative is to apply rigorous tests of competence and subsidiarity to all Commission activity: we should be ready to test Commission action before the ECJ. We could also resurrect our 1985 proposal that the number of Commissioners be reduced to one per member state - to avoid idle hands finding unnecessary work to do (this requires Council unanimity, but not Treaty change);

(b) if the Commission's exclusive right of initiative were transferred to either the European Parliament or to individual member states the results would be to our disadvantage. Transfer to member states is in any case unlikely to be feasible: there will be advocates of greater EP powers of initiative, but the UK interest will lie in opposing them.

EC INSTITUTIONAL REFORM: **ANNEX C**

I WHERE WE MIGHT EXTEND QM VOTING

1. The following are the main areas of the Treaty where unanimity still applies: action in the absence of specific powers (Article 235); fiscal policy (Article 99); environment (Article 130s); some institutional matters (appointments to and composition of Commission, ECJ, Court of Auditors and ESC); enlargement and association agreements (Articles 237 and 238); derogations from state aid rules (Article 93(2)); new tasks for European Social Fund (Article 126b); adoption of financial regulations (Article 209); establishment of the Common Market in certain areas (eg free movement of people) (Article 100); conjunctural policy measures, ie macro-economic co-ordination (Article 103(2)); social security for migrant workers (Article 51).

2. Of these, the only area where HMG might wish to consider extending QM voting would be on the environment. Article 130s already provides for the Council to take such a step (acting initially by unanimity).

3. On social policy, there are already several treaty bases requiring QM (118a - Health and Safety of Workers); 54 and 57 (Right of Establishment); and even simple majority (Article 128, Vocational Training). The Commission is unlikely to base much of the Social Action Programme on the unanimity provisions we would prefer (Article 51, Article 100/100a2 or Article 235). In any case, these articles must remain unanimity, in particular Article 235 (action in the absence of specific powers in the treaty).

4. On the other hand, we might want to try (but stand little chance of success) to change the simple majority provisions on vocational training to QM voting (Article

128). This would avoid an anomaly whereby significant funds can be voted through on a simple majority.

II WHERE WE MIGHT EXTEND THE CO-OPERATION PROCEDURE

5. The Co-operation procedure is set out in Article 149, added by the Single European Act. This gives the European Parliament additional powers in certain areas of legislation (primarily single market, social policy, implementation of the ERDF, and implementation of the R & D framework programme). The specific Treaty references to the Co-operation procedure are Articles 7, 49, 54(2) second sentence, 57 (except the second sentence of 57(2)), 100a, 100b, 118a, 130e and 130q(2).

6. The Co-operation procedure introduced two readings in both Council and Parliament. After receiving the first opinion of the EP, the Council reaches agreement (by QM) on a common position. The European Parliament then has to give its opinion by absolute majority of all MEPs within three months. If the EP then proposes amendments, the Commission has one month to reconsider, and perhaps revise its proposals. The Council then has three months either to adopt the latest Commission proposal by QM, or amend it by unanimity. If the European Parliament has rejected the common position (which has only happened once so far), the Council may only adopt it by unanimity. So the increased power for the Parliament comes either through rejecting the common position; or through working in alliance with the Commission to amend the original Commission proposal, both requiring unanimity in the Council to overturn the EP position.

7. The Co-operation procedure can only be applied where QM voting is the rule. Areas where there is QM voting but no co-operation procedure at present include:

- Customs Union (12-37)

- Agriculture and Fisheries (43)

- Free Movement of Services and Capital (63.2 & 69), (but these are now largely extinguished by 100a)

- Transport (75(1) and 84)

- Conjunctural Policy (103.3) (implementation of measures already agreed by unanimity)

- Mutual Assistance (over balance of payments problems) (108.2)

- Trade Policy (113)

- European Social Fund (127 - in contrast to the ERDF where co-operation procedure applies)

- Budget Procedure (203)

8. There is no particular policy advantage to HMG in extending the Co-operation procedure. The procedure takes time. And the amendments proposed by the Parliament are by definition ones which the Council will not have made in adopting its own common position. Since we are rarely outvoted in the Council, it would be rare for us to seek recourse to the EP to refight a battle lost in the Council. In practice, EP amendments are on balance likely to be unhelpful to us.

9. Nevertheless, there may be a political case for agreeing to extend the Co-operation procedure in order to appear to be enhancing the role of the EP. The two areas where this would be least painful are:

- Transport (which is de facto part of the single market programme);

- European Social Fund (to mirror the ERDF), but only on condition that we could stop short of extending the Co-operation procedure applying to the Third Structural Fund (EAGGF). Increased EP involvement in policy decisions on agriculture expenditure would be very unwelcome.

10. There is no case for extending the co-operation procedure on the budget because the Treaty already provides a separate conciliation procedure specifically for handling the institutional dialogue on the budget (the EP and the Council each have a distinct role as the two arms of the "budgetary authority").

EC INSTITUTIONAL REFORMS ANNEX D

SUBSIDIARITY

The following draft amendments are examples of draft language for insertion in the Treaty to provide a test of subsidiarity, either as a general principle, or in a specific policy area. They are not mutually exclusive. We could argue for all five.

Amendments A, B and C are of a general character, and would be more suitable if we wanted the test of subsidiarity to be applied to proposed Community legislation across the board. The alternatives under Amendment D would relate to action in particular areas (as Article 130r.4 already does in relation to the environment). Most suitable for this purpose might be areas in which for most practical purposes national action would be preferable, eg economic and monetary policy and research and development; or areas in which the Community is acquiring creeping competence, eg social policy in the widest sense, including health, education and culture. Amendment E would provide an additional subsidiarity test to be applied in cases where the Community might acquire new competence by acting under Article 235.

Amendment A: Preambular paragraph:

"Recognising that the principle of subsidiarity must apply so that democratic accountability to individual citizens is maintained, and that action at Community level should only be taken where a clear trans-frontier element to policy is involved and where it is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States;"

Amendment B: New general provision (eg in Article 5 or 145)

"In exercising the powers conferred on it by this Treaty, the Council shall have regard to the desirability of acting at Community level only to the extent that a clear trans-frontier element to policy is involved and that common action is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States."

Amendment C: New general provision (eg in Article 155):

"The Commission shall propose action at Community level only to the extent that a clear trans-frontier element to policy is involved and that such action is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States."

Amendment D: New specific Article relating to eg EMU or social policy:

Variant (a)

"Within the powers conferred by this Treaty, the Community shall take action relating to [economic and monetary policy] [social policy] to the extent to which the Council considers that a clear trans-frontier element to policy is involved and that action at Community level is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States."

Variant (b) - following Article 130r.4 precedent:

"The Community shall take action relating to [economic and monetary policy] [social policy] to the extent to which the objectives referred to in [relevant Treaty provision] can be attained better at Community level than at the level of the individual Member States."

Amendment E: New paragraph added to Article 235:

"In considering whether to act in pursuance of this Article, the Council shall have regard to the desirability of acting at Community level only to the extent that a clear trans-frontier element to policy is involved and that common action is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member states."

EC INSTITUTIONAL REFORM **ANNEX E**

THE CASE FOR AND AGAINST A SUPER-COUNCIL

1. The suggestion has been made, most recently by Delors in February to the European Parliament, that there is a need for a Super-Council, perhaps building on the Foreign Affairs Council, by making its day-to-day role more closely match its official title of "General Affairs Council".

2. Two separate functions could be fulfilled by such a Council:

(a) to act as a senior arbiter when specialist councils prove unable to resolve policy disputes; or to make trade-offs reading across between specialist councils;

(b) to oversee the work of the Commission, in particular forthcoming policy proposals.

3. To fulfil function (a) effectively, members of a Super Council would have to be able to exercise authority within their national cabinets over the relevant specialist ministers. To fulfil function (b), such a council would have to meet regularly (Delors suggests weekly) in Brussels, together with the Commission President and Vice-President.

4. The <u>attractions</u> for us in establishing such a Council could be:

(a) tighter political control over the Commission, in particular an oversight of forthcoming proposals, and a chance for the Council to shape the Commission's annual work programme;

(b) a good forum for the Commission to expose inadequacies in member state enforcement/implementation (ie greater transparency).

5. The case against such a Council is:

(a) Delors' motive is to secure greater political impetus towards integration in the Community; any Super-Council, by definition inexpert on the detailed points at issue, would be more vulnerable to Commission integrationism than the relevant Specialist Councils;

(b) the European Council and the Foreign Affairs Council already exercise the requisite oversight, if necessary taking over negotiations, as in our CAP/Budget reform in 1987/88;

(c) close monitoring of the Commission by the Council would lead to greater national political influence over exercise of the Commission's autonomous powers (eg competition policy) in a way which, in many cases, would be detrimental to UK interests.

6. Conclusion On balance the risks greatly out-weigh the potential gains to the UK. No other member state has proposed that such a Council be created. To the extent that week to week collective monitoring of the Commission is necessary, COREPER already fulfils the function on instructions from capitals.

EUROPEAN POLITICAL COOPERATION **ANNEX F**

1. The regime for EPC is defined in Title III of the Single European Act and a related Ministerial Decision of 28 February 1986. These texts codified the practices that had developed over the years, and created a small Secretariat to assist the Presidency. Title III provides for the possibility of a review of EPC five years after entry into force on 1 July 1987. But aspects covered by Title III were introduced informally in 1986, and an earlier review seems likely: we can support this.

2. We shall have to resist some suggestions for change, eg introduction of voting, or bringing EPC within the Commission's responsibility under the Treaties. But it will be easier to do so if we have positive proposals of our own. Moreover improvements are desirable to develop the degree of consensus among the Twelve across a growing range of issues; to make EPC more flexible and responsive; and to enhance the degree of EC/EPC consistency.

3. Examples of such changes are

A: Making the Secretariat more efficient

The Secretariat established in 1987 along lines we advocated has worked well. There is scope for building up its role, both to help us resist Commission encroachment, and to get us through weak Presidencies.

- Some staff increases (from 6 to say 10) would be appropriate and would ensure that a UK official was a member for a longer period of time than at present. In particular, a Commission official should be seconded to its staff on the same basis as Member States' secondments. This would improve cohesion between EPC and the Community, and help see off Commission ambitions to take over the liaison function inside the Commission.

- The Head of the Secretariat should take on some of the Presidency's external burden, by representing the Twelve in routine contacts with less important third countries and with the European Parliament, on the authority of the Presidency.

B. Improvements to the Working Structure

The Political Committee spends far too much of its time on routine reports and trivial points.

- A Committee of Deputies should be established to meet in between full meetings of the Committee and wrap up minor or urgent business;

- Decision taking should be streamlined, by use of more delegated powers to Working Groups, a system of A points, and more use of the COREU network for minor decisions.

C. Blurring the EC/EPC distinction at Ministerial level

We should make a virtue of formalising the increasing overlap of EC and EPC business at Foreign Minister level (eg on Eastern Europe) by:

- proposing that EC and EPC business be taken together as necessary;

- abolishing the two formally separate EPC Foreign Ministers' meetings per Presidency.

D. Cooperation Abroad

- Significant resource savings could be achieved if cooperation among Embassies of the Twelve were developed, not only in practical and administrative matters but also with more pooled political and economic reporting.

E. Third country contacts

- As EPC contacts with third countries grow, priority must continue to be given to the most important partners and allies (the US, Japan and Canada). We could propose a secure communications link between the Presidency and the Foreign Ministries of these countries, to be activated in agreed circumstances of an operational or urgent kind.

4. All these proposals could be implemented by treaty amendment.

Security Matters

5. In 1985-86 we were unable to prevent a restriction on EPC discussion of European security matters, limiting it to political and economic aspects. Rapid development of EPC discussion in this area is highly unlikely given Irish views. We would support the lifting of the restriction (as the Belgians have already suggested): we see EPC discussion (on security but not of course overlapping onto military matters) as contributing to a strengthened European pillar of the Alliance.

Conclusion

6. Others will also have proposals for developing EPC. In general this is an area which we have strongly supported and continuing to do so could yield useful benefits and be good tactics.

IEA PAPER: THE NEW EUROPE: CONSITITUTIONALIST OR CENTRALIST? **ANNEX G**

1. The IEA paper by Frank Vibert of 29 March analyses appropriate institutional reform in the Community, seeing two main alternatives: a "centralist" (ie federalist) model; and a "constitutionalist" model. Our conclusions are broadly in line with his.

2. Like him we reject the "centralist" model, in particular:

a) creation of a super Council (see Annex E);

b) new legislative and revenue raising powers for the European Parliament (see paras 15-16 and Annex C);

c) new second chamber for European Parliament (see para 4);

d) giving the Commission a more "political" role, with a directly elected President (see paras 12-17).

3 Like him we support, on "constitutionalist" grounds:

a) maintaining the primacy of the European Council, with the Council of Ministers remaining the dominant decision-making body;

b) explicit recognition of the role of national parliaments (see paragraph 29);

c) a new European Parliament role in reviewing implementation of legislation, and the effectiveness of EC spending programmes (see paras 29-33);

d) strengthening the ECJ's ability to "take effective action against abuse of powers" (see paragraph 26(c)).

4 Changes suggested by the IEA which we do not support are:

a) incorporating the Luxembourg Compromise in the Treaty. On important policy areas unanimity is already prescribed by the Treaty, and we believe must be maintained (para 15). But we see no chance of securing the incorporation of the Luxembourg Compromise in the Treaty, for at least five member states (Benelux, Italy and Germany) have always refused to recognise it. Our paper is about institutional reform which might be achieveable, not about changes we would ideally like;

b) incorporating in the Treaty a constitutional limit on the size of the EC budget. The 1988 Own Resources Decision, which sets the ceiling, cannot be changed without unanimity and the agreement of national parliaments. There is therefore no need to incorporate it into the Treaty. Moreover to press for this would risk others seeking to raise the current ceiling: such pressures could be successfully resisted, but it would be best not to encourage them. In short, the IEA proposal would be an own goal.

5. Our analysis also differs from the IEA's on the issue of subsidiarity, which Vibert sees as a trap which would lead to an expansion of EC competance. We believe that suitably handled it would have the opposite effect (see paras 18-24, and Annex D). But we accept that the point is an important one: our paper therefore suggests that the Law Officers be asked to look at this carefully.

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CC PC
CDP 17/4

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Minister of State
Tim Eggar MP

CDP 17/4

The Hon Francis Maude MP
Minister of State
Foreign and Commonwealth Office
LONDON
SW1A 2AH

10 April 1990

Dear Francis,

PRESENTATION OF UK POLICY TOWARDS THE EC

I was pleased to see your letter of 10 April to Peter Lilley setting out ideas for discussion at our Europe Group meeting on the 18th. We should I am sure be working up the kind of detailed plans for lobbying and presentation you have in mind, and indeed I had already intended to look to you for help in our presentation in other EC member states.

As you know, we are well advanced in the ED Group in our thinking of how we present UK policies on European Community issues in the employment field. Within the UK we are already establishing links with employers and employer groups, MEPs when they are over here, London-based foreign journalists, and others. Our links with CBI are strong, and, in the context of the Commission's intention to consult the social partners on the basis of discussion papers for each proposal in the social action programme, will need to remain so.

I hope your unit will help ensure that our balanced approach to the Community's social dimension is properly understood in other member states. I believe the situation now requires a systematic plan to put UK views across in each individual country within the Community in ways that fit local circumstances. I have in mind a locally based campaign which will include: placing articles in the local press; a programme of meetings with labour correspondents, leading employers and other opinion formers; and a series of sponsored visits for people to come here. You are familiar with the sort of programme. Embassies have already helped us before, and were able to get us good coverage of the charter before the Strasbourg Council. The lesson from that was that we should take local advice about the presentation of our case.

I should therefore be very grateful if you could in due course write to Ambassadors, asking for their advice to enable us to draw up a strategy (in which action by posts would feature strongly) to put across our approach to the "social dimension" and our policies in the social field. The strategy will need to be more sophisticated than for the charter, and to cover a longer period. The action programme is less newsworthy as yet, and indeed is not an entity (nor should we encourage it to be considered as such) but a series of very different measures of widely differing impact, some of which we should be able to accept. However, a number of the items of substance are unacceptable to us either because they run counter to our policy of a competitive single market or because we see no role for the Community in the areas in question. On these, we run the risk of being isolated.

It is all the more important therefore for us to present our case with care. My Department will of course provide the basic material. But our Embassies are best placed to tailor the message to suit the local market. We shall also need to look to them for action and advice on timing, targets and logistics.

If you agree I will ask my officials to work with your new unit on a draft letter for Ambassadors along these lines, and will write to you again once this is done. I am sure we can move ahead quickly. I have also asked my officials to produce a text which can serve as a basis for a number of different articles targeted according to a particular locality and to suit different audiences. They would of course also be able to let posts have whatever other briefing is necessary.

Action programme proposals will start appearing in May and June. I am keen to ensure that our position is properly understood from the outset.

I am sending copies of this to those who received your letter of today's date.

Yours ever,

EUROPOL : Budget PH I.

CTO

cc/PC

Foreign and Commonwealth Office

RESTRICTED London SW1A 2AH

From The Minister of State

10 April 1990

The Hon Francis Maude MP

Peter Lilley Esq MP
Financial Secretary
HM Treasury
Parliament Street
London SW1

CMB 1076.

Dear Mr Lilley,

MINISTERS' EUROPE MEETING, 18 APRIL

I undertook to circulate some ideas for the next Ministers' Europe Group meeting, on 18 April.

Following Douglas Hurd's minute of 29 March, it is now agreed that our Group should coordinate work on the presentation of UK policy towards the Community. The objective would be to work up detailed plans for both lobbying and presentation, in the UK and other member states, on the main subjects identified in the OD(E) paper (and on any others which colleagues think deserve a similar treatment). This will involve consideration by Departments of the possibilities in the UK, as well as further advice from our posts in Community countries on targets for individual and group lobbying, the timing of Ministerial visits and so on. I hope we can devise a plan for <u>each</u> principal subject in <u>each</u> of the member states, using the range of instruments available to us (see for example paragraph 15 of the OD(E) paper).

Our new EC unit, headed by Nigel Sheinwald (270 2309) of the European Community Department (Internal), will be responsible for coordination here. It will be important for your officials to develop these operational plans in close consultation with him.

I suggest that on 18 April we might review the opportunities for positive presentation, particularly on EMU, social issues, the Single Market and the environment.

Looking ahead to the few weeks after 18 April, the Community agenda will clearly be dominated by the 28 April Informal Summit in Dublin. This will concentrate on German unification and events in Eastern Europe, and their implications for the Community. We have, generally, a strong and positive message

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on Eastern Europe and on the EC aspects of German unification. The question of Community institutional reform, which is bound to come up on the 28th (and at the preparatory meeting of Foreign Ministers the week before) will, however, be trickier for us.

Colleagues may also wish to say something about forthcoming Councils. The Informal Environment meeting on 20-22 April, the ECOFINs on 23 April and 14 May (the promised Commission VAT proposals should help to reassure business about the post-1992 system), and the Internal Market Council on 14 May should all produce some positive stories for use abroad and in the UK. The Informal Meeting of Social Welfare Ministers on 26-27 April, and the Health and Culture Councils in mid-May provide less obvious targets of opportunity for us, but I would welcome views.

I am sending copies of this letter to Charles Powell, the Earl of Caithness, David Curry, Timothy Eggar, Eric Forth, David Heathcoat-Amory, Douglas Hogg, Baroness Hooper, Robert Jackson, Peter Lloyd, Michael Portillo, John Redwood, and Gillian Shephard.

Yours sincerely,

Valerie Ewan

Francis Maude
Approved by the Minister
and signed in his absence

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

9 April 1990

Dear Stuart,

EC INSTITUTIONAL REFORM

The Prime Minister has considered the Foreign Secretary's minute of 4 April and accompanying paper on institutional reform in the European Community. She suggests that the Foreign Secretary should circulate it to other colleagues, saying that the approach in it commends her general approval and inviting their comments. A revised version could then be discussed among colleagues concerned.

The Prime Minister also thinks it would be useful if the Law Officers were invited to look at the possible problem over subsidiarity identified in the IEA paper and give a view.

I suggest that we should aim for a discussion in the first half of May.

Yours sincerely,

(C.D. POWELL)

J.S. Wall, Esq.,
Foreign and Commonwealth Office.

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the department for Enterprise

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

Rt Hon Douglas Hurd CBE MP
Foreign and Commonwealth Office
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Your ref
Date 6 April 1990

Dear Douglas

PRESENTATION OF UK POLICY TOWARDS THE EC

Thank you for your minute of 29 March. I can endorse the proposals in Francis Maude's paper on presentation [OD(E)(90)4] and implementation [OD(E)(90)5].

I agree that the Single Market and its development beyond 1992 must remain a key part of our presentation. As well as the points made in Francis' paper, it is important that we do whatever we can to emphasise that the Single Market is still the Community's number one priority, on which all else depends. We do not want the assumption to gain ground that the programme has run out of steam or, conversely, that it is all over bar the shouting. The former would undermine our efforts to get British industry to prepare for 1992; and the latter would be a gift to those member states who want to leap ahead to monetary and political union, but are not prepared to take the practical decisions needed for a Single Market. We should therefore seek publicity for each important step forward, as John Redwood did successfully on public procurement in February, and as we did with the Anglo-German agreement on insurance last week. We should not hesitate, either, to point the finger at member states who are dragging their feet on particular issues.

I had one minor point on the suggestions for action in paragraph 24 of the paper. I am very sceptical about our ability to get consumer groups in other member states to preach the virtues of deregulation. We can try - but I fear it is these very groups

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the department for Enterprise

who are behind some of the pressures for more regulation. I think we have more chance of success through industry groups and potentially sympathetic government Departments.

On implementation, I endorse your judgement that we have more to gain than lose in spreading Internal Market Council practice to other member states. The regular reports to the IMC have certainly had an appreciable effect in putting pressure on laggard member states, and have been recognised as a major plus for the UK. We need to be aware though that it will not be easy to keep up our good record - even on the Single Market, on which some significant pieces of legislation will be required.

I take issue with only one point in Francis' paper. Paragraph 8(b) seems to imply that we should play down the importance of enforcement/compliance, as potentially embarrassing to us. But on the Single Market at least, Compliance is just as important as implementation, if not more so. If legislation is enforced unfairly, or not at all, we will still face barriers to trade. That is why my Department's Compliance Unit will be concerned both with implementation and compliance in other member states.

I hope the suggestions in both papers can be taken forward in Francis Maude's European Ministers group, bearing in mind the points I have made here. I am copying this letter to the recipients of yours.

Euro Bn Budget
A45

PRIME MINISTER

INSTITUTIONAL REFORM IN THE EUROPEAN COMMUNITY

You will want to see the attached FCO paper on institutional reform in the European Community. The subject is likely to come up at the informal EC Heads of Government Meeting in Dublin on 28 April.

The main conclusions from the paper are:

- a further round of discussion in the Community on institutional reform is inevitable. It may start with the establishment of a special committee to look at the possibilities, leading on to an Inter-governmental Conference. We cannot block this, but should have well thought-out proposals of our own.

- there is a good deal more rhetoric than substance in what other member states say about institutional change. We should not mistake their windy declarations for the reality of what is likely to emerge at the end of Community debate (as was the case with the transmogrification of 'political union' into the small-print of the Single European Act in 1985).

- our own proposals should draw their inspiration from the constitutionalist approach characterised by the recent IEA pamphlet. Our principal aim will be to resist attempts to strengthen the Community's central institutions. The area where reform is most needed is in the operation of the Community.

- we should be guided by four basic principles: a more efficient Community: restraint on empire-building by the Commission: a fairer Community: improved accountability in the Community's finances.

The paper attached to the Foreign Secretary's minute is fairly

hard-headed. Its main conclusions are:

- at least some applications for accession will succeed by the mid-1990s. We should be looking forward to the problems of making a larger Community work efficiently.

- we want the Council to remain the dominant decision-making body, and should oppose attempts to give the European Parliament any significant new powers at the expense of the Council.

- our interests will not be served by any further extension of qualified majority voting. But we do need existing procedures to work better: where there is deadlock in the Council, the Commission is usually the gainer.

- a frontal assault on the Commision's existing powers would probably fail. The more promising way forward is to limit its power by applying rigorous tests of competence and subsidiarity to all Commission activity: and to renew our earlier attempt to reduce the size of the Commission.

- we should therefore propose incorporation of subsidiarity in the Treaty, as a specific way of restricting the powers of the Commission.

- we should also propose Treaty amendments to strengthen enforcement and implementation of EC decisions (where our own record is very good).

- another idea we could propose would be a Solemn Declaration by member states on the essential role of National Parliaments. We could press an amendment to the preamble to the Treaty, stressing this role.

- we should insist on stricter financial accountability by the Commission to the European Parliament and to the Court of Auditors.

These changes would be very much in the spirit of the IEA

pamphlet. The only points on which we differ from it are:

- we don't believe it is feasible to incorporate the Luxembourg Compromise into the Treaty (given that five member States have always refused to recognise it at all).

- we don't see the need for a constitutional limit on the size of the EC budget in the Treaty. The 1988 Own Resources decision already sets a ceiling which cannot be changed without unanimity. If we re-open the issue, there will be pressure to raise the ceiling.

- we see subsidiarity as an opportunity to limit Commission powers: the IEA fear that it could lead to an extension of Community competence. The Law Officers would need to look carefully at this point.

All that is sought at this stage is your agreement to work up these ideas into more substantial proposals. Since other Departments have not yet been consulted, you may prefer to ask the Foreign Secretary to circulate the paper to colleagues first for comment, saying that the approach in it has your general approval, to see what further ideas may be forthcoming. You could then decide whether a wider Ministerial discussion would be useful.

Agree to this procedure?

Yes

C.D.P.

CDP

5 April 1990

jd c:institutional

EC INSTITUTIONAL REFORM **ANNEX A**

UK INTEREST IN ENLARGEMENT

1. The first wave of enlargement would probably be from EFTA. Politically, it would be difficult to reject EFTA candidates. Doubts about neutrality have assumed less importance, and holding out against the Austrian application after 1993 might be difficult. By 1995 at least Norway and Sweden are likely to have applied for membership. Their accession would help counter the greater Germanophone influence.

2. Economically, EFTA membership of the EC (or full EFTA participation in the Single Market through a successful outcome to the current EC/EFTA negotiations) would marginally increase EC economic growth. All current EFTA members except Iceland would be net contributors to the budget of an enlarged Community. Their combined net contributions (which on 1992 forecast data and unchanged EC policies might be some 5 becu) might reduce the UK's net contribution (after abatement) by some 400 mecu.

3. All would be comfortable colleagues with whom to do business. But their EC membership could also bring attendant disadvantages, including pressure for increased spending on structural funds, aid, the environment and social policies, and the budgetary consequences of further brakes on agricultural reform. (Such offsetting disadvantages would only arise from full membership, not from a successful outcome to the current EC/EFTA negotiation.) Against this, except Austria, they are all likely to be sympathetic to our own non-federalist approach. It is difficult to envisage Norway, Sweden or Switzerland embracing the notion of political union with any anthusiasm.

4. Realistically, any East European accessions are long term prospects. Sustained economic growth, and total reform of economic structures, would be necessary before they could sustain the obligations of membership. Even so their membership would be expensive in budgetary terms. All are prospective heavy claimants on the structural funds. Their current income per head is probably below that of Spain and Ireland (just over $7000) and, in some cases, Greece and Portugal ($3-5000) as well. (The data is uncertain: for example, estimates of Hungarian income per head range from $2240 to $8660, with the realistic figure probably below $5000.) If the present level of, and criteria for, structural funds support were extended to all East Europeans, the EC Budget cost might be some 15 becu a year. Moreover, several are substantial agricultural producers and would expect to be substantial FEOGA recipients as well. On the basis of present production levels and prices this would add another 2.5 becu a year to the net budgetary cost, (but CAP benefits, with privatisation of the collective farms, would doubtless further stimulate agricultural production.) These costs would fall to the richer existing Member States: maintenance of the Fontainebleau abatement arrangements would however restrict annual additional UK costs to perhaps under 1 becu. However, these figures are only illustrative; trade patterns, relative incomes and Community policies are bound to change substantially over the decade. But enlargement has hitherto always led to greater centralisation of decision making and added authority for the Brussels institutions. It would be unwise to assume that a further major enlargement round would not have a similar effect.

5. It is difficult to predict how spending pressures might develop in an enlarged Community. Southern Member States would still want increased Structural Fund expenditure, as would any East Europeans. Although Germany, France and new

EFTA members might want more CAP expenditure, they would all be net contributors to the EC budget. Since they do not have the benefit of Fontainebleau, the impact of increased spending on each would be three times as great as on us.

6. Politically, rejecting apparently qualified East European candidates would be difficult and the prospect of eventual Community membership could be beneficial in East European countries, encouraging economic adjustment, political reform and the rule of law. It would make nationalistic confrontations with neighbours less likely. East European democracies would not float in Central Europe, but would be anchored to the Community by the prospect of membership. Association Agreements without the long-term prospect of membership would do this less effectively.

7. For the moment, the Community is not ready to contemplate accession by Turkey, and instead envisages an extension of the existing Association Agreement. Accession by others would encourage Turkish expectations, making it harder to rebuff them. If Turkey were in the end admitted democracy and economic progress there would no doubt be consolidated. But there would be strong economic, budgetary, cultural, demographic and political disadvantages. Turkish accession would also make it difficult to resist the membership of Malta and Cyprus. It is difficult to foresee circumstances when the admission of any of these would be advantageous.

8. This issue will need further study. Meanwhile, there is no pressure for early decisions on enlargement, or for us to signal now that we envisage a larger Community post 1993. Indeed to do so would not be welcome to EFTA governments, (apart from Austria) whose current policy is to secure, through the EC/EFTA negotiations, access to the Single Market without paying the membership price. (It would also be counter-productive in current intra-EC debate. Our

strong support, at the 18 November Elysee dinner, for the pre-93 Moratorium on accession negotiations, took the wind from our critics' sails.)

9. Our pre-Strasbourg framework paper on future EC relations with Eastern Europe deliberately left open the question of future EC membership. This is reflected in current Commission thinking about future Association Agreements. The long-term possibility of membership is probably beneficial. But we should not encourage expectations in East Europe that membership is a realistic prospect in the short/medium term.

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PM/90/016

PRIME MINISTER

EC Institutional Reform

1. We discussed last week the need to prepare ourselves for the coming French and German proposals for a discussion on EC institutions. That need is now even more urgent, as the Council meeting on 2 April made clear. It is now less likely that you will be seriously pressed in Dublin on 28 April either to advance the opening date or to decide the closing date of the IGC on EMU. But it is virtually certain that you will be faced with a proposal in some form for an IGC on institutional change, or at least for a study group leading to such an IGC.

2. The case for further general institutional change so soon after the Single European Act has not been made out. I share your view that arguments based on German unification are fallacious. The Community has enough on its plate for the present in coping with the challenges of unification, EMU preparations, and the 1992 programme, devising the right forms of Association for Eastern Europe, the requirements of the end-1990 deadlines for the GATT Round and the EC/EFTA negotiations. If the Community rises successfully to all six of these challenges, it will ipso facto be strengthened: failure on any of them would be serious. Tinkering with institutions is a divisive and damaging distraction. This is what I said at the Foreign Affairs Council on 2 April.

3. But I take it as axiomatic that:

(a) we cannot block such a discussion. Even the Danes are now in favour;

(b) it would be foolish to boycott such a discussion;

(c) it would be almost as foolish to sit at such a discussion without ideas of our own. (This does not mean we need decide now on whether to put forward a worked-up UK package.)

A purely negative reaction at any of these stages would harm us domestically, in Europe, and with the Americans. There would be no gain anywhere that counts.

4. We have to resist the argument that the reference to "an ever closer union among the peoples of Europe" in the original Treaty of Rome, or the reference to "political union" to which you subscribed at Stuttgart in 1983 leads inevitably to central institutions controlled by a central Parliament. Some of the small countries may want this, but France certainly does not, and whatever Kohl may say now it would not suit the new Germany. It is certainly not for us. But to resist that argument is not to stand pat where we are now. Nor is there any point in putting forward British proposals which would be ridiculed by all, or almost all, our partners as negative and backward looking. We need to work up ideas which make sense to us and can be made reasonably persuasive to others. At the same time we need to say that while we are sceptical about timing, we shall of course take part with our own ideas in any discussion of these themes.

5. I enclose an FCO paper drawn up against this background, and should be grateful for an opportunity to discuss substance and handling. Other government departments, whom I have deliberately not consulted, may have other ideas too.

6. Annexed to the paper is a note on the recent IEA paper which you have read, and on which we have drawn.

DH

(DOUGLAS HURD)

Foreign and Commonwealth Office

4 April 1990

EC INSTITUTIONAL REFORM

I INTRODUCTION

1. We want the Inter-Governmental Conference (IGC) to focus only on EMU. Other member states are already suggesting that the agenda be broadened to include wider institutional reform, which some (eg the French) claim will be necessary to counterbalance the increased weight of a united Germany. In practice broadening may be unavoidable. If so, we would not want the agenda to be wholly dictated by others. This paper examines institutional changes - including (at Annex F) to EPC arrangements - which we might propose, because they would advance UK interests. It does not cover EMU-related changes, or wider changes which others might advance and we would oppose.

2. Our view of the Community opposes the idea that its success depends on the strength of its central institutions. It focusses on the nation-state, the protection of diversity, and the entrenchment of subsidiarity. In considering changes which would advance our interests we have identified four basic principles. We want:

a) a more efficient Community which keeps up its impetus;

b) restraints on Commission empire-building;

c) a fairer Community, with a level playing field;

d) improved accountability in Community finances.

3. The basis for this analysis is a Community of 12 member states. However, the Community could well grow, perhaps to some 20 member states, by the end of the century. The

institutional reforms proposed in this paper would in our view be in the UK interest whether or not enlargement takes place. But they would be more necessary in an enlarged Community. Section II of this paper examines the likelihood of enlargement, while **Annex A** assesses the pros and cons for the UK.

4. Most of those in the Community who want institutional change want to increase the European Parliament's powers in the field of legislation. We disagree: our guiding principle is that national governments remain accountable to national parliaments, including for the decisions they take in Council discussions in Brussels. So we firmly reject calls, such as the Belgians', to increase the European Parliament's control over the Council. Sections III and IV of this paper consider what changes in the EC legislative process would be consistent with our guiding principle and could therefore be countenanced.

5. The area where in our view the need for reform is most obvious, in the UK interest, is in the operation of the Community. Improving implementation and enforcement of EC legislation is dealt with in Section V. Section VI suggests proposals to improve financial control and accountability for public money.

II ENLARGEMENT

6. Pressure to enlarge the Community will increase. Turkey and Austria have formal applications on the table; Malta and Cyprus are poised to apply. Detailed EC/EFTA negotiations to apply the single market to EFTA countries are proceeding; if they fail, and perhaps even if they succeed, Scandinavian and perhaps Swiss membership applications will be likely. The emerging democracies of Eastern Europe hope for closer links with the Community, and some contemplate eventual EC membership.

7. Member States and the Commission take the view that, at least until 1993, the Community should concentrate on consolidation and completion of the Single Market. In London, Ministers have agreed that Turkish membership would not be in the UK interest, and that for the time being we need not take a formal position on the Austrian (or any other possible EFTA) application; instead we should actively support the present EC/EFTA dialogue, to which all the EFTA countries, including Austria, are currently committed.

8. The Community has concluded agreements with Poland and Hungary (and the USSR), and similar agreements are envisaged by end June with the GDR, Czechoslovakia, Bulgaria and Romania. We have suggested that the Community consider second generation Assocation Agreements with all East European countries implementing comprehensive reform. The forms of these Association agreements will vary with individual countries, but will provide for closer commercial and economic cooperation, some financial assistance, and enhanced political dialogue. While the ultimate aim should be free movement of goods, services, capital and people, these countries are unlikely, for the foreseeable future, to be able to fulfil the requirements (particularly the economic requirements), of EC membership. But Hungary and Czechoslovakia have already shown interest in EC membership, and over a 10-year period applications are likely.

9. All other member states are determined not to take decisions on existing or future applications, or to open accession negotiations, before completion of the Internal Market at end 1992. Looking further ahead, Turkish membership will probably still find no supporters, and strong Greek opposition, but Austria may have Italian and German support; and Denmark will continue to advocate wider Nordic membership. The French have said little; they oppose enlargement but do not want to be seen to close doors.

President Mitterrand's suggestion of a European Confederation may be an attempt to square the circle.

10. The benefits to the UK of further enlargement are considered at **Annex A**. The budgetary implications of enlargement to the North would be favourable to the UK, but enlargement to the East or South would be costly. The main institutional consequences would be increased difficulty in decision-taking, at least where consensus is necessary, although EFTA votes would sometimes work in our favour. Community law would need to be enforced across a wider territory. Former EFTAN Member States would be likely to be good implementers, but in an enlarged Community more action would nevertheless be necessary by the enforcement agencies (Commission and Court), thereby reinforcing the power of the centre.

11. Conclusion: There will by the mid-nineties be several applications for accession some of which are likely to succeed. It therefore makes sense to consider the UK interest in institutional reforms not only in a Community of Twelve, but also in a Community of perhaps 20.

III EC DECISION MAKING

12. The 1992 programme has set the EC, at last, on the path towards a liberal, deregulated, internal market. We shall want further liberalisation pursued after 1992 in the main EC policy areas, both through further legislation, and more effective action on implementation and enforcement. A protectionist EC would not be in our interest. Council decisions will still be needed simply to run the Community. Furthermore we shall want:

a) Continuing Single Market work to level the playing field further (competition policy, non-legislative barriers etc). Enlargement would make the need even greater, as the ex-EFTA countries would bring to the

Community relatively closed and regulated markets. On many areas (eg transport), where the current aim is to secure a deregulated structure, the future requirement will be for an effective Community role to enforce it;

b) Environment standards to be applied uniformly throughout the Community. In some areas we may want additional EC legislation to tackle cross-border environmental problems;

c) Further CAP reform, which will be essential irrespective of the Uruguay Round outcome, though a good outcome will make it less difficult to achieve. The problems of securing greater discipline on the CAP would grow if ex-EFTA countries, who are agricultural protectionists, proved hostile to CAP reform: surmounting them would be even more important in the event of accessions by East Europeans;

d) Further liberalisation in EC international trade policy, post Uruguay Round. Protectionist pressures within the Council would grow if fragile East European free market economies were to join the Community.

13. In order to achieve our policy goals in such areas, we shall continue to need EC institutions which work. None of these policy requirements necessitates any change to the current inter-institutional balance, where the Council takes the final decisions, but substantial enlargement might make the machinery clog up. In certain policy areas - eg increased social legislation - this would work to our advantage, but paralysis in decision-making would also prevent progress in the areas where we want action. On balance our interest will probably be served best by the Council's decision-making procedures working effectively.

Furthermore, paralysis might lead to greater executive action by the Commission at the expense of the Council's dominant role as decision-maker.

14. The case for and against removing the Commission's exclusive right of initiative is considered in Annex B. The conclusion is that such a change would work against our interests. Running it would not attract any support, and would jeopardise our case on other points because we would be accused of spoiling tactics.

15. The reaction of most member states to problems in Council decision-making will be to urge greater use of qualified majority (QM) voting. This has clearly helped UK interests in the Single Market area, both in expediting decisions, and in removing protectionist blockages. However the main areas where unanimity is still required are ones where the UK interest argues against change. We clearly want unanimity to continue to apply on issues of fiscal policy, free movement of people, revenue raising, and decisions about the EC institutions. We may face particular pressure to extend QM voting to social policy and the environment. There is certainly no advantage to us in making further changes on social policy (some measures can be decided by QM already). But on the environment, QM voting might improve decision-making, in particular removing obstacles thrown up by less environmentally conscious Southerners. We should explore this further. The case for extending Qualified Majority is analysed in detail at Annex C.

16. Where QM voting was introduced by the Single European Act, the so-called "Co-operation procedure" was established with the European Parliament to strengthen its role in the legislative process. Under this procedure the European Parliament has a second reading and unanimity is required in the Council to overturn its amendments if the Commission accept them. Some Member States (eg Belgium) now propose

giving the EP real, if limited, powers of co-decision with the Council. In order to head off such pressure we might want to consider as a tactical move limited extension of the "Co-operation procedure" into new areas where QM voting already exists. This too is considered at Annex C.

17. Conclusion: We want the Council to remain the dominant decision-making body, and our interest (with or without further enlargement) lies in it being effective. This means our opposing giving the European Parliament any real new powers vis à vis the Council. If the Community enlarged, effective Council decision-making might become more difficult, but even then the UK interest would not be served by extending QM voting significantly.

IV SUBSIDIARITY

18. We want to avoid unnecessary EC legislation. In particular we shall want to restrain the Commission tendency to expand its role. Achieving real restraint may be more important and more difficult if the Community expands, given the centripetal impact new enlargement might - and previous enlargements have had - on the power of the Brussels institutions. The best weapon to counteract Commission expansionism may be the Commission's own new doctrine of subsidiarity - namely that decisions should only be taken at the Community level when they cannot better be taken at a lower level: the closer to the citizen the better. We must ensure that this principle is only applied where Community competence already exists, ie as a further limitation on central decision-making. Delors, among others, has already argued that subsidiarity should be incorporated into the Treaty.

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19. There are three ways in which this could be done:

a) incorporate a general principle. This could be done in a preamble to the Treaty; in one of the general articles eg Article 5, (which is a general requirement to fulfill the obligations of the Treaty, and/or Article 145 (which defines the powers of the Council); and/or in Article 155 (which defines the role of the Commission and could be amended to place an obligation on the Commission to consider subsidiarity when acting under the Treaty). The argument against a general reference is that it imposes a test which would be justiciable, but on which the ECJ's ruling would be binding. If the ruling went against us in a specific case, our position would worsen; per contra, a ruling in our favour would reinforce national powers; much would depend on our securing Treaty language which incorporates a presumption of action at a national level as the norm;

b) incorporate specific references. This would mean following the Single European Act precedent of Article 130r (Environment), and inserting similar specific references to subsidiarity in different parts of the Treaty. The main candidates are social policy (in the widest sense), economic and monetary policy, and research and development. There are dangers in writing a list, however comprehensive, which is not complete, and there is the risk of the ECJ finding that subsidiarity did not apply in areas not specifically covered;

c) a combination of both general and specific references. This looks on balance best.

20. Annex D contains illustrative draft Treaty language to provide both general and specific provisions. Giscard is preparing a report for the European Parliament on subsidiarity. He will recommend that it should apply unless a clear transfrontier element of policy is at stake, and there is a general agreement that common policy action is necessary and desirable. Both these points are useful ones for us, and are reflected in the language at Annex D. (A point to watch is that in negotiating texts, we must guard against language which would imply that decisions not taken at Community level should not be taken at national level either, but instead be devolved to the sub-national level; we do not want to get involved in arguments about central and local government powers.)

21. There are several advantages in making such a proposal at the IGC. Securing such a text should help discourage unnecessary Commission proposals and EC legislation. On certain (eg social) policy issues, subsidiarity should also help us to avoid bruising debates where we believe matters can be adequately, if not better, regulated at national level. Reference to subsidiarity in the Treaty would reinforce the political point that democratic accountability should be exercised primarily at the national level. A favourable ECJ ruling would serve to limit Community activity. We could be confident of a reasonable reception for UK proposals on subsidiarity. Indeed other governments, including the Belgians, have similar ideas.

22. But there are potential disadvantages too. In particular:

a) the test is primarily a political one. It may not always help us to have it defined precisely, in a form which is justiciable. Unsatisfactory ECJ interpretative rulings could open the way to increased EC legislation. But as para 18(a) above shows, this argument works both ways;

b) other Member States might try to use subsidiarity to mount a legal defence of local laws or practices which are market-distorting in effect;

c) other Member States advocate subsidiarity because they see this partly as a compensation for the greater centralisation of power which they envisage taking place through institutional reform at the next IGC; we would need to resist this centralising approach, both by refusing to pay a price for the principle of subsidiarity, and by ensuring that the Treaty language incorporates the presumption of de-centralisation (as the texts at Annex D do). But most political leaders in the EC are now signed up to the principle of subsidiarity in any event, and we should seek to exploit this.

23. A different approach would be for lists of subjects suitable to be dealt with at Community level to be drawn up, perhaps in the form of "compacts" between Council and Commission. Anything not on the list would be for member states. Delors himself has suggested this, though in the reverse, more dangerous, format. There are difficulties and dangers in this approach, but it is worth considering.

24. Conclusion: Incorporating subsidiarity in the Treaty has strong political attractions and we can turn to our advantage the general Community support for the principle. The options are either specific Treaty references, or a general provision, or both. The drafting would be crucial and the Law Officers will need to be involved.

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V IMPROVED IMPLEMENTATION AND ENFORCEMENT PROCEDURES

25. With the growing body of legislation and an increasingly open market, we must ensure the playing field is level, ie that the Community is run effectively. Few Member States implement obligations as rigorously as we do. Proper implementation and enforcement of policy is therefore a key UK aim. If the Community grew larger, the need for adequate enforcement would be even greater.

26. There is a role here for all the main institutions:

a) in the Council we should work for regular reviews of implementation. Where Member States fall behind on their obligations, transparency is probably our best lever. No Treaty change is necessary to achieve such reviews, but a proposal for Treaty change to make them obligatory could be tactically advantageous;

b) we must make sure the Commission use their existing powers under the Treaty to enforce a level playing field. In particular we want them to enforce a liberal competition policy (eg tackling German and Italian state aids), and to take prompt action (infraction proceedings) against Member States who do not comply. There is a case for increasing Commission powers in the area of enforcement, eg autonomous investigative powers to combat fraud. This might require Treaty change;

c) European Court of Justice. We need the judicial process to work quickly, not least to avoid distortions of competition (eg the protectionist result of long lead times for anti-dumping cases, which is why we want the Court of First Instance

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now to tackle these). We may also want the ECJ to impose sanctions, eg fines, against Member States for persistent non-compliance with obligations. The Court could be given such powers either by regulation under Article 172, or by further Treaty amendment;

d) European Parliament. Our main interest will be in using the Parliament to achieve greater transparency, through regular debates about implementation and compliance. But the Parliament could also play a key role in scrutinising how Community money is spent (see Section VI below).

In some cases Treaty change may not be essential to achieve our objectives, but there might well be both tactical and substantive advantage in securing the institutional changes we want through Treaty amendments tabled at an IGC.

27. Conclusion: There is a strong UK interest, which would grow with enlargement, in achieving improved enforcement and implementation. Few of the changes necessary would require Treaty amendments. But securing them by Treaty change could be useful both tactically in an IGC, and substantively.

VI ACCOUNTABILITY

28. In the UK, while ministers are accountable to Parliament for policy, accounting officers are accountable to the Public Accounts Committee for how money is spent.

29. In the UK view, EC political accountability is already achieved through members of the Council answering to their national parliaments. We should encourage others to improve their scrutiny procedures, as we are doing. There are already welcome signs of growing links between national

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parliaments, and with Strasbourg. But we should not try to enshrine these procedures in a new Treaty article, for it would be very dangerous to appear to accept that Westminister's role could be defined, and therefore changed, by EC legislation. (For the same reason we should reject proposals - eg the idea of a second Strasbourg Charter on US Senate lines - for direct Westminister involvement in the European Parliament.) Instead this could be enshrined in a Solemn Declaration by the Member States or (perhaps preferably) by the Presidents of the national Parliaments. Alternatively, a reference to the essential role of national parliaments might be included in the preamble to the Treaty. A UK proposal along these lines might mobilize useful support from national politicians in other member states.

30. But there would be considerable benefit - both substantive and tactical - in offering the European Parliament a greater role in achieving better EC financial accountability. Accountability in the Public Accounts Committee sense is at present inadequate in the Community, and we might aim to replicate there the NAO/PAC arrangements here. UK proposals for Treaty revision to achieve this could be presented as a positive UK counter-initiative to the various proposals likely from other member states for extending EP powers in the legislative area. And others would have difficulty opposing UK ideas for improved mechanisms to ensure financial propriety.

31. Our main goal should therefore be to achieve greater accountability of the Commission to the European Parliament for the execution of policy, in particular spending EC money. The necessary Treaty amendments fall into two parts:

a) Changing Article 205a, 206a and 206b to enhance European Parliament scrutiny of the budget, strengthening its role in budget control, and turning the existing Budgetary Control Committee into the real equivalent of our PAC;

b) Using Article 206a to give the Court of Auditors a role vis-a-vis the Budgetary Control Committee, akin to that of the National Audit Office.

32. The Budgetary Control Committee is at present required to "discharge" the budget two years after the relevant financial year. Its actual influence, currently minimal, could be strengthened by:

- giving it the power (which the PAC here has) to summon particular Commission officials (the Commission now choose who to send);

- requiring it to obtain monthly in-year monitoring reports on budget expenditure; (this would improve transparency and provide early warning of overspending);

- giving it power to request anti-fraud reports on specific fraud cases in member states;

- giving it a formal role in clearing CAP accounts, now the preserve of the Commission and member states;

- giving it power to apply sanctions if dissatisfied with budget Commission management.

(The Chairman of the Budgetary Control Committee is an EDG MEP (Peter Price).)

33. In this area it would be important to reinforce, not undercut, the role of the Court of Auditors (ECA). It already examines the accounts for the Community, but at present only conducts a sample survey. We want its role strengthened, eg through:

- an explicit requirement in the Treaty that the Court should ensure full coverage of the budget, without which the "discharge" would not be given;

- requiring the ECA to come to an overall judgement of the Community accounts, including professional working methods and standards, before they are certified accurate and reliable (the current audit is partial and does not certify the account);

- requiring audit certification to be part of the ECA's Annual Report, and their part of the formal process of clearing the Community accounts;

- possibly reorganising the Court, reducing the number of full-time national members and letting Finance Ministers elect the President, to make it operationally sharper and more like the European Investment Bank in structure.

34. Conclusion: The frontiers of Political Accountabilty should not be changed. But the case for improving financial accountability is clear, even in a Community of 12. Enlargement would mean a bigger budget, and all the more reason to ensure better assurance of financial propriety. Further work with HM Treasury would be needed to give these ideas Treaty form.

VII CONCLUSIONS

35. Our four main targets are to make the Community decision making efficient; to restrain Commission expansionism; to ensure fair competition; and to improve financial control. In all four respect, Treaty amendments could be helpful; and enlargement would reinforce the case for reform. (Our analysis is consistent with the IEA's: see Annex G.)

36. Whitehall work should accordingly start on possible UK Treaty amendments which would:

a) maintain effective decision making, perhaps with very limited extension of QM voting, in the Council;

b) systematic application of the principle of subsidiarity to EC legislation;

c) stimulate more effective enforcement of EC commitments; and

d) introduce greater accountability of the Commission to the European Parliament on administration, value for money and financial propriety.

Work should also be undertaken on the non-Treaty possibilities at para 23 on subsidiarity and at para 29 on accountability to national parliaments.

37. The tactical decision on whether to table such amendments (eg in a prospectus similar to that now tabled by the Belgians) need not of course be taken now. The principle of an IGC considering non-EMU Treaty change need not yet be accepted. But it makes sense to press on with Whitehall preparations.

EC INSTITUTIONAL REFORMS ANNEX B

THE CASE FOR AND AGAINST REMOVING THE COMMISSION'S EXCLUSIVE RIGHT OF PROPOSAL

1. The Commission's exclusive right of proposal derives from Article 155, and is reflected explicitly at numerous places in the policy chapters of the Treaty. Should we remove it? If so, to whom should it be transferred?

2. The arguments for removal are:

   a) restrict expansionism by the Commission, in particular avoid new Community activity in unwelcome areas (social policy, health);

   b) reduce Community activity more generally; work for "steady state" Community once Single Market programme complete;

   c) prevent Commission strengthening its de facto power at the centre, particularly in an enlarged Community, through choosing in which areas the legislative agenda should be set.

3. The case against is:

   a) we would lose the liberalising thrust of Commission proposals in the Single Market area, including in follow-up legislation going beyond the White Paper (eg on barriers to takeovers);

   b) the Community might grind to a halt, leaving aside policy areas where we want progress. Simply running the Community requires continuing proposals on which the Council decides (eg CAP or budget); a "steady state" Community would not be in HMG's interest;

c) in the absence of a Commission initiative, the European Parliament might try to seize the initiative; the EP would be far more protectionist and interventionist;

d) or the Council might try to take the initiative; here too, protectionist forces (eg France on trade or Germany on farm support) would have greater opportunities for setting the Council agenda than at present; the Community would be at the mercy of successive Presidency whims;

e) loss of the Commission's right to initiate compliance proceedings, (of major importance in ensuring a level-playing field); if every member state felt free to initiate ECJ proceedings against another whenever compliance was in question, the ECJ would grind to a halt, leaving the offender unhindered by an ECJ ruling; the Commission's pre-Court role as policeman derives partly from its right to initiate infraction proceedings.

4. Conclusions.

(a) a more feasible way of avoiding excessive use of the Commission's power of initiative is to apply rigorous tests of competence and subsidiarity to all Commission activity: we should be ready to test Commission action before the ECJ. We could also resurrect our 1985 proposal that the number of Commissioners be reduced to one per member state - to avoid idle hands finding unnecessary work to do (this requires Council unanimity, but not Treaty change);

(b) if the Commission's exclusive right of initiative were transferred to either the European Parliament or to individual member states the results would be to our disadvantage. Transfer to member states is in any case unlikely to be feasible: there will be advocates of greater EP powers of initiative, but the UK interest will lie in opposing them.

EC INSTITUTIONAL REFORM: **ANNEX C**

I WHERE WE MIGHT EXTEND QM VOTING

1. The following are the main areas of the Treaty where unanimity still applies: action in the absence of specific powers (Article 235); fiscal policy (Article 99); environment (Article 130s); some institutional matters (appointments to and composition of Commission, ECJ, Court of Auditors and ESC); enlargement and association agreements (Articles 237 and 238); derogations from state aid rules (Article 93(2)); new tasks for European Social Fund (Article 126b); adoption of financial regulations (Article 209); establishment of the Common Market in certain areas (eg free movement of people) (Article 100); conjunctural policy measures, ie macro-economic co-ordination (Article 103(2)); social security for migrant workers (Article 51).

2. Of these, the only area where HMG might wish to consider extending QM voting would be on the environment. Article 130s already provides for the Council to take such a step (acting initially by unanimity).

3. On social policy, there are already several treaty bases requiring QM (118a - Health and Safety of Workers); 54 and 57 (Right of Establishment); and even simple majority (Article 128, Vocational Training). The Commission is unlikely to base much of the Social Action Programme on the unanimity provisions we would prefer (Article 51, Article 100/100a2 or Article 235). In any case, these articles must remain unanimity, in particular Article 235 (action in the absence of specific powers in the treaty).

4. On the other hand, we might want to try (but stand little chance of success) to change the simple majority provisions on vocational training to QM voting (Article

128). This would avoid an anomaly whereby significant funds can be voted through on a simple majority.

II WHERE WE MIGHT EXTEND THE CO-OPERATION PROCEDURE

5. The Co-operation procedure is set out in Article 149, added by the Single European Act. This gives the European Parliament additional powers in certain areas of legislation (primarily single market, social policy, implementation of the ERDF, and implementation of the R & D framework programme). The specific Treaty references to the Co-operation procedure are Articles 7, 49, 54(2) second sentence, 57 (except the second sentence of 57(2)), 100a, 100b, 118a, 130e and 130q(2).

6. The Co-operation procedure introduced two readings in both Council and Parliament. After receiving the first opinion of the EP, the Council reaches agreement (by QM) on a common position. The European Parliament then has to give its opinion by absolute majority of all MEPs within three months. If the EP then proposes amendments, the Commission has one month to reconsider, and perhaps revise its proposals. The Council then has three months either to adopt the latest Commission proposal by QM, or amend it by unanimity. If the European Parliament has rejected the common position (which has only happened once so far), the Council may only adopt it by unanimity. So the increased power for the Parliament comes either through rejecting the common position; or through working in alliance with the Commission to amend the original Commission proposal, both requiring unanimity in the Council to overturn the EP position.

7. The Co-operation procedure can only be applied where QM voting is the rule. Areas where there is QM voting but no co-operation procedure at present include:

- Customs Union (12-37)

- Agriculture (43)

- Free Movement of Services and Capital (63.2 & 69), (but these are now largely extinguished by 100a)

- Transport (75(1) and 84)

- Conjunctural Policy (103.3) (implementation of measures already agreed by unanimity)

- Mutual Assistance (over balance of payments problems) (108.2)

- Trade Policy (113)

- European Social Fund (127 - in contrast to the ERDF where co-operation procedure applies)

- Budget Procedure (203)

8. There is no particular policy advantage to HMG in extending the Co-operation procedure. The procedure takes time. And the amendments proposed by the Parliament are by definition ones which the Council will not have made in adopting its own common position. Since we are rarely outvoted in the Council, it would be rare for us to seek recourse to the EP to refight a battle lost in the Council. In practice, EP amendments are on balance likely to be unhelpful to us.

9. Nevertheless, there may be a political case for agreeing to extend the Co-operation procedure in order to appear to be enhancing the role of the EP. The two areas where this would be least painful are:

- Transport (which is de facto part of the single market programme);

- European Social Fund (to mirror the ERDF), but only on condition that we could stop short of extending the Co-operation procedure applying to the Third Structural Fund (EAGGF). Increased EP involvement in policy decisions on agriculture expenditure would be very unwelcome.

10. There is no case for extending the co-operation procedure on the budget because the Treaty already provides a separate conciliation procedure specifically for handling the institutional dialogue on the budget (the EP and the Council each have a distinct role as the two arms of the "budgetary authority").

EC INSTITUTIONAL REFORMS ANNEX D

SUBSIDIARITY

The following draft amendments are examples of draft language for insertion in the Treaty to provide a test of subsidiarity, either as a general principle, or in a specific policy area. They are not mutually exclusive. We could argue for all five.

Amendments A, B and C are of a general character, and would be more suitable if we wanted the test of subsidiarity to be applied to proposed Community legislation across the board. The alternatives under Amendment D would relate to action in particular areas (as Article 130r.4 already does in relation to the environment). Most suitable for this purpose might be areas in which for most practical purposes national action would be preferable, eg economic and monetary policy and research and development; or areas in which the Community is acquiring creeping competence, eg social policy in the widest sense, including health, education and culture. Amendment E would provide an additional subsidiarity test to be applied in cases where the Community might acquire new competence by acting under Article 235.

Amendment A: Preambular paragraph:

"Recognising that the principle of subsidiarity must apply so that democratic accountability to individual citizens is maintained, and that action at Community level should only be taken where a clear trans-frontier element to policy is involved and where it is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States;"

Amendment B: New general provision (eg in Article 5 or 145)

"In exercising the powers conferred on it by this Treaty, the Council shall have regard to the desirability of acting at Community level only to the extent that a clear trans-frontier element to policy is involved and that common action is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States."

Amendment C: New general provision (eg in Article 155):

"The Commission shall propose action at Community level only to the extent that a clear trans-frontier element to policy is involved and that such action is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States."

Amendment D: New specific Article relating to eg EMU or social policy:

Variant (a)

"Within the powers conferred by this Treaty, the Community shall take action relating to [economic and monetary policy] [social policy] to the extent to which the Council considers that a clear trans-frontier element to policy is involved and that action at Community level is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member States."

Variant (b) - following Article 130r.4 precedent:

"The Community shall take action relating to [economic and monetary policy] [social policy] to the extent to which the objectives referred to in [relevant Treaty provision] can be attained better at Community level than at the level of the individual Member States."

Amendment E: New paragraph added to Article 235:

"In considering whether to act in pursuance of this Article, the Council shall have regard to the desirability of acting at Community level only to the extent that a clear trans-frontier element to policy is involved and that common action is necessary [and] [or] would ensure greater benefit and effectiveness than action at the level of the individual Member states."

EC INSTITUTIONAL REFORM ANNEX E

THE CASE FOR AND AGAINST A SUPER COUNCIL

1. The suggestion has been made, most recently by Delors in February to the European Parliament, that there is a need for a Super-Council, perhaps building on the Foreign Affairs Council, by making its day-to-day role more closely match its official title of "General Affairs Council".

2. Two separate functions could be fulfilled by such a Council:

(a) to act as a senior arbiter when specialist councils prove unable to resolve policy disputes; or to make trade-offs reading across between specialist councils;

(b) to oversee the work of the Commission, in particular forthcoming policy proposals.

3. To fulfil function (a) effectively, members of a Super Council would have to be able to exercise authority within their national cabinets over the relevant specialist ministers. To fulfil function (b), such a council would have to meet regularly (Delors suggests weekly) in Brussels, together with the Commission President and Vice-President.

4. The attractions for us in establishing such a Council could be:

(a) tighter political control over the Commission, in particular an oversight of forthcoming proposals, and a chance for the Council to shape the Commission's annual work programme;

(b) a good forum for the Commission to expose inadequacies in member state enforcement/implementation (ie greater transparency).

5. The case against such a Council is:

(a) Delors' motive is to secure greater political impetus towards integration in the Community; any Super-Council, by definition inexpert on the detailed points at issue, would be more vulnerable to Commission integrationism than the relevant Specialist Councils;

(b) the European Council and the Foreign Affairs Council already exercise the requisite oversight, if necessary taking over negotiations, as in our CAP/Budget reform in 1987/88;

(c) close monitoring of the Commission by the Council would lead to greater national political influence over exercise of the Commission's autonomous powers (eg competition policy) in a way which, in many cases, would be detrimental to UK interests.

6. Conclusion On balance the risks greatly out-weigh the potential gains to the UK. No other member state has proposed that such a Council be created. To the extent that week to week collective monitoring of the Commission is necessary, COREPER already fulfils the function on instructions from capitals.

E. Third country contacts

- As EPC contacts with third countries grow, priority must continue to be given to the most important partners and allies (the US, Japan and Canada). We could propose a secure communications link between the Presidency and the Foreign Ministries of these countries, to be activated in agreed circumstances of an operational or urgent kind.

4. All these proposals could be implemented by treaty amendment.

Security Matters

5. In 1985-86 we were unable to prevent a restriction on EPC discussion of European security matters, limiting it to political and economic aspects. Rapid development of EPC discussion in this area is highly unlikely given Irish views. We would support the lifting of the restriction (as the Belgians have already suggested): we see EPC discussion (on security but not of course overlapping onto military matters) as contributing to a strengthened European pillar of the Alliance.

Conclusion

6. Others will also have proposals for developing EPC. In general this is an area which we have strongly supported and continuing to do so could yield useful benefits and be good tactics.

EUROPEAN POLITICAL COOPERATION ANNEX F

1. The regime for EPC is defined in Title III of the Single European Act and a related Ministerial Decision of 28 February 1986. These texts codified the practices that had developed over the years, and created a small Secretariat to assist the Presidency. Title III provides for the possibility of a review of EPC five years after entry into force on 1 July 1987. But aspects covered by Title III were introduced informally in 1986, and an earlier review seems likely: we can support this.

2. We shall have to resist some suggestions for change, eg introduction of voting, or bringing EPC within the Commission's responsibility under the Treaties. But it will be easier to do so if we have positive proposals of our own. Moreover improvements are desirable to develop the degree of consensus among the Twelve across a growing range of issues; to make EPC more flexible and responsive; and to enhance the degree of EC/EPC consistency.

3. Examples of such changes are

A: Making the Secretariat more efficient

The Secretariat established in 1987 along lines we advocated has worked well. There is scope for building up its role, both to help us resist Commission encroachment, and to get us through weak Presidencies.

- Some staff increases (from 6 to say 10) would be appropriate and would ensure that a UK official was a member for a longer period of time than at present. In particular, a Commission official should be seconded to its staff on the same basis as Member States' secondments. This would improve cohesion between EPC and the Community, and help see off Commission ambitions to take over the liaison function inside the Commission.

- The Head of the Secretariat should take on some of the Presidency's external burden, by representing the Twelve in routine contacts with less important third countries and with the European Parliament, on the authority of the Presidency.

B. Improvements to the Working Structure

The Political Committee spends far too much of its time on routine reports and trivial points.

- A Committee of Deputies should be established to meet in between full meetings of the Committee and wrap up minor or urgent business;

- Decision taking should be streamlined, by use of more delegated powers to Working Groups, a system of A points, and more use of the COREU network for minor decisions.

C. Blurring the EC/EPC distinction at Ministerial level

We should make a virtue of formalising the increasing overlap of EC and EPC business at Foreign Minister level (eg on Eastern Europe) by:

- proposing that EC and EPC business be taken together as necessary;

- abolishing the two formally separate EPC Foreign Ministers' meetings per Presidency.

D. Cooperation Abroad

- Significant resource savings could be achieved if cooperation among Embassies of the Twelve were developed, not only in practical and administrative matters but also with more pooled political and economic reporting.

IEA PAPER: THE NEW EUROPE CONSITITUTIONALIST OR CENTRALIST? ANNEX G

1. The IEA paper by Frank Vibert of 29 March analyses appropriate institutional reform in the Community, seeing two main alternatives: a "centralist" (ie federalist) model; and a "constitutionalist" model. Our conclusions are broadly in line with his.

2. Like him we reject the "centralist" model, in particular:

a) creation of a super Council (see Annex E);

b) new legislative and revenue raising powers for the European Parliament (see paras 15-16 and Annex C);

c) new second chamber for European Parliament (see para 4);

d) giving the Commission a more "political" role, with a directly elected President (see paras 12-17).

3 Like him we support, on "constitutionalist" grounds:

a) maintaining the primacy of the European Council, with the Council of Ministers remaining the dominant decision-making body;

b) explicit recognition of the role of national parliaments (see paragraph 29);

c) a new European Parliament role in reviewing implementation of legislation, and the effectiveness of EC spending programmes (see paras 29-33);

d) strengthening the ECJ's ability to "take effective action against abuse of powers" (see paragraph 26(c)).

4 Changes suggested by the IEA which we do not support are:

a) incorporating the Luxembourg Compromise in the Treaty. On important policy areas unanimity is already prescribed by the Treaty, and we believe must be maintained (para 15). But we see no chance of securing the incorporation of the Luxembourg Compromise in the Treaty, for at least five member states (Benelux, Italy and Germany) have always refused to recognise it. Our paper is about institutional reform which might be achieveable, not about changes we would ideally like;

b) incorporating in the Treaty a constitutional limit on the size of the EC budget. The 1988 Own Resources Decision, which sets the ceiling, cannot be changed without unanimity and the agreement of national parliaments. There is therefore no need to incorporate it into the Treaty. Moreover to press for this would risk others seeking to raise the current ceiling: such pressures could be successfully resisted, but it would be best not to encourage them. In short, the IEA proposal would be an own goal.

5. Our analysis also differs from the IEA's on the issue of subsidiarity, which Vibert sees as a trap which would lead to an expansion of EC competance. We believe that suitably handled it would have the opposite effect (see paras 18-24, and Annex D). But we accept that the point is an important one: our paper therefore suggests that the Law Officers be asked to look at this carefully.

CONFIDENTIAL
FM BONN
TO IMMEDIATE FCO
TELNO 440
OF 040847Z APRIL 90
AND TO ROUTINE EUROPEAN COMMUNITY POSTS

FRAME GENERAL

UKREP TELNO 989 AND PARIS TELNO 378: GERMAN VIEWS ON IGCS

SUMMARY

1. KOHL'S PROPOSAL FOR A SECOND IGC TO CONSIDER INSTITUTIONAL ISSUES, INITIALLY DESIGNED TO DEFLECT FRENCH PRESSURE FOR FASTER PROGRESS ON EMU, IS NOW DEVELOPING ITS OWN JUSTIFICATION, PARTLY BECAUSE IT ALSO REFLECTS A LONG-STANDING GERMAN BELIEF IN THE DESIRABILITY OF FURTHER INSTITUTIONAL DEVELOPMENT OF THE COMMUNITY. BUT CONCRETE AIMS MUCH MORE MODEST THAN RHETORIC SUGGESTS. FRANCO/GERMAN CONSULTATION HAS PRODUCED A PROCEDURAL PROPOSAL FOR THE SPECIAL DUBLIN SUMMIT.

DETAIL

2. KOHL'S PROPOSAL FOR A SECOND IGC TO CONSIDER INSTITUTIONAL ISSUES WAS INITIALLY INTENDED TO DEFLECT FRENCH PRESSURE FOR FASTER PROGRESS ON EMU (MY TELNO 411). THE FEDERAL GOVERNMENT REFUSE TO BRING FORWARD THE STARTING DATE OF THE IGC ON EMU FOR ELECTORAL REASONS. IN ADDITION THE FINANCE MINISTRY AND THE BUNDESBANK REMAIN STRONGLY OPPOSED TO SETTING A FINISHING DATE, WHICH THEY FEAR WOULD PUT THEM UNDER PRESSURE TO CONCEDE PREREQUISITES AND MIGHT LEAD TOO FAST TO STAGE II, WHICH SO FAR REMAINS UNDEFINED AND OF WHICH THEY ARE SUSPICIOUS ANYWAY. SINCE THE FRENCH WERE TRYING TO MAKE GETTING ON WITH EMU A TEST OF GERMAN COMMITMENT TO THE COMMUNITY, KOHL SWITCHED THE FOCUS BY RESURRECTING THE OLD DEBATE ON THE NEED FOR POLITICAL UNION TO ACCOMPANY ECONOMIC AND MONETARY UNION AND - HE NOW ADDS - GERMAN UNIFICATION.

3. PROGRESS TOWARDS POLITICAL UNION IS THUS NOW DEVELOPING A LIFE OF ITS OWN. IT REFLECTS A LONGSTANDING BELIEF IN BONN IN THE DESIRABILITY OF FURTHER INSTITUTIONAL DEVELOPMENT IN THE COMMUNITY. IT IS WIDELY HELD HERE THAT, FOLLOWING THE INTRODUCTION OF MAJORITY VOTING IN THE COUNCIL, EUROPEAN MINISTERS ARE NO LONGER FULLY ACCOUNTABLE TO THEIR NATIONAL PARLIAMENTS. THE AUSWAERTIGES AMT GO ON TO ARGUE THAT DEMOCRATIC CONTROL CAN BEST BE EXERCISED BY THE EUROPEAN PARLIAMENT NOW HAVING GREATER CONTROL OVER THE COUNCIL.

THEY MAY ALSO BE THINKING OF SOME FURTHER INSTITUTIONALISATION OF POLITICAL COOPERATION.

4. WHILE THESE GERMAN IDEAS ARE DIFFICULT FOR US, THEY FALL WELL SHORT OF KOHL'S EXPANSIVE RHETORIC IN FAVOUR OF POLITICAL UNION. KOHL DOES NOT BELIEVE THAT A EUROPEAN FEDERATION IS JUST AROUND THE CORNER. HE WANTS TO SATISFY THE FRENCH AND GET THEIR COOPERATION OVER THE ASSIMILATION OF THE GDR, BUT NOT BY PUSHING THINGS TO THE POINT WHERE THE GOOD WILL OF OTHER MEMBER STATES IS PREJUDICED.

5. THE GERMANS WILL THEREFORE TREAD FAIRLY CAREFULLY. WE UNDERSTAND THAT DURING A VISIT BY ATTALI AND BOISSIEU ON 2 APRIL THE GERMANS PROPOSED, AND THE FRENCH DID NOT DISSENT, THAT DECISIONS AT THE DUBLIN SPECIAL SUMMIT ON 28 APRIL SHOULD BE PURELY PROCEDURAL. THE FRANCO-GERMAN INITIATIVE THEREFORE WOULD BE THAT FOREIGN MINISTERS WOULD BE CHARGED WITH DRAWING UP A REPORT FOR THE DECEMBER SUMMIT ON THE SUBSTANCE AND MODALITIES OF PROGRESS TOWARDS POLITICAL UNION. FOREIGN MINISTERS SHOULD MAKE RECOMMENDATIONS ON WHETHER THERE SHOULD BE A PREPARATORY DOOGE-STYLE GROUP, A SECOND IGC, ETC. ON SUBSTANCE, THE MANDATE SHOULD SPELL OUT CRITERIA (GREATER EFFICIENCY AND COHERENCE OF THE INSTITUTIONS) RATHER THAN OUTCOMES. THIS SOUNDS A LITTLE TOO GOOD TO BE TRUE. BUT THE AUSWAERTIGES AMT SAY THEY DO NOT WANT A ROW ON 28 APRIL (NOR, PRESUMABLY, TOO MUCH DISTRACTION FROM THE GDR ITEM ON THE AGENDA).

MALLABY

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Ref. A090/855

PRIME MINISTER

Cabinet: Community Affairs

Mr Gummer may mention last week's Agriculture Council, which failed to reach agreement on the CAP price-fixing. The main points were:

- the Presidency (with the Commission's endorsement) tabled a compromise proposal which would have involved extra costs of 500 mecu in 1990 and 1000 mecu in 1991. A majority of member states rejected this on the ground that it was insufficiently generous;

- the Commission, with UK support, strongly resisted further concessions, eg on reducing the cereals and milk coresponsibility levies, on the ground that reducing levies without offsetting price cuts would undermine the 1988 stabiliser package;

- the compromise included proposals for a range of green pound devaluations for individual commodities, mostly slightly greater than the 33% originally proposed. The devaluation in the cereals sector would have reduced the present gap by about 50%;

- the Council will return to the issue on 25/26 April.

2. The Chancellor may report on last week's informal ECOFIN, which focussed mainly on EMU. Other main points were:

- progress report by Herr Waigel, in standard terms, on prospects for German economic and monetary union;

- agreement that the Austrian and Norwegian requests for associate membership of the EMS should be studied further by the Monetary Committee and Central Bank Governors.

3. The Foreign Secretary may report on the 2 April Foreign Affairs Council. Key points were:

- UK proposal for lifting all quantitative restrictions for Czechoslovakia well received. General willingness to see early extension of G24 process to other reforming East Europeans;

- frontier coordinators to study scope for removing visa restrictions for GDR, Hungary and Czechoslovakia (general support only for doing this for the GDR);

- FRG briefing, in familiar terms, on latest thinking on German unification. Delors floats idea of "super association" (content unspecified) for pre-unification period;

- on EMU, Delors said the Commission would produce a paper on institutional aspects in time for discussion at 19-20 May informal meeting of Foreign Ministers; a technical document for ECOFIN and Foreign Ministers to discuss in June; and a more exhaustive document by the end of July on the transition to stage 3.

4. Mr Parkinson may also mention the Transport Council on 29 March. The most important points were:

a. agreement (by qualified majority) on a 40% increase in Community road haulage quotas for 1990;

b. German announcement that in response to strong domestic political pressure they would introduce a tax on foreign lorries travelling through Germany with effect from July 1990. UK, Netherlands and other member states protested strongly; the Commission said that they would take rapid action against the Germans under the state aid provisions of the Treaty.

5. The next Council meetings, after the Easter break, will be:

- ECOFIN, 23 April
- Agriculture Council, 25/26 April

R.R.B.

ROBIN BUTLER

4 April 1990

THE RT HON JOHN WAKEHAM MP

Department of Energy
1 Palace Street
London SW1E 5HE

01 238 3290

The Rt Hon Chris Patten MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

4 April 1990

Dear Chris,

ELECTRICITY PRIVATISATION AND THE EC LARGE COMBUSTION PLANT DIRECTIVE

Thank you for your letter of 22 March.

I am glad that you accept that we should aim to meet the target reductions in the most economic way that is environmentally satisfactory. I agree of course on the importance of convincing the Commission that the Government can be relied upon to ensure that the reductions required by the Directive are achieved. I do not see why they should be suspicious of the move away from 12GW of retrofits: there are perfectly good explanations for the change in our views.

On the "firmness" of the plan, we must strike a balance between definite plans for retrofits and supplementary measures (combined cycle gas turbines and fuel imports) which have a shorter lead-time.

I take your point about not overdoing the environmental disadvantages of FGD, though we should not close our eyes to them.

It does not seem to me to be right that HMIP should be free to require further FGD retrofits beyond the end of the century. It follows from the Government's agreement to the LCP Directive that its requirements define what we should

aim to achieve. As the requirement for reduction of emissions from existing plant extends to 2003, HMIP's policy should be geared to implementation of the Directive. In fact, your Department advised the CEGB in June 1988 that HMIP recognised that where there was a directive in force which specified total emissions for a particular class of plant, that would normally set the framework for their enforcement work.

I have explained the difficulties about reductions before 1993. But I agree that officials should discuss further.

I attach a copy of the Press Release which my Department have issued following my comments at NEDC this morning.

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

JOHN WAKEHAM

DEPARTMENT OF ENERGY

1 Palace Street
London SW1E 5HE
Press Office: 01-238 3347
Out of hours: 01-276 5999
Press Office Fax: 01-931 9893
Telex: 918777 ENERGY G
Non-Press Enquiries: 01-238 3368

NEWS RELEASE

On 6 May 1990 the above 01 codes will change to 071

65

4 April 1990

JOHN WAKEHAM ANNOUNCES £1.2 BILLION POWER STATION CLEAN UP

John Wakeham, Energy Secretary, said today that he expected 8GW of flue gas desulphurisation equipment to be retrofitted to coal fired power stations at a capital cost of around £1.2 billion.

Mr Wakeham was speaking at today's meeting of the National Economic Development Council in London.

He said: "I expect National Power and PowerGen each to retrofit 4GW of FGD equipment as part of Britain's commitment to the Large Combustion Plant Directive.

"National Power are already retrofitting the FGD to the 4GW Drax power station in North Yorkshire. I expect that PowerGen will also retrofit 4GW of FGD equipment, but it will be a matter for the company to announce which specific power stations will be fitted.

"These measures, together with other actions by the generators including switching to low sulphur fuels such as gas, will meet the 1998 sulphur dioxide reductions required under the Directive."

NOTES TO EDITORS

Under the EC Large Combustion Plant Directive Britain's sulphur dioxide emissions will need to be reduced by 40% by 1998 and by 60% by 2003.

The Directive lays down the targets to be achieved but does not stipulate the means by which the reduction must be carried out.

The remainder of the target of reduced emissions is expected to be met by adopting supplementary measures, such as the burning of low sulphur fuels.

Europol Budget PL45

THE RT HON JOHN WAKEHAM MP

Department of Energy
1 Palace Street
London SW1E 5HE
01 238 3290

The Rt Hon Douglas Hurd MP
Secretary of State
for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
Whitehall
LONDON
SW1A 2AH

4 April 1990

Dear Douglas

ELECTRICITY PRIVATISATION AND THE EC LARGE COMBUSTION PLANT DIRECTIVE

Thank you for your minute of 30 March. As you will see from my further letter of today to Chris Patten, I fully agree that we must convince the Commission of the effectiveness of the measures we expect the generators to take. I also agree that there can be no question of failure to reach the targets which we accepted in 1988.

I do not think that the Commission or other Member States would be justified in accusing us of breaking an "agreement". The Directive does not specify how SO_2 reductions are to be achieved; and they can hardly object if we choose a mix of measures which, as well as being equally effective and more economic, will be also environmentally beneficial since they will produce less CO_2, one of the main greenhouse gases.

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

Yours ever

JOHN

JOHN WAKEHAM

EUROPOL Budget PL 45

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CPA

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

The Rt. Hon. Nicholas Ridley MP,
Secretary of State for Trade & Industry,
1 Victoria Street,
London,
SW1.

CO
574.

3rd April 1990

Dear Nicholas.

EUROPEAN COMPANY STATUTE

Thank you for copying to me your letter of 21 March to Douglas Hurd.

In your letter, you mention the formal Opinion of the Council Legal Service on the legal basis of the proposal for the European Company Statute which endorses the United Kingdom's views on the choice of legal basis for the ECS. An excellent note on legal basis prepared by a group of Whitehall lawyers, chaired by the Cabinet Office Legal Adviser, was submitted to the Council Legal Service in order to assist it in preparing its Opinion. I have no doubt that the Council Legal Service's conclusions were influenced by the note. Whilst I appreciate that much careful work still remains to be done, this highlights the desirability that Whitehall lawyers should be given early notice of legal issues so that helpful and constructive advice can be given.

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

Yours ever,

Malcolm

EURO PDL
Budget pt 45

TPM

CDP
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Foreign and Commonwealth Office

London SW1A 2AH

2 April 1990

CDP

Dear Charles,

White Paper on Developments in the European Community: July - December 1989

I enclose a pre-publication version of the latest six-monthly White Paper on developments in the European Community. It has been approved by OD(E) and will be published on Tuesday 3 April.

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

Yours,
Stephen Wall

(J S Wall)
Private Secretary

C D Powell Esq
10 Downing Street

fuè MJ

cc ODCE)
C.O.

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

2 April 1990

Dear Leon.

I read with interest your letter of 12 March about recent developments in the Community. Good progress has indeed been made in a number of important areas of the Single Market programme, notably banking and competition, and I am grateful for the central role you have played in these achievements. We shall need to continue to push ahead in order to meet the 1992 deadline, and to avoid spoiling the good news by retrograde steps, for example in the area of social policy.

Yours ever
Margaret

The Right Honourable Sir Leon Brittan, QC.

ECL

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CCPC

Foreign and Commonwealth Office

London SW1A 2AH

30 March 1990

Dear Charles,

Recent developments in the European Community

Your letter of 13 March asked for comments on Sir Leon Brittan's open letter about recent developments in the Community.

Progress on the Single Market remains our top priority, and one that is being achieved. We agree that the areas for which Sir Leon Brittan is responsible have made good progress. In addition to recent agreements on the mergers regulation and banking legislation, there was political agreement in December on the life insurance directive. We continue to press for further progress - notably liberalisation of the insurance and investment markets, and of air and shipping transport, and hope for further successes under the Irish Presidency. In the telecommunications field, we are at the forefront of liberalisation, with Sir Leon Brittan's support. His campaign to tighten up the Commission's approach to state aids has also been welcome.

But the scene is not uniformly lighted by success. The worker participation clauses of the European Company Statute are a serious problem for us (although there has been a recent French proposal, supported by a majority of member states, that they be deleted). We think that the Social Charter and proposals under the Commission Social Action Programme pose rather more serious problems for the UK (and other member states) than Sir Leon Brittan allows. Nor does he mention wider pressure, which we regard as unwelcome, for institutional reform to strengthen central Community powers.

We see no need for a full substantive reply to Sir Leon Brittan. A draft brief acknowledgement, agreed with the departments most concerned, is enclosed.

I am copying this letter to the Private Secretaries to the members of OD(E) and to Sonia Phippard (Cabinet Office).

Yours,

Stephen Wall

(J S Wall)
Private Secretary

C D Powell Esq
10 Downing Street

CONFIDENTIAL

DRAFT LETTER FROM THE PRIME MINISTER

I read with interest your letter of 13 March about recent developments in the Community. Good progress has indeed been made in a number of important areas of the Single Market programme, notably banking and competition, and I am grateful for the central role you have played in these achievements. We shall need to continue to push ahead in order to meet the 1992 deadline, and to avoid spoiling the good news by retrograde steps, for example in the area of social policy.

The Right Honourable Sir Leon Brittan QC

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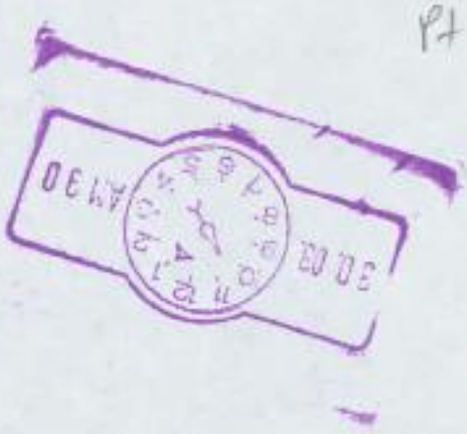

TPM SW
ccPC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

2 April 1990

PRESENTATION OF POLICY ON THE EUROPEAN COMMUNITY

Thank you for your letter of 27 March, covering the page proofs of the pamphlet on 'Presentation of Policy on the European Community'. The Prime Minister read this over the weekend. Her only comment relates to the section on Economic and Monetary Union. She thinks the first sentence should speak of economic and monetary cooperation rather than integration. And she questions the phrase "integrate Community economies" in the third sentence. The very point is surely that in 1992, the Community will have built a single market.

(C. D. POWELL)

Stephen Wall, Esq.,
Foreign and Commonwealth Office.

CC PC PS.

CONFIDENTIAL

FCS/90/074

SECRETARY OF STATE FOR ENERGY

Electricity Privatisation and the EC Large Combustion Plant Directive

1. I have seen a copy of your letter of 8 March to Chris Patten, and his reply of 22 March.

2. The targets set for the UK in the Directive took account of the high sulphur content of UK coal. So they were lower than those set for other highly industrialised member states. If we do not use flue gas desulphurisation (FGD) equipment to the extent originally envisaged the Commission and other Member States could accuse us of breaking our agreement. Our plans would get a hostile reception in the Community and from the Scandinavians; and the Commission might propose higher targets for the later dates when the Directive is reviewed in 1994.

3. So it will be important to convince our partners that the measures you propose are enough to meet our commitments on SO_2 emissions in 1993 and beyond. Failure to reach the targets would be extremely damaging, in view of the undertaking given in the Prime Minister's speech to the Royal Society on 22 March, and of the priority we attach to compliance with EC obligations; and it would be bound to lead to ECJ proceedings against us.

/4.

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4. I also share Chris Patten's concern about the period before the first target date. But our partners and the Commission would be surprised if our SO_2 emissions were to rise before they fell; my legal advice, like Chris Patten's is that this would breach the Directive, and the Commission could challenge our projections this summer.

5. So I agree that officials should do more work in this area to ensure that the plans we present are seen to be consistent with our legal obligations.

6. Copies of this minute go to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Secretary of State for Scotland and the Cabinet Secretary.

DH

(DOUGLAS HURD)

Foreign and Commonwealth Office
30 March 1990

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FCS/90/073

SECRETARY OF STATE FOR TRADE AND INDUSTRY

Presentation of UK Policy Towards the EC

1. There is unlikely to be a further meeting of OD(E) before Easter. I am keen that Francis Maude and his colleagues should, as proposed in my memorandum earlier this month (OD(E)(90)4), make a start soon on the coordination of work on the presentation of UK policy towards the Community. This has been endorsed by the Prime Minister (Charles Powell's letter of 11 March).

2. I should therefore be grateful if any further comments could reach me by 6 April. (We are already discussing with the Treasury tactics for lobbying on EMU.) If there is agreement on the approach advocated in Francis' paper, the next meeting of junior ministers on 18 April could consider how to take this exercise forward.

3. I should also like to go ahead with the proposals in Francis' paper on Implementation (OD(E)(90)5). Again, if there are any comments, I would be grateful for them by 6 April.

/4.

4. I am sending copies of this minute to the Prime Minister, members of OD(E), the Home Secretary, the Secretaries of State for Education and Science, Environment, Energy, Health, Transport and Social Security, to the Chancellor of the Duchy of Lancaster, Parliamentary Secretary to the Treasury and to Sir Robin Butler

DH

(Douglas Hurd)

Foreign and Commonwealth Office
29 March 1990

Europa : Budaor-Pilis

Ref. A090/796

PRIME MINISTER

Cabinet: Community Affairs

1. Mr Patten may report on the Environment Council which he attended on 22 March. Key points were:

- agreement on a Directive on freedom of access to environmental information; the principle, consistently promoted by the United Kingdom, is already reflected in the Environmental Protection Bill;

- agreement on Directives on the contained use and deliberate release of genetically modified micro-organisms, in line with current and proposed United Kingdom legislation;

- agreement on the Regulation establishing the European Environment Agency. Its location will be decided separately;

- in discussion of global climate change the Commission's attempt to secure Council endorsement for specific CO2 targets failed after Mr Patten advocated a specific action plan to reduce greenhouse emissions;

2. Mr Ridley may report on the informal meeting of Internal Market Ministers on 24-25 March, which Mr Redwood attended. Key points were:

- general agreement on the need to maintain the momentum of the Single Market. Mr Redwood called for faster progress on financial services, insurance and barriers to takeovers. In

a private bilateral with the Irish Presidency he handed over a list of Single Market measures on which a common position should be possible by June;

- an encouraging discussion of the European Company Statute, at which there was widespread support among member states for a French proposal to drop worker participation and tax provisions from the draft statute. No conclusions could be reached as this was an informal meeting, and Bangemann strongly defended the draft in its current form; but our hand should be strengthened in future negotiations.

3. Mr Gummer may be able to report on the latest position on the price-fixing negotiations in the Agriculture Council, which is continuing in Luxembourg.

4. Forthcoming meetings are:

29 March	Transport Council
31 March - 1 April	Informal ECOFIN
2-3 April	Foreign Affairs Council

R.R.B.

ROBIN BUTLER

28 March 1990

Foreign and Commonwealth Office

CONFIDENTIAL & PERSONAL London SW1A 2AH

From The Minister of State

28 March 1990

Stephen Flanagan Esq
Private Secretary to
the Financial Secretary
HM Treasury
Parliament Street
London SW1P 3AG

CQ. 2013

Dear Stephen,

MINISTERS' EUROPE GROUP, 19 MARCH

Mr Maude began by drawing attention to the OD(E) paper on presentation (OD(E) 90 4) now circulating, which Ministers will want to look at. The Foreign Secretary's proposal that this Ministerial group should coordinate presentation of the UK's EC policies has been broadly approved by the Prime Minister (see the enclosed letter from Charles Powell); we are setting up a small unit in the FCO to coordinate this exercise.

In the social field, Mr Maude said that the FCO and Department of Employment are already working out plans for reaching opinion-formers in other member states. On Single Market subjects, Mr Redwood pointed out that the DTI had successfully operated through foreign subsidiaries of UK companies to improve the capital adequacy directive. Mr Heathcote-Amory agreed that there was scope for more direct action on environmental issues. The European Environment Agency, when it is set up, might be encouraged to commission an independent study of the level of pollution in the Rhine and Meuse for example. He undertook to set in hand a short list of bull points on the UK's good environmental record - such as that out of the 68 EC infraction proceedings, only one was against the UK. He suggested that the Environment Secretary might launch a UK blueprint for clearing up the European environment. Mr Garel-Jones suggested following this up with signed Ministerial articles and perhaps a conference. An article by Ministers - personal copies of which might also be sent to selected European colleagues and journalists - could bring out some of the more glaring examples of our partners' bad performance in comparison with our own. Mr Maude referred to the scope for indirect activity. We should be working to stir up local pressure groups in other member states; our

posts could provide information on the key targets. There is also scope for complaints by UK citizens and organisations against other member states.

Mr Forth said that he was working up material produced by the DTI's compliance unit and would be sending it to Mr Maude shortly. Mr Maude referred to the OD(E) paper on implementation just being circulated; it recommended that the Foreign Secretary write to Delors suggesting 6 monthly implementation reviews by each Council, and to the President of the European Parliament encouraging him to scrutinize member states' compliance records more closely. Ministers will want to look at this paper. We have also asked posts to report on implementation in their host countries, and to report anecdotal evidence of shortcomings.

Mr Maude suggested that it might be worth reviving the DTI's bilateral seminars on deregulation, which had encouraged European businessmen to lobby their own governments about the costs of compliance of both domestic and EC legislation.

Ministers mentioned a number of specific areas where there is scope for taking initiative. Mr Garel-Jones said that the UK would come out well on standards of care for animals: publicity on this issue would cause severe embarrassment to some European colleagues. Mr Jackson referred to a recent informal conference on the ethics of embryo research organised by the Germans. Their aim was to influence domestic public opinion, currently very resistant, by showing that there was a European consensus in favour of embryo research. The UK could use similar tactics. Mr Heathcote-Amory suggested the import of toxic waste as an issue on which there was scope for changing public perception. Mr Eggar said that the best way of tackling social issues in Europe is to target the areas where others are vulnerable.

Mr Redwood raised German unification and integration into the Community; we needed to explain to the public why negotiations were necessary. Mr Jackson thought that we should not be out in front, with others sheltering behind us. Mr Maude mentioned the Commission paper being prepared on this. Mr Lilley drew attention to how much German unification would cost the Community. The UK is paying in £4.3 billion and getting £2.4 billion out. But there are no Commission figures for each country's contribution. Ministers agreed that we might ask MEPs to put down Questions about this in the European Parliament. It would be advantageous for these figures to be in the public domain.

Mr Portillo mentioned "A" points at Council meetings, which often cover issues which the UK has welcomed. He suggested that we should take advantage of their appearance on Council agendas as an opportunity for further publicity. Ministers agreed that it would be helpful if UKRep Brussels could

highlight any "A" points on which we had a positive story that Ministers could use either with the Brussels press or in London.

For the next meeting of the Ministers' Europe Group (18 April), we will circulate a short informal agenda; if there are any topics that other Ministers want to raise, please let me know.

I am copying this letter to Charles Powell, and to the Private Secretaries to the Paymaster General, David Curry, Timothy Eggar, Eric Forth, Robert Jackson, David Heathcoat-Amory, Douglas Hogg, Baroness Hooper, Michael Portillo, John Redwood and Gillian Shephard.

Yours sincerely

Nicola Brewer

Nicola Brewer
Private Secretary to
Mr Francis Maude

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

15 March 1990

Dear Stephen,

PRESENTATION OF UK POLICY TOWARDS THE EC

The Prime Minister has looked at the paper on presentation of UK policy towards the EC circulated under cover of the Foreign Secretary's memorandum. She is in general content with it and agrees it would be most useful if Mr. Maude continued to chair periodic meetings of junior ministers responsible for European issues, to coordinate the presentation of policy.

I am copying this letter to the Private Secretaries to members of OD(E).

Yours sincerely,

(C. D. POWELL)

J.S. Wall, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL

CDP C

dti

the department for Enterprise

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

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

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
01-215 5000

Telex 8811074/5 DTHQ G
Fax 01-222 2629

CDP 28/3.

Direct line 01 215 5622
Our ref PB2AJD
Your ref
Date 28 March 1990

Dear Charles

Thank you for sending me a copy of your letter of 13 March to Stephen Wall which enclosed the Prime Minister's copy of Sir Leon Brittan's round-robin letter describing the developments in his first year at the Commission.

As you say, the letter is a shade complacent. It also contains some distinctly unhelpful language, for instance on the Social Charter and the European Company Statute and particularly the ERM. But it would be a pity if this diverted attention too much from Sir Leon's achievements on the single market programme over the past year. His stance on competition policy, state aids and financial services has been a considerable help to us in achieving satisfactory outcomes on measures such as the Merger Regulation and the Second Banking Coordination Directive, and on the steps taken so far to liberalise insurance and telecommunications on a European scale. We shall of course be working to ensure that we are able to build further on these successes.

You may be interested to know that John Redwood is intending to send a short courtesy reply to Sir Leon's letter, since many of the topics he highlights fall within his ambit.

Copies of this letter go to recipients of yours.

Yours ever

MARTIN STANLEY
Private Secretary

Recycled Paper

Europoli Rudiger pt 45

CAPC (4)
(Letterman).

Foreign and Commonwealth Office

London SW1A 2AH

27 March 1990

Prime Minister

Dear Charles.

You might like to be warned on this

Presentation of policy on the European Community: Booklet

Richard Gozney's letter of 20 March promised a final version of the booklet. I enclose a set of page proofs. Apart from a few minor adjustments still to be made (eg the title to be printed in black, repositioning of one or two lines of text, removal of the duplication on page 2), these are replicas of the pages to go into the booklet (the latter will not be available until very shortly before the launch).

We are commissioning final printing for a launch date of 3 April.

Yours.

(J S Wall)
Private Secretary

C D Powell Esq
10 Downing Street

Britain in the Community: Europe in the 1990s

Helping Eastern Europe

The banner of economic and political reform is now being carried throughout **Eastern Europe**, and the European Community is acting as a symbol of freedom for its East European neighbours. At all levels we are working to establish strong democratic political institutions in Eastern Europe which will ensure that the iron curtain is never lowered again.

Those countries need help as they travel down the road of reform, to systems based on **free choice and open markets**. We and other members of the Community are responding effectively and imaginatively, throwing them a lifeline. How?

- by concluding trade and cooperation agreements which will help the Eastern European countries to begin new relationships with the Community.

- by funding projects to aid **agricultural reform**, provide **training** and promote **environmental protection**.

- by **tackling food shortages** and offering **humanitarian aid** in countries such as Poland and Romania.

- by setting up a **European Bank for Reconstruction and Development**, to stimulate the private sector and encourage enterprise.

The key is to assist these countries in the long, as well as the short-term, as they seek to create their own prosperity and, eventually, to stand on their own feet.

EUROPE IS GROWING UP.
It's a challenging time to be a European. In every way, the barriers are coming down.

First, **1992** is approaching. With Britain at the forefront as the Single Market Programme advances, the European Community has already agreed a series of changes which will have a fundamental effect on all our lives - at home and at work.

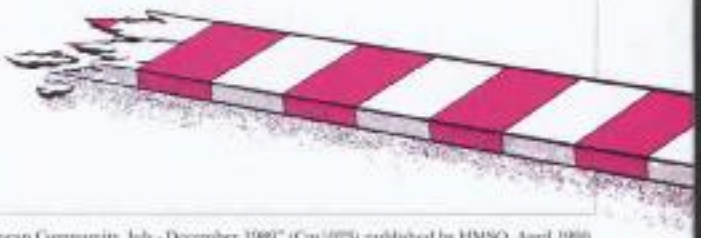
In creating a **genuine common market**, we can enjoy a greater choice of goods and services; promote business and employment opportunities and sharpen our competitiveness. And easier, cheaper travel will be available to all.

At another, more literal level, barriers are disappearing. The 1992 message has been heard loud and clear throughout the world, not least in **Eastern Europe** where it has encouraged the march of democracy and individual freedoms. The Community is playing a key part in promoting the process of economic and political reform there.

On the following few pages we've set out to explain some of the more important changes which have already taken place, and we look forward to others in the pipeline.

It's not just a good idea that you read about these changes, it's vital. 1992 is no longer a distant target; it is here and now.

For more details see "Developments in the European Community, July - December 1989" (Cm1023) published by HMSO, April 1990.



For more details see "Developments in the European Community, July - December 1989" (Cm1023) published by HMSO, April 1990.

Money Matters

Only three years ago European Community spending was out of control.

The **Common Agricultural Policy** designed to secure food supply and the welfare of farmers was actually encouraging over-production. Everyone remembers the butter mountains and wine lakes, and the problems over Britain's contribution to the budget.

But in 1988 Britain persuaded its partners to agree to control spending and begin the real fight against fraud. We are now seeing the fruits. In 1990, agricultural spending will be nearly £3 billion below the ceiling agreed in 1988.

The mountains and lakes are now a fraction of their peak levels. Beef stocks are down 80%. Cereals are down 55%.

With these successes in budgetary control, the Community has been able to make completion of the Single Market its top priority.

The United Kingdom firmly believes that by consolidating the Single Market, Europe's economy will be transformed, stimulating competition and putting pressure on all Member States to lower inflation and foster an economic climate which will attract both capital and labour.

Health & Safety at Work.

Working anywhere within the Community, you will be protected by **health and safety standards** which, in many areas, reflect our comprehensive legislation in Britain. The United Kingdom also supports the idea of a new European Health and Safety Institute.

The Environment.

In the UK we have always maintained that many **environmental problems** cannot be solved by just one country.

The Community has now adopted over 250 measures to protect our environment. These range from the problems of pollution, such as acid rain and making lead-free petrol easily accessible, to conservation issues like the banning of products made from the skin of baby seals.

The next challenge is **global warming**. The Community and Member States will have an important role in international efforts to reduce carbon dioxide and other greenhouse gas emissions.

The United Kingdom has welcomed the new European Environment Agency.

Training & Education.

Training and education are the most important keys to our future.

That's why special programmes are being introduced that will help young people, students and academics spend time in other European countries learning new skills, and new languages. Training programmes will help Europe to respond to rapid technological change.

Professional qualifications will soon be recognised throughout the Community, allowing professionals to take up jobs anywhere in Europe without requalifying.

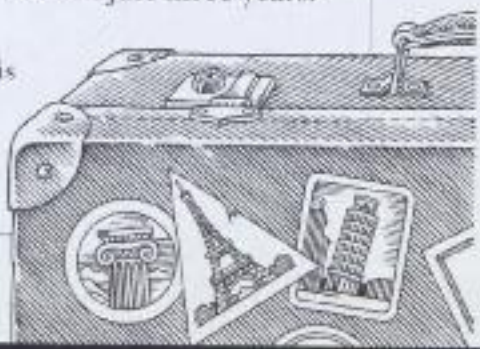
All of us will soon have the right to live and work wherever we like in the Community, as long as we have a job or adequate resources.

Travel.

Making it easier for people to travel is a major objective for the Community, and for the United Kingdom. The aim is to maximise mobility and minimise customs and immigration checks. But we shall have to keep up our defences against drugs and crime too.

And we want **travel to be cheaper** as well as easier. We are pushing for more competition between airlines - creating more routes and lower fares. Deregulation has already reduced the economy fare on the London - Dublin route from £176 to £114 in just three years.

This is what the United Kingdom is pressing for: the **freedom to choose,** throughout the Community - creating a **practical "People's Europe".**



- **Public purchasing** is being opened up, making the supply of goods and services to the public sector and big utilities throughout the Community more competitive.

- To save time and money, **customs formalities are being reduced**. Broad agreements have been reached on the collection of **VAT after 1992**.

- To make it easier to sell in different markets, **common industrial standards** and a consistent approach to testing and certification of products are also being agreed. For example, a recent directive has introduced comprehensive protection on toy safety.

These and many other measures will change the face of business in Europe. Indeed, much of the Single Market has already arrived, long before the 1992 deadline.

Implementation.

It is not enough just to agree on these measures. They have to be implemented in each Member State, and some are lagging behind.

But the UK's record in making the Single Market a reality is second to none. We support efforts to keep implementation up to date, to ensure that Europe's business enjoys the same opportunities in all parts of the Community.

Putting People First

We will all benefit as individuals from the Single Market of 1992. 60% of the programme has already been agreed.

The changes taking place are helping to create a **"People's Europe"** in which consumers' interests come first.

One of the main aims of the 1992 process is to remove restrictions which prevent people from buying the goods and services they want at prices they can afford.

More **goods and services** will become more freely available. There will be more competition, giving consumers more choice - from the food you eat to the television programmes you watch.

You will be able to **move money** more easily from your UK bank account to one in Italy or France. Transaction costs are coming down and methods getting simpler.

You will be able to select **life insurance** policies or **unit trusts** from companies in other Member States who may be able to offer what you want at a more reasonable price - again, introducing healthy competition across the Community.

Economic & Monetary Union

The Community is committed to moving towards closer economic and monetary integration.

A package of changes has been agreed, which will form Stage One of this process. 1992 is a key element, because it will do so much to integrate Community economies. Stage One will also include:

- creating a **single financial area**, opening up the banking, insurance and stock markets to give you a wider choice of services and allowing much freer movement of money.
- closer coordination of Member States' economic policies.
- **reducing state subsidies** to industry.

All this is a major undertaking and will take some years to complete. The debate has started on what should follow Stage One. A conference on economic and monetary union will start later this year. Views differ on the best way forward. The UK is playing a full part in the discussions.

The pace of agreement on new measures is speeding up - over 130 were agreed in 1989 alone - covering **financial services, trade, transport and the free movement of people**.
Here are just a few of the measures already agreed:

- the **abolition of all exchange controls** in the Community. Soon money will be transferable from one Member State to another without penalty or restrictions on amount.

- **banks will be able to operate in *any* Member State** once they have authorisation to do so in just one.

- a scheme for **lorries** to carry loads freely throughout the Community, reducing the current, uneconomic system which prevents hauliers picking up extra trade abroad.

- an **agreement on Merger Controls** for large scale mergers, which will save time and money by setting clear and uniform competition-based rules centred around a "one-stop-shop" system.

Other important improvements are gradually being introduced.

- The old monopolies are being dismantled. **Telecommunications** is becoming more competitive to provide for the needs of a dynamic business market in Europe.

Making Europe Your Business

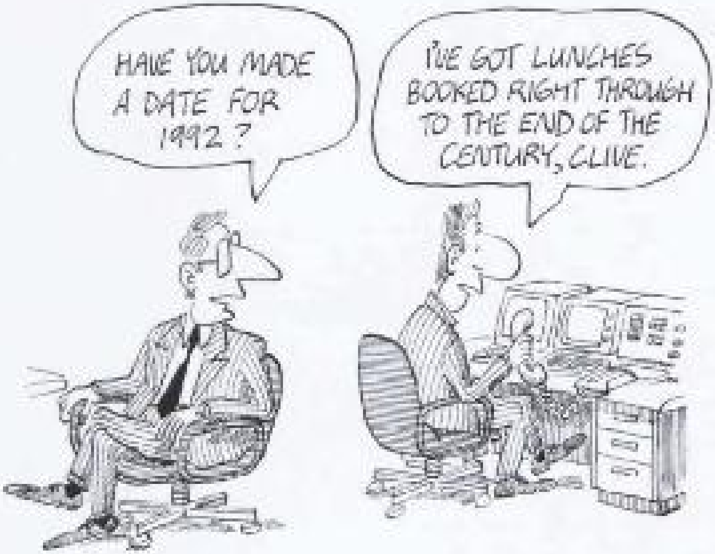
1992.

The European Community is on the brink of achieving one of its most remarkable goals: the **single European market**. For thirty years this seemingly impossible dream was delayed by problems over budgets and runaway agricultural spending.

But now, thanks to hard work by the UK and a number of other countries, we are beginning to see some of the most dramatic changes to business life in the history of modern Europe.

Although the 1992 deadline is extremely tight, the timetable is on schedule: 164 out of 279 measures in the original Single Market proposals mapped out in 1985 had been agreed by the end of 1989.

Foreign &
Commonwealth
Office



This booklet has been produced by the Foreign & Commonwealth Office and highlights the main points in the latest, six-monthly White Paper "Developments in the European Community, July - December 1989", (Cm 1023) published by HMSO, April 1990.

For further copies of this booklet, please write to:
Foreign and Commonwealth Office ATL, PO Box 116, Hayes UB3 1BR

THE RT HON JOHN WAKEHAM MP

Department of Energy
1 Palace Street
London SW1E 5HE

01 238 3290

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

27 March 1990

Dear Norman

EUROPEAN COMMUNITY FRAMEWORK PROGRAMME

I am afraid I was not aware of your letter of 26 February to Douglas Hogg until I noticed the reference to it in his letter of 16 March to you.

As you have pointed out, the decisions on the negotiating line agreed in E(ST) in December were on the basis that the EUROPES system would continue. My own agreement to this was on the basis that the whole of that system would continue, including the existing baseline. It would not have been possible to give agreement to the negotiating line without the ability to estimate the implications for my Department that such a basis provided.

I accept much of what you say about the need for a EUROPES system to control public expenditure. As I said in my earlier letter, one of my concerns about a redistributon of EUROPES baselines is precisely that it destroys that discipline. These are doubtless matters which will be considered further when officials meet shortly to discuss the question of redistribution of the baseline.

Irrespective of the question of redistribution, like Douglas Hogg, I welcome your recognition of the mismatch between domestic and EC R&D. I too will be looking to the Survey to deal with this by providing adequate levels of funding for domestic R&D.

I am sending copies of this letter to the Prime Minister, members of E(ST) and to Sir Robin Butler.

Yours ever

JOHN WAKEHAM

fst.sb/Lilley/26.3.90.2

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

NBPM
GBB 27/3

Michael Howard MP
Secretary of State for Employment
Employment Department
Caxton House
Tothill Street
LONDON SW1

26 March 1990

Dear Secretary of State

THE MERGERS DIRECTIVE WILL REQUEST IC ACQUIRES

Thank you for your letter of 9 March in reply to mine of 3 March. I note your reluctance to accept the Mergers Directive as it currently stands, but you will have seen the subsequent letters from Francis Maude and John Redwood who support the proposal that the UK should seek a Council and Commission Minutes Statement on article 14a(1) in order to preserve our wider position on worker participation. I hope we can therefore agree that this should now be our object in negotiations. We are also agreed that we should explore the possibility of an amendment to the unsatisfactory article 14a(2).

Francis has suggested that we should be prepared, as a fall-back, to accept a unilateral Minutes Statement adopted by as many member states as possible. I am not convinced that we should be prepared to accept the Directive if it is clear that the UK's interpretation of article 14a is not shared by most other member states. To do so would carry the risks to our wider position on worker participation which we have been concerned to avoid.

I therefore propose that the furthest we should be prepared to fall back in negotiations is to a Minutes Statement adopted by the Commission and a majority of member states. I note the importance you attach to securing an amendment to article 14a(2) but if we cannot secure support for this, I suggest that we should also seek to have the effect of this clause clarified in a Minutes Statement, again supported at least by the Commission and a majority of member states. In the event that we cannot secure majority support for these Minutes Statements, I continue to think that the risks are too great for us to accept the Directive as a whole.

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fst.sb/Lilley/26.3.90.2

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I understand that officials are in consultation over possible texts. I am encouraged that initial contacts with the French have shown that they share some of our concerns. I am sure that the more we can build on this, the greater will be our chances of securing wider support for our objectives.

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

Yours

PETER LILLEY

Agreed by the Financial Secretary and signed in his absence.

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(2)

PRIME MINISTER

EUROPEAN COMMUNITY: CONSTITUTIONAL ISSUES

I think you will find the attached note by the IEA on European constitutional issues - to be published later this week - of great interest. It corresponds closely with many of your own views.

In essence the paper distinguishes two alternative ways forward in the development of the European Community:

- the centralist way, which involves strengthening the powers of the existing central institutions of the Community and creating new ones (such as a second chamber to the European Parliament). Community institutions would take priority over national institutions. Majority voting would be the rule.

- the constitutionalist way. This would establish the primacy of the European Council. The Commission would be restricted to a civil service or agency role. The Treaty would be amended to give explicit recognition to the role of national parliaments, while the European Parliament would be no more than a forum, and the role of the European Court would be that of impartial arbiter. There would be constitutional limits on the Community budget.

The paper puts the choice in the context of how to deal with the problem of German 'dominance' in the EC. The centralist solution is to tilt the centre of gravity towards supranational institutions at the centre of the Community: the constitutionalist sees it more in terms of preserving the rights of minorities or smaller countries versus a dominant partner.

I have underlined the key passages for you to read. I think the overall approach has much to commend it, even though some of the

specific proposals are probably non-negotiable. It would be a useful quarry for ideas at an IGC on institutional questions, and for a son-of-Bruges speech.

C.D.P.

(CHARLES POWELL)

26 March 1990
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IEA Inquiry

INSTITUTE OF ECONOMIC AFFAIRS 2 LORD NORTH STREET WESTMINSTER LONDON SW1P 3LB

Number 17 29 March 1990

THE NEW EUROPE: CONSTITUTIONALIST OR CENTRALIST?

Frank Vibert

Senior Research Fellow, Institute of Economic Affairs

SUMMARY

This paper looks at two alternative patterns of institutional development for the European Community. One model (referred to as the 'centralist' model) involves building up the central institutions of the Community in a power sharing arrangement between Council, Commission and European Parliament. The other model (referred to as the 'constitutionalist' model) is one of diffused powers. In this model the European Council and Council of Ministers are the key bodies for collective decision taking by the Community while the democratic systems in member states provide the basis for diffused powers. This model would preserve different jurisdictions for the expression of different political preferences in Europe and for the testing of different policies. It would encourage democratic diversity in Europe.

After outlining the salient features of each model, the paper discusses the different theoretical considerations underlying the two and then outlines certain practical considerations, for example, dismissing the claim that the constitutionalist model would reduce the momentum for cooperation in Europe.

The theme of the paper is that there exists today a possibly unique opportunity to reshape Europe and its institutions. As a result of the breakdown of post-war barriers in Europe, the Community itself needs to be reshaped as part of the revised architecture for the new Europe. The constitutional provisions of the existing Treaties are flawed. They do not provide a suitable basis for the cooperation now possible in a wider European setting and which will need to cover a broader range of issues, including eventually, aspects of defence and security arrangements in Europe.

The paper recommends the constitutionalist model as providing a more robust framework for taking advantage of Europe's new opportunities. The centralist model which involves a distinction between 'senior' level central institutions of the Community and 'junior' level status for the institutions of member states (their parliaments) is the wrong course to follow. Discussions on institutional changes in the Community will begin later this year. This **IEA Inquiry** recommends that Heads of Governments insist that such discussions should consider constitutional issues in as wide a framework as possible.

THE NEW EUROPE: CONSTITUTIONALIST OR CENTRALIST?

Frank Vibert

I. INTRODUCTION

This paper follows two earlier papers examining specific Community institutions (the Commission and the European Parliament). It looks at constitutional arrangements in the European Community in their entirety.[1] It puts the points made earlier about the Commission and the European Parliament in the context of Community Treaty arrangements as a whole. As discussed in these previous papers, when looked at as constitutional arrangements the provisions of the existing Treaties are deeply flawed. New constitutional arrangements are needed in order to take advantage of the new setting in Europe. The time is now ripe to debate what these arrangements should be. This paper sets out the two main alternatives and looks at their theoretical background as well as the practical issues. The tactical options as to how to go about Treaty revision are also briefly mentioned.

II. THE OPPORTUNITY

The collapse of post war barriers in Europe provides an opportunity to reshape Europe and its institutions. Until now, proposals for the development of the European Community and its institutions have assumed that the wider European setting could be handled as a subject apart from the Community's own institutional evolution. This is no longer possible. The countries of Eastern Europe have made much faster strides towards political pluralism than anticipated; their desire to introduce market-oriented reforms also appears more whole-hearted than earlier seemed likely. Their interest in eventual membership or closer association with the Community has been indicated. EFTA countries have also made clear their desire to move rapidly towards new arrangements with the Community. As a result the Community's own evolution must now be seen as part of a wider drawing together in Europe. Not only must the Community's institutional evolution be seen in this wider context, but the agenda of issues will inevitably broaden.

The reshaping that is required in Europe must take place on several different levels. First, the economic motor of the new Europe must be provided by extending the Single Market over

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1 IEA Inquiry No.13, **Europe's Constitutional Deficit**, 27 November 1989 and IEA Inquiry No.16, **The Powers of the European Parliament: The Westminster Deficit**, 12 March 1990. These two papers include detail on concepts such as subsidiarity as well as details on the Commission and where the review and scrutiny role of the European Parliament might be strengthened. These more detailed points are not further discussed in this overview paper which is concerned with the general thrust of institutional reform in the Community.

time to as many countries as possible. This includes not only the countries of EFTA but also those Eastern European countries that are pursuing market-oriented policies in a pluralist political system. This extended market must also be fully open to global trade and finance. Secondly, the new security arrangements needed in Europe call for a restructuring of the NATO alliance, for new burden sharing arrangements between the United States and its European partners and new sharing arrangements among the European members. Within Europe, a distinction needs to be made between the **financial** contributions that a united Germany can eventually make to security arrangements as compared with its **military** contribution in terms of forces. For the economies of France and U.K. to carry a larger financial share of Europe's new defence and security arrangements will aggravate economic imbalances in Europe even though they can and must provide a relatively large proportion of its military preparedness. Because of these financial and economic implications, putting Europe's new security arrangements in place will involve not only a reshaping of NATO but also the eventual need for the European Council and the Council of Ministers (or a subgroup of each) to include aspects of defence arrangements among the items on their agenda. Thirdly, political cooperation in the new Europe requires an overhaul of the constitutional arrangements provided in the Treaties establishing the European Community.

The purpose of the overhaul of the constitutional provisions of the Community Treaties would be:

- to correct the deficiencies of the existing Treaties;
- to provide a flexible basis for cooperation in a wider European setting and with a broader political agenda;
- to place the evolution of Europe's political institutions on a sounder constitutional basis.

Such a review of Community Treaties is now timely. They should be subject to the same scrutiny as other institutional arrangements for the new shape of Europe. The rejection of centralised bureaucratic government in Europe and the connection between market-oriented economies and the assertion of individual liberties is a challenge to many of the existing tenets of the Treaties. In the past,constitutional revision of Community Treaties has been rejected as divisive and unnecessary. Constitutional change can no longer however be avoided in Europe's new setting.

III. THE ALTERNATIVES

Two different models for future institutional development in the European Community can be distinguished. The first is a **centralising** vision applicable mainly to existing Community members. It involves building up the central institutions of the Community (in particular the Commission and the Parliament), the putting in place of new central bodies (such as a Second Chamber of the Parliament) and a sharing of power at the centre between Councils, Commission and Parliament. New Treaty provisions would accentuate the normative element of existing articles. Hence the Treaty would be further directed towards an end of state of **'union'** in the sense of an eventual unitary state for the Community grouping. The Court of Justice would play an activist judicial role in facilitating institutional and policy evolution to that end.

Under the centralist vision for Europe, Community level bodies such as the European Parliament would be clearly designated the 'senior' bodies in the political grouping. Conversely, institutions of member states (such as national parliaments) would be clearly designated as 'junior' bodies. This would be reflected (under the existing primacy of Community law) in new Treaty provisions incorporating such principles as 'subsidiarity' and by distinguishing between different classes of legislation.

The second model is a **constitutionalist** vision. According to this view, political power in the new Europe should be diffused. This means building on the parliamentary frameworks of member states as the basic element in political cooperation, with the Heads of Government in the European Council and Ministers of national governments in the Council of Ministers affirmed and strengthened as the key institutions for collective action by the Community and as the key link to other countries in Europe. The constitutional provisions of Community Treaties would be amended and supplemented to provide a framework of rules oriented to preventing the abuse of power by Community level institutions. The Court of Justice would be referee of the rules, not a maker of laws within an activist frame of reference. 'Union' would be seen as a **process** for achieving collective objectives in Europe, not as an end goal of a unitary state.

Under the constitutionalist view, a wide array of governmental institutions is seen as necessary for Europe's development. While the European Council and Council of Ministers can provide the capacity for collective action at the Community level, the continued vitality of the parliamentary framework of member states is seen as an essential safeguard against the accumulation of power in any one central institution or by any group of states. The parliamentary frameworks of member states provide the key means to keep participatory democracy flourishing, as well as the means to provide for different jurisdictions to test different policies and to reflect different preferences. The aim is to establish the **middle ground** between excessive centralisation

where all key powers are concentrated at the Community level and excessive decentralisation under which collective action becomes impossible. Each of these two different visions are set out in further detail below.

IV. THE CENTRALIST VIEW

There are four essential elements in the centralists' view of how the Community should evolve:

(i) the strengthening of institutions at the Community level in a power sharing arrangement at the centre between Council, Commission and the European Parliament;

(ii) an incorporation of new Treaty provisions demarcating the enlarged sphere of the central bodies;

(iii) supplementary powers for the Court of Justice to adjudicate and enforce these demarcations;

(iv) a change in Community 'decision rules' in order to extend the scope of majority voting and thus make action at the centre less vulnerable to blocking by member states.

Power Sharing at the Centre

The lynchpin of the centralist view of Europe's institutional evolution is a sharing of powers at the Community level between Council, Commission and the European Parliament. In order to achieve this objective, enhancements are envisaged for each of these bodies. These enhancements consist of new institutional elements at the centre, accompanied by an enlargement or consolidation of the powers of the Commission and Parliament. The key enhancements are as follows:

- the work of individual ministers in the **Council** would be guided by a new body of 'superministers' (Ministers for European Affairs) sitting as a permanent ministerial body in Brussels;

- the **European Parliament** would receive new legislative powers (the authority to legislate directly) and new financial authority (over the expenditure and revenue side of the Community budget) including the powers to tax;

- the **European Parliament** would, in addition, receive a second chamber, either of members from national parliaments or possibly the 'superministers' plus deputies would form the nucleus of a second chamber;

- the **Commission** would have its political direction role confirmed[2] and this role as well as the Commission's right to initiate and propose on Community matters would be 'validated' by the direct election of the Commission's President or by a confirmation voting procedure of the European Parliament.

Demarcation and Adjudication

The second element sought by the centralists is for demarcation provisions to be added to Community Treaties in order to underpin the enlargement of powers involved at the centre. Key among these is the principle of **'subsidiarity'**. This principle would demarcate between the sphere of responsibility of Community level bodies and the institutions of member states. Related Treaty additions are 'subject matter' reserves which would define the subject areas within the jurisdiction (in certain cases the exclusive jurisdiction) of the Community level bodies, and a distinction between laws applied directly by the centre (sometimes referred to as 'organic laws') and the laws of member states. 'Organic' laws would have primacy. These additions are interconnected in the sense that the area of jurisdiction for the Community level bodies would reflect the principle of 'subsidiarity' and might be implemented through 'organic laws'.

The supplementary powers envisaged for the Court of Justice are concomitant with this institutional and Treaty based assertion of powers at the Centre. The additional powers would relate to the interpretation of such principles as 'subsidiarity', the application of 'organic' laws

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2 This role is encapsulated in Article 155 which expresses the 'guardian' role of the Commission as follows:

'In order to ensure the proper functioning and development of the Common market, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant hereto are applied:
- formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;
- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty.'

emanating from the centre, as well as the adjudication on the competence of central bodies in different subject areas.

Majority Voting

The final element in this centralist view of Community development is a change in the 'decision rules' within the Community - notably in the Councils. The aim would be to make **majority voting** (which currently applies to decisions on the Single Market as well as some other areas) the main or only rule for Council decisions. The unanimity requirement would be restricted, or abolished. The veto convention (the so called Luxembourg compromise) would be set aside. The purpose of these changes in the decision rules would be to reduce the possibility of member states in the minority being able to block action by the majority.

For reasons of both presentation and tactics, the four key ingredients in the centralist view of institutional development may be presented in their component parts rather than as a whole. However, they should be seen together as a package or as an inevitable and intended sequence. The change in the decision rules makes the enhanced powers of the central bodies easier to invoke; the demarcations enlarge the sphere of their operation and the Court of Justice enforces the new legal basis.

Constitutionalist Objections

The constitutionalist has three main objections to this package. First, the sharing of powers at the centre will inevitably lead to **confusion** as to which body should be held responsible for a particular set of policies. This erodes the value of the electoral vote in the democratic process because the effectiveness of voting depends on the elector being able to allocate responsibility and to vote to change those responsible if the voter disagrees with the policies. The confusion of responsibility also gives interest groups much greater play in the political system because they have greater opportunity amidst an unstable jostling for power and because their actions are less easy to identify. Indeed, because of the erosion of the value of the vote, the individual elector has to find other ways of channelling his views and interest groups provide the next best channel. It is however very much a second best solution. Interest groups can only give expression to a narrow range of a voter's views; the political process becomes murky, and money (needed both to organise and persuade) becomes a much larger feature of the political system. If the central bodies are prone to regulate economic interests, then money interests become that much more prominent in the system because their vital interests are at stake. All of these features are characteristics of the American system of government but they are not desirable either in the United States or in Europe. They lead to a cynicism about the political process and a further demotivation of the voter. Low

voter participation rates in the United States are no coincidence. Europe has a chance to avoid the blemishes of the U.S. democratic process. The opportunity to find alternatives should be taken.[3]

A second objection of the constitutionalist is to the key role accorded to the **bureaucratic** element in the power sharing arrangements proposed by the centralist - namely the Commission. The apologists point to the important role played by all bureaucrats within national and international frameworks. However, the powers accorded the Commission extend far beyond the customary. The 'guardian' role reflected in Article 155, the numerous references in the Treaties to the initiating and proposing functions of the Commission and its 'middleman' position in the procedures of the European Parliament go well beyond the civil service and agency functions that are appropriate for bureaucracies. The political direction role accorded the Commission reflects a distrust of the democratic process (understandable in the early post war period) and a belief that a guiding 'enlightened elite' has a role to play outside democratic channels. For the constitutionalist such elitism has no place. Democracy may not provide the most enlightened or efficient forms of government but it enshrines other more important values. Proposals to have the Head of the Commission directly elected or validated by an indirect electoral process only aggravates the problem. It introduces a personal element into the central bodies of the Community which is avoided by the rotating leadership among the group of elected Heads of Governments in the Council. It raises the possibility of the Commission obtaining a pre-eminent role at the centre by virtue of superior cohesion in relation to the Parliament and the Heads of Government. This would take Europe a step towards an American presidential system with all the drawbacks of over-personalised government without any of the safeguards of the American constitution. For the constitutionalist, the direction of change must be in the opposite direction - to rid treaty arrangements of the political role accorded the Commission.

The third objection of the constitutionalist is that the new Treaty provisions proposed by the centralist and intended to demarcate the enlarged sphere of the central bodies and the role of the Court of Justice, will work not to safeguard other jurisdictions but to **emasculate** them. The distinctions offered by such concepts as 'subsidiarity', 'organic laws' and 'subject matter reserves' are vague, subjective and open ended.[4] They will permit a gradual or rapid further assertion of

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3 The centralist may attempt to justify the sharing of powers between Council, Commission and Parliament as a form of 'separation of powers'. It is, however, a travesty of that concept. For a discussion of what is intended by a separation of powers, see for example F.A. Hayek, 'New Studies in Philosophy, Politics, Economics and the History of Ideas', 1978, Routledge and Kegan Paul.

4 For a recent expression of legal reservations see, 'Note by Counsel to the Speaker - Subsidiarity;' in Minutes of Evidence, 'The Operation of the Single European Act', House of Commons Foreign Affairs Committee, Wednesday 17 January 1990.

power at the centre. The problem is accentuated by the role accorded the Court of Justice. As noted by a former British permanent representative to the Community, 'the Court's judgements, rather naturally tend in the direction of strengthening the role of Community law'.[5] For the constitutionalist, the purpose of Treaty revisions would be to correct any such bias. Instead of the Treaties providing a framework for interpretative activism by the Court with a centralising tendency, the aim of revisions should be to emphasise the role of the Court as an impartial arbiter.

These objections of the constitutionalist to the centralising vision of institutional development in the Community are not necessarily fatal. As noted at the outset, the member states of Europe need an increased capacity to act collectively; institutional arrangements are needed to bring together a wider grouping of European states in various forms of association or membership; and, a broader political agenda may also need to be addressed by the Community. It is therefore incumbent on the constitutionalist to set out an alternative pattern of development that will fulfil these objectives.

V. THE CONSTITUTIONALIST APPROACH

The constitutionalist approach is built around the following key elements:

- The primacy of the **European Council** supported by the Council of Ministers for arriving at collective decisions in the Community would be brought out clearly. New arrangements might be needed in addition so that the Councils can bring Heads of Governments and Ministers of other European countries into closer association. The Commission's functions would be restricted to a civil service and agency role.

- Explicit recognition would be given in the Treaties to the **parliamentary systems** of member states as the source of authority for Heads of Government and Ministers at the European Council/Council of Ministers level. The function of the parliaments of member states to act as chambers of debate and scrutiny in respect of issues for collective decisions to be taken at the Councils (as well as to perform as Assemblies for issues concerning only the particular member state) would also be explicitly recognised in the Treaties.

- The role of the European Parliament would be defined as a **forum** for additional support for the Assemblies of member states for the review and scrutiny of policies

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5 Sir Michael Butler, 'Europe: More than a Continent', 1986 Heineman.

undertaken by the Community collectively. By virtue of its proximity to Commission, Council of Ministers and COREPER, the review role would usefully focus on the economic effectiveness of Community spending programmes and as a check on any abuse of powers by the Commission in addition to its current pre-legislative focus.

- Decision rules of the Community Treaties would be changed in order to incorporate a right of **veto** for member states and (probably more importantly in practice) to incorporate provisions enabling a member state in a minority to opt out of a collective decision. The opting out provision could be expressed in the form of different types of constitutional reserves (executive, legislative and popular).

- Treaty provisions relating to the Court of Justice would be amended to ensure its functioning as an **impartial arbiter** of Community processes rather than encouraging a law making tendency towards promoting an end state of 'union'. Provisions enabling it to take more effective action against the abuse of powers would be strengthened.

- New economic provisions might be included in the Treaties to provide a further defence against abuses of powers and to guard against an accretion of power by the Community acting collectively. These would be expressed in terms of **constitutional limits** on the size of the Community budget (at say a fixed proportion of the GNP of member states) and an obligation on the monetary authorities to keep inflation in the 0-2 per cent a year range. (Analogous to the Bundesbank Articles which enjoin it to preserve the value of the currency.)

The overriding purpose of these arrangements would be to establish the middle ground between the need for member states to be able to take collective action on a broad agenda of issues as a Community while preserving the vitality of different jurisdictions. The European Council and Council of Ministers would have the capacity to act collectively on all issues but the parliamentary systems of member states would have a pivotal role in providing a diffusion of power among different jurisdictions. The trimming of the powers of the Commission together with the extension of the review and the scrutiny role of the European Parliament would help guard against bureaucratic centralisation. The composition avoids the horizontal distinction in structures between senior bodies at the Community level and institutions of member states relegated to a junior level which is made by the centralists.

The changes envisaged by the constitutionalist in the decision rules of the Community are an integral feature of the balance being sought between collective decision taking and diffused powers. The veto power is one for highly restricted use. It ensures that all members go along with a policy of fundamental importance (or possibly a constitutional change). However, it involves the cost of blocking all members if a single member does not concur. The opting out provision is a more flexible device. It preserves the incentive for the majority in the Councils to obtain unanimous consent. However, if there is an immovable minority view, the majority can proceed in their own jurisdictions. Different preferences among different jurisdictions are preserved. Different policies can be tested and compared. It recognises that virtue may lie in divergencies rather than in harmonisation.

Would ministerial Councils abuse their power if clearly given the key role? There are many restraints - their members would need to retain their majorities in national parliaments; the Treaties would contain new provisions against the abuse of powers; and the Court of Justice would be placed in an impartial setting. The European Parliament too would exercise a more extensive review and scrutiny role. In addition, rotating leadership in the Councils guards against personalisation of power.

An important objective of this structure is to facilitate a widening of the Community. The suggestion by the present head of the Commission (Jacques Delors) is for a Europe of concentric circles. The present Community (or an even smaller nucleus) would accept to be bound by the centralist model. Other states of Europe would arrange themselves in different degrees of tightness around the perimeter. This division of Europe's member states into first class, second class and third class members is repugnant. What historical basis exists to distinguish between Belgium, Austria and Hungary as first, second and third class Europeans respectively? The problem arises from the narrow bureaucratic vision of the centralist. By contrast, the constitutionalist model, with collective action at the ministerial level and the institutional bed-rock remaining with member states, provided a more robust framework for the flexible relationships which can now begin to be extended throughout Europe.

VI. THEORY

Underlying the two different models of centralist evolution for Community institutions or the constitutionalist alternative, are different theoretical considerations. The centralist posits a close relationship between optimum market size and the optimum size of political unit and identifies each with the present Community grouping. Phrases such as 'political unity must follow economic unity' reflect this kind of postulate. The constitutionalist is more concerned with processes than end

states, rejects the kind of correlation between market size and optimum political unit size advocated by the centralist and sees optimum market size and flexible political arrangements extending well beyond the present Community. There are three main considerations underlying this theoretical debate and each is outlined below.

The Range of Public Choice

The first consideration relates to public choice. Interdependence among Europe's economies means that certain policies can only be offered at the level of collective action of all member states or can most effectively be offered there. For example, it is widely accepted that external trade policies are best set by the Community collectively. Defence and security arrangements are in fact a good example of policies which can best be offered at the collective level, which are not offered by the present Community but may need to be addressed in the future. The centralist draws the conclusion that the centre of gravity for political direction must therefore be at the Community level and the key policy levers be exercised by the Community's central institutions.

The constitutionalist starts from the same point of departure. It is accepted that public choice is enriched by policies that can be offered through collective action by the Community. For this reason, in the constitutionalist model the Councils are the key body for collective action, with the potential to act collectively over a broad range of policies.

However, the constitutionalist also qualifies his view of the desirability of exercising public choice at the Community level. The number of public policies that are best offered or can only be offered at the level of collective action is limited. Furthermore some policies which may become offerable at the Community level may be undesirable (for example the renewed scope for market interventionist policies). Moreover once powers are established at the centre they may be used to usurp control over other policies that do not have to be offered at the level of collective action. In respect of this last point it is bureaucratic empire building that is one key concern of the constitutionalist but not the only concern.

Because of these qualifications, the model of the constitutionalist strips the Commission of its political direction role. It also emphasises the need for strong constitutional rules against the abuse of power, including budget and monetary rules designed to make an assertion of powers at the centre more difficult, as well as to check the in-built bias of politicians to offer policies without the means of payment. In short, the constitutionalist attempts the difficult balancing act between according the Councils the power to adopt collective policies wherever they may best be offered, combined with strong constitutional rules against the abuse of power and tendencies for power to accrete at the centre. The proposed balance looks back to the separation of powers of classical

liberalism[6] between specific legislative acts (agreed by the Councils) and general rules of political conduct (enshrined in the new provisions envisaged for the Constitution). It also rests crucially on the diffusion of powers achieved by maintaining the prerogatives of the democratic systems of member states.

Clubs, Unions and Decision Rules

The second theoretical consideration relates to the effectiveness of collective action in clubs, alliances and unions and, by analogy, in the Community. Broadly speaking, a union is likely to be more effective than an alliance because it can exercise 'coercion' over its reluctant members (the 'coercion' is accepted voluntarily through the decision rules of the union). Thus the well known problem of 'free riders' is avoided. The centralist advocates the desirability of this kind of 'coercion' in the Community and it is reflected in the preference for the decision rule of majority voting. The terminology of 'union' in the preamble of the existing Treaties is used to justify this general approach to collective action by the Community as well as the centralists' frequent desire to see an eventual end destination of a unitary state of Europe.

The decision rules of the constitutionalist (veto and opting out provisions) accept the efficiency loss that results from a situation where 'coercion' may not always be exercisable. But this efficiency loss is regarded as more than offset by the value attributed to the preservation of different jurisdictions. These enable different policy preferences to be exercised and different policies to be tested out. It is held that Europe's history gives ample reason to support cultural diversity, and to avoid the consequences of majorities persistently overruling minorities. Moreover minorities may be 'right'. The testing of different policies in different jurisdictions is likely to be to the benefit of all. Dissonance may discourage bureaucratic minds but it reflects the functioning of a healthy democratic system.

Separating Preferences

A third theoretical consideration is the postulate that democratic processes are best served by institutions that distinguish between policies on offer at the collective level and institutions that deal with other policies that do not have to be taken collectively. These distinctions are reflected in the division between the senior level central bodies of the Community and the junior level institutions in member states proposed by the centralist. The centralist holds that by dividing a broad range of policies into two or more narrower and distinct ranges, the scope for divergences

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6 Hayek op cit.

in political preferences is diminished, the need for 'coercion' is reduced and democratic preferences can be expressed more clearly.

The constitutionalist rejects these propositions in the context of Europe for three reasons. First, because the suppliers of policies at the senior level will face in a wider Europe an even more heterogeneous electorate than today, the senior bodies at the centre will be under two undesirable pressures. One will be to offer policy options in a 'weak' form in electoral situations, simplifying the message and reducing political debate to the 10 second T.V. 'sound bites' familiar from U.S. Presidential politics. The other will be the pressure to introduce policies to harmonise and encourage a more homogeneous society. The constitutionalist regards neither of these tendencies as desirable. The constitutionalist looks to diversity in Europe as a source of creativity, and important also for the sense of an individual's identity in a broader European society. Secondly, the supposed advantages of separating preferences will, according to the constitutionalist, be nullified by the confusion of power at the senior level under centralist proposals which further erode the electoral process. It will be special interests that will be catered to and courted by the centre. Thirdly, but not the least consideration, those bodies that will become 'junior' bodies under the centralist model, (national parliaments) happen to have been the bulwark of freedom in Europe up to now. They may not always have worked, and in Eastern Europe, democratic practices have to be re-established. Nevertheless, if their role is eroded, it will not easily be regained. If democratic practices do not flourish in individual member states, they are unlikely to flourish at the centre.

As indicated above, purely theoretical considerations are fairly quickly overwhelmed by pragmatic or normative judgements about their applicability to the specific characteristics of Europe. The constitutionalist can show that the theoretical premises of the centralist are not well founded. But the centralist can also turn to additional practical considerations relating to the two models of Community development which are held to support the case for stronger powers among the central bodies of the Community. These further practical considerations are discussed next.

VII. PRACTICAL ISSUES

The centralist objections of a practical nature to the constitutionalist model are that its adoption will reduce the momentum towards increased cooperation in Europe, erode part of the existing Community patrimony (the *acquis communautaire*) and represents a tacit nationalism harmful to the new Europe. These fears are discussed below.

Momentum

The fear that a system built on a diffusion of powers will slow the momentum for cooperation in Europe is rooted in a bureaucratic bias which sees interventionism as guiding Europe's future rather than market dynamics. On the contrary, it is competition within an extended Single Market area, together with open external trading arrangements that will provide basic economic momentum for a wider Europe. It was the reduction of internal and external barriers to trade which provided dynamism to the Community in the past and not its interventionist policies.

At the level of political cooperation, the constitutionalist model equips the European Council and Council of Ministers with the capacity to act decisively over a broad range of policies. It does not exclude the possibility that new mechanisms to improve the workings of the Councils may be desirable. In addition the Councils need to make new arrangements for co-operation with other European governments. Such arrangements would be an integral part of the development sought by the constitutionalist. On external issues, the advantages of the Community speaking with one voice will remain and indeed increase.

The *Acquis Communautaire*

The doctrine of the *acquis communautaire* (or patrimony) states that once a function or power has been obtained at the Community level, it should never be relinquished. It is a pernicious doctrine. It encourages rigidities which will hinder Europe's integration rather than help it. The new situation in Europe requires new policies and new institutional structures. A leading example of past Community policies that have outlived their time is the Common Agricultural Policy. Within the existing Community, it benefits narrow interests at the expense of the population as a whole; it encourages financial excess, supports arbitrary resource transfers and a spiral of bureaucratic regulation, fraud and enforcement. Externally it is damaging to open trading arrangements. In the context of a larger Community, the countries of Eastern Europe with their much larger proportion of population in agriculture dependent on agricultural income, with much of their comparative advantage in agricultural produce, need unrestricted access to export to the markets of the Community and not the barrier of CAP.

The idea that old functions should always be sustained and new policies always additional is a bureaucrat's dream. The concept of the *acquis communautaire* is a doctrine invented by bureaucrats for the benefit of only bureaucrats. It is a doctrine correctly spurned in the constitutionalist model. Different jurisdictions in an open market setting will provide a framework for competition, creative diversity, change and a rightful rejection of the self-serving biases of centralised bureaucracies.

Nationalism

There are two quite different issues involved under the rubric of nationalism. The first is how to accommodate, within the context of the new Europe, **imbalances** between member states (in particular the concern expressed by some about the weight of Germany which on a unified basis accounts for between 25-30 per cent of existing Community GNP). The centralist reverts to the original ECSC idea of clearly tilting the centre of gravity in political arrangements towards supranational institutions at the centre of the Community. The constitutionalist sees the issue as the more classical liberal issue of how to preserve the rights of minorities vis-a-vis a majority or a dominant partner. The diffusion of power, related decision rules and constitutional provisions against the abuse of power are therefore seen by the constitutionalist as providing a surer way of dealing with imbalances. Diffusion is not nationalism under a new guise. On the contrary, a more robust framework for increased cooperation in a wider European setting is a key objective of the constitutionalist model.

The second issue is that those supporting centralist development frequently see a unitary state of Europe as the **end goal** of European union. The constitutionalist emphasis on a diffusion of power is thus seen as a hindrance to this eventual goal. The constitutionalist looks at 'union' as a process of cooperation and a unitary state is not sought. Those who support the idea of a unitary state of Europe see it as some kind of 'middle way' between Soviet socialism and American capitalism. They forget that freedoms in Europe have been made possible in this century largely because of American support and because of the steadfastness of the post war Atlantic Alliance. The emotional appeal to a unitary state of Europe is also regarded with distrust by the constitutionalist. It plays heavily to the same emotionalism in politics that led to the evil excesses of nationalism in the past.

A further point that is relevant in this context is that democratic diversity strikes the outside observer differently from the way it is seen by the inside participant. The outside observer wishes to deal with a cohesive unit. Thus European countries and Japan have difficulties in dealing with the democratic processes of decision taking in the United States. The mirror image is the advocacy by successive U.S. administrations of 'unity' in Europe. Neither party should forget that democracy is about the diversity of ideas, the tolerance of differences, the competition between different approaches and not about cohesion. Cohesion reflects the historical chance of a homogeneous society or the shadow of autocracy. The U.S.. administration should be careful not to misinterpret the constitutional debate in Europe.

Future Discussions

A final practical issue of importance to both centralists and constitutionalists is how to embark on the constitutional discussions now required in the Community. The Inter Governmental Conference arranged for later in 1990 in connection with talks on monetary union is one occasion at which institutional issues may be taken up. However, to take proper advantage of the new opportunities in Europe, the constitutional discussions need to be broad ranging. A second possibility is for the European Council to make separate arrangements for preparation and discussion of broader constitutional issues. Such an effort should clearly take place under the auspices of the European Council and not under the Commission with its vested interest in particular outcomes. Such a broadening of the constitutional review would be timely.

Discussions about Europe's constitutional future will be divisive. Precisely because of this, they have been largely avoided in the past. A pragmatic 'muddling through' has seemed preferable. The time has come when this so-called 'pragmatism' is no longer appropriate. What seems like a series of small self-contained steps can produce the wrong overall result because of a neglect of the larger picture. There is a new situation in Europe which requires a more far reaching response if the opportunities are to be taken. As remarked by Professor Buchanan in the context of constitutional reform in the United States, 'I am convinced that the social interrelationships that emerge from continued pragmatic and incremental...response, informed by no philosophical precepts, is neither sustainable nor worthy of man's best efforts.[7] The opportunities now available to reshape Europe and its institutions require no less than Europe's best efforts.

VIII. CONCLUSIONS

The 1990s open with an opportunity to create and put in place new arrangements for political and economic cooperation in Europe which will cover a much wider grouping of European states and a broader agenda. In order to take advantage of this opportunity, new constitutional arrangements are needed in the Community. The model offered by the constitutionalists provides for collective action on a broad range of topics on a Europe-wide basis by emphasising the role of the European Council supported by the Council of Ministers. At the same time, the model relies on democratic practices in the member states as a way of diffusing power, making sure that government remains close to the people and that different preferences can be expressed and exercised in different jurisdictions. It is a more challenging model than that of the centralist. It is an easy temptation to respond to the uncertainties of the present situation with proposals to build up central institutions.

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7 'The Limits of Liberty', James M. Buchanan 1975, University of Chicago Press.

It would be the wrong course to follow. The division of institutions between senior and junior level bodies will weaken democratic roots in Europe, open the risks of bureaucratic, personalised government, remote from the people and where interest groups will have a special advantage to press their particular claims. The constitutionalist model offers the best hope for a new flowering of democratic diversity in as wide as possible a European setting. In discussions with its European partners, Britain should firmly reject any step towards a centralist Europe. Instead it should take the lead and encourage its partners in Europe to broaden their vision and look to build a new constitutional basis for a new Europe.

Attachments:	Chart A	The Constitutionalist Structure
	Chart B	The Centralist Structure
	Table	Alternative Institutional Structures (and note to Table)

CCPS

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My ref:

Your ref

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NBPM at Rio Stmt

CS no dd 24 CDS 26/3

22 March 1990

CDS 26/3

Dear Secretary of State

ELECTRICITY PRIVATISATION AND THE EC LARGE COMBUSTION PLANT DIRECTIVE

will request if required

Thank you for your letter of 8 March 1990 about the directive and the implications for privatisation.

As you know I believe that we shall come under increasing international pressure during the 1990s to tighten up the targets for emissions. The scientific analysis is building up and we shall not be able to deny the evidence of the damage being done to sensitive environments, both in the UK and on the continent. We agreed, however, at MISC 141 last week that the existing targets at present are themselves very demanding on the industry and that there can be no question of tightening them for the present.

In order to defend this position successfully I think it will be extremely important for us to be able to demonstrate to the Commission and all others concerned that the present targets are indeed very demanding for the UK industry but that we are pursuing them vigorously. We must firmly repulse any suggestions either that the targets are being relaxed, or that they could realistically be tightened in the near future. I think we shall also increasingly feel the need of an indication of what we expect to happen beyond 2000.

Our first deadline with the Commission on these matters is in June this year when we have to tell them of our arrangements for complying with the Directive and have our plan ready showing how we are going to implement the target reductions specified in the Directive. I fully accept that we should aim to meet these targets in the most economic way that is environmentally satisfactory. If we can now demonstrate robustly that the targets can be achieved with less use of flue gas desulphurisation by more use of new gas technology I think that we can defend that position in principle to the Commission and others. They will undoubtedly be suspicious of

the apparent resiling from the earlier talk of 12 GW of retrofits. But the new approach is clearly more economic, and it has other environmental advantages. So provided that the plan when we submit it looks firm and it can be demonstrated that it will definitely meet the targets in the Directive I think we should be able to mount a strong defence of it. (I understand my officials are discussing the robustness of the proposed scenarios with yours.)

I would suggest however that you do not make quite so much of the environmental disadvantages of fuel gas desulphurisation itself. I recognise of course that it reduces the energy efficiency of generation and increases CO_2. It is right to make these points. But it is effective in reducing sulphur loads, and it has been widely adopted in several other European countries. I think it will only stir up opposition and controversy if you seek to knock it too hard at this stage. The argument you make about problems with limestone and gypsum involved in FGD is for example regarded by my own Minerals Directorate as somewhat overstated. I suggest it would be sufficient to point out the economic and environmental advantages of alternatives without seeming to knock FGD itself. This seems to me a more robust line of argument for us, especially since you are not proposing to drop FGD altogether but simply reducing its share of the total pollution reducing package.

I am reinforced on this point because my own Inspectorate of Pollution believe that FGD is at present the Best Available Technology for reducing pollution from traditional coal fired power stations. FGD or an equivalent would be specified as a matter of course by the Inspectorate as a requirement of any new coal power stations of traditional design that might be proposed. And in the normal course of preparing guidance for the industry on the implementation of Best Available Technology under the Integrated Pollution Control provisions of the current Environmental Protection Bill, the Inspectorate will soon need to start discussing a programme with the industry for the progressive upgrading of all existing plant, which would on their present thinking imply the progressive introduction of FGD or equivalent technology over an appropriate timescale.

The Inspectorate would naturally expect to set the timetable so as to fit in with the European Directive up to the end of the Century. So up to that point they will be acting in effect as the formal instrument for achieving implementation of the Directive and enforcing the plans your Department are themselves developing with the industry in the context of privatisation.

But looking beyond that the Inspectorate would also normally expect to establish in their discussions with the industry a programme that would secure general application of Best Available Technology for reducing sulphur emissions from existing coal-fired power stations within a period of perhaps 15-20 years, either by further applications of FGD or perhaps more realistically by that time by retirements of existing plant. (A 10 year timetable for securing necessary improvements will be a more normal requirement for

industry in general, so 15-20 years will already seem quite generous.) For this industry HMIP will have to have regard not only to these general requirements of the Environmental Protection Bill, but also to the requirements of Article 13 of the Air Framework Directive (the parent directive of the Large Combustion Plant Directive) which requires us to implement policies and strategies for gradual adaptation of existing plants to the Best Available Technology.

The Inspectorate will be very ready to discuss this with the industry in a sympathetic spirit so as to produce a programme that makes economic sense, and will clearly not want to upset the privatisation programme. But as with other industries they must take a long-term view, and cannot properly be restricted to looking only as far as the specific requirements of the Large Combustion Plant Directive. We need to find a way of expressing this which will reassure the Commission, the environmental interests, the industry and the City at one and the same time. If you agree I suggest we ask our officials to explore further with HMIP what should be said about these longer term issues.

All the above makes it particularly important to get right what happens in the immediate future. As you say, our officials are in correspondence about the obligations implied by the directive in the years before 1993. One of the major objectives of the directive is to achieve the specified reductions by the target dates of 1993, 1998 and 2003. Our legal advice is that the Commission will be within their rights in seeking progressive reductions between these target dates and between 1990 and 1993. I think it would be very damaging both for privatisation and for the presentation of our acid rain policy if the Commission were able to mount a challenge to us this summer on the basis that the plan which we submit in June shows an increase of sulphur emissions between now and 1992 before coming down to the target in 1993.

As I understand it we may be able to give ourselves some flexibility here by building some technical headroom into the 1990 reference level from which reductions over the next three years should be shown in the plan. We shall be as helpful as we can on this; but beyond that I think it will be extremely important for our credibility with all concerned that the path from there to 1993 should show a progressive reduction rather than a hump in between. I suggest our officials report to us further on this possibility urgently and the cost implications.

I hope this helps to clarify the position. Our officials are already in touch on the details. I should be glad to have a word with you myself if that would be helpful.

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

Yours sincerely,

CHRIS PATTEN

(approved by the Secretary of State and signed in his absence)

Ref. AO90/738

PRIME MINISTER

Cabinet: Community Affairs

There have been no Council meetings in the last week.

2. The Minister of Agriculture may mention his recent visits to Czechoslovakia and Bulgaria.

3. The Secretary of State for Trade and Industry may mention the Commission's latest progress report on the Single Market, which puts Britain at the top of the league for prompt implementation of Single Market measures (on the Commission's figures, only 9 not fully implemented on time, compared with 50 for Italy, the worst performer).

4. Forthcoming meetings are:

- Environment Council, 22 March
- Agriculture Council, 26 March onwards (1990 price-fixing)
- Transport Council, 29 March.

F.E.R.B.

ROBIN BUTLER

21 March 1990

dti

the department for Enterprise

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

CDP

24/3

The Right Hon Douglas Hurd MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
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Our ref JW2AOY
Your ref
Date 21 March 1990

Dear Douglas

EUROPEAN COMPANY STATUTE

I am writing to bring you and colleagues up to date on the European Company Statute (ECS), and in particular to let you know the approach John Redwood intends to take at the informal Internal Market Council at the end of this week.

We have many reservations about the company law aspects of the draft ECS, both in principle and in detail. But our main concern is the treatment of worker participation. The policy on this is for Michael Howard, and my officials are closely in touch with his. The effect of the compulsory worker participation provisions would be that UK companies would be faced with the choice of adopting one of the prescribed statutory methods of worker participation or of being excluded from using the European company form. We have no intention of agreeing to any proposal for an ECS which involves any form of compulsory worker participation being imposed on UK companies who wish to become European companies.

Discussions in the Council Working Group have covered 100 of the 137 articles of the Regulation and have not yet got down to the separate Directive which contains the worker participation proposals. These discussions have been very much a first reading identifying many problems with the draft and few solutions. Although Martin Bangemann is known to be disappointed with the rate of progress, it would be unreasonable to expect to cover a draft of such scope and complexity any more quickly, particularly when the quality of the draft is so poor. It is expected that the Commission will

be asked to redraft major parts of the proposal once the first reading is completed, which may be at the end of the Irish presidency, or early in the Italian one.

As you know, we received the formal opinion of the Council Legal Services on the legal base of the proposal at the end of January. It endorses the view that we have always held that the Commission's proposal that the Statute should be based on provisions allowing qualified majority voting is unjustified. We expect the legal base to be discussed by officials between the first and second readings. I should hope that there will be sufficient agreement with the Council Legal Services' opinion to make it clear to the Commission and future presidencies that there will be no point in taking the proposal to the Council for adoption until there is unanimous agreement on it.

Although the UK has no intention of agreeing to any form of compulsion on worker participation, and there are major difficulties in producing a text on this issue which will reconcile the various sensitivities of other Member States, the Commission are determined to pursue such proposals one way or another. From our point of view, it will be less dangerous for the Commission to be occupied on the worker participation provisions in the European Company Statute than on those in the Fifth Company Law Directive: the current draft of the Fifth Directive has even more restrictive compulsory worker participation provisions than the ECS, and they would have to be applied to all PLCs with more than 1,000 employees.

Our general aims on the ECS should therefore be twofold. First we should oppose the worker participation proposals firmly, and make it clear that the Commission's attempt at a "UK option" does not reflect the position in the UK and is unacceptable. Second, we should avoid putting our objections in terms which would suggest that discussions should be stopped. As explained above such suggestions, if effective, would be likely to lead to the resumption of work on worker participation in the Fifth Directive, which would be a bad thing in itself, and other Member States might be less willing to consider the UK's interests in relation to the Fifth if we were seen to have adopted a non-negotiable position on worker participation in the ECS. If, on the other hand, we tried and failed to stop work on the ECS, that might lose us allies in preventing the Statute from being agreed by qualified majority voting. Our overall approach should therefore be to play it long.

It is becoming clear that this is unlikely to be difficult. Quite apart from the political problems on worker participation, there are many difficult company law issues in the draft Regulation. Even if there were strong political

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the department for Enterprise

will behind the ECS and Member States accepted that the final drafting would have serious technical imperfections, it would be unlikely to be agreed, if at all, in anything less than two years. We may want to go along with the removal of the provisions on accounts and winding up if, as expected, the Irish Presidency propose it. (Here the considerations are different: we would be joining a popular cause, and the knock-on effects on other EC proposals would be helpful rather than damaging.) This would still leave a number of issues which have proved insoluble before, and we can encourage discussions to grind on without reaching conclusions and eventually to grind to a halt.

Although there has been no substantive discussion in the Council Working Group about the worker participation aspects of the European Company Statute, they are on the agenda for the informal Internal Market Council at the end of this week. In view of the considerations set out above, the line we propose to take is to make it clear that the present proposals are unacceptable, that there should be an option for worker participation which recognises the UK's voluntary approach, and that we are very willing to discuss. It will then be for Department of Employment officials to develop these points in more detail in the Working Group discussions.

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

Foreign and Commonwealth Office

London SW1A 2AH

20 March 1990

CDP 21/3

Dear Charles,

Presentation of Policy on the European Community

Thank you for your letter of 16 March about the booklet on developments in the EC.

The draft enclosed with my letter of 15 March was indeed a mock-up. The final version will be on good quality paper, comparable to that used for DTI Single Market literature, and printing will be of a similar standard. I shall let you have a copy when it is available.

Yours ever,

Richard Gozney

(R H T Gozney)
Private Secretary

C D Powell Esq
10 Downing Street

EUROPOL
Budget
PT 45

NOTE FOR THE RECORD

cc: C Powell Esq, No.10
J O Kerr Esq CMG,AUSS,FCO
D Hadley Esq,Cabinet Off.
Mr de Fonblanque
Heads of Section

INFORMAL EUROPEAN COUNCIL : 28 APRIL

1. Mr Powell and I lunched with the Secretary-General of the Commission on 16 March. The conversation focussed on the April informal European Council.

2. We discussed the form of any conclusions. I put the case for avoiding written conclusions of any sort; it was an informal not a formal meeting; much time would be consumed over verbal haggling if any text appeared at or after lunch; any text, however bland, would be divisive, given the sensitivities over German unification. It would be better if Mr Haughey could be armed with half a dozen, largely procedural, oral conclusions with which to sum up each of the two main discussions (German Unification, East European association). Mr Powell said he believed that would be the Prime Minister's firm preference: she had considered the November Elyseé dinner format the right one for an informal meeting and would wish to see it repeated. He would consider having a word with Mr Nally on those lines. Mr Williamson took the same view and said he would advise President Delors in that sense.

3. Mr Williamson then trailed the Commission's paper on German unification which he was beginning to draft. It would be pretty short: and more analytical than prescriptive. The issue of maintaining an internal frontier, at least up to 31.12.92, would be aired although not espoused(the Germans themselves were pushing hard to maintain controls at the I.G.B. principally to protect the FRG from Trabant cars!). There might be some reference to pre-accession aid but this would be financed from the new Central and Eastern Europe sub-line in the Financial

/Perspectives.

Perspectives. There would be references to transitional periods for agriculture and a number of other issues. The Structural Fund argument was leaning away from Objective 1 and towards Objective 2 and 5(b). Mr Powell made it clear that ambitious plans for pre-accession aid would not be welcome. I said it might be better, so far as the GDR was concerned, to stick to multilateral technical assistance such as the Training Foundation and TEMPUS. The E.B.R.D. and E.I.B's activities in encouraging private sector investment could also have a role to play. In addition I registered the following points :

(i) There must be no question of an agricultural transitional period with GDR prices higher than EC ones. Mr Williamson agreed.

(ii) It might be better to leave the EC stabilisers alone until the February 1988 decisions came up for review. GDR production could be assessed separately on the basis of pre-unfiication production levels.

(iii) On fisheries, the FRG quotas were heavily under-used, so there was a good deal of scope for accommodating the GDR. (this was a new point for Mr Williamson who thought the main fisheries issue would be laying-up aid).

4. I asked Mr Williamson whether EMU would be raised at the April meeting. There was no case for such a discussion since the Strasbourg communique had foreseen one at the June European Council. Any premature discussion at Head of Government level would be divisive. Mr Williamson agreed on both points which he would put to President Delors.

5. Mr Williamson said there would inevitably be much talk of what most member states called acceleration and the UK called steady progress. It should be possible to stick to generalities.

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6. On security issues Mr Powell said he thought the Prime Minister would agree with the Delors line that these should not be discussed at the April European Council. The meeting was being held to consider the EC implications of unification. But it was noted that member states other than those involved in the 2+4 talks, were likely to take a different view.

7. Mr Williamson was optimistic that the latest moves by the European Parliament on the Strasbourg/Brussels issue (agreement to hold all normal plenaries in Strasbourg) would enable the French to unblock the decisions on sites. But I rather think he was whistling in the dark.

19 March 1990

D H A Hannay

dti

the department for Enterprise

The Hon. Douglas Hogg MP
Minister for Industry and Enterprise

Rt Hon Norman Lamont MP
Chief Secretary
HM Treasury
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Department of Trade and Industry

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Our ref
Your ref
Date 16 March 1990

Dear Norman

EUROPEAN COMMUNITY FRAMEWORK PROGRAMME

Thank you for your letter of 26 February.

I am sorry you do not feel able to agree to the proposal for a review of the EUROPES system at this stage. Given the build-up of EC R&D expenditure, the longer we put off this important issue the more difficult the problems will become. I am, however, grateful to you for spelling out again the degree of flexibility which already exists within the system, and for acknowledging that there will be some mis-match between EC spending and the UK's own priorities. I shall certainly be looking to the Survey to deal with that mis-match by providing an adequate level of funding for domestic R&D.

The Survey discussions will need to take account of the overall level of domestic expenditure on civil R&D. Present plans indicate that here may be a drop in such expenditure between 1991/92 and 1992/93, and your minute to the Prime Minister dated 9 November 1989 said that the plans would need to be reconsidered in the 1990 Survey. Furthermore, we need to bear in mind our influence in the Community. Our stance in the recent Framework Programme negotiations has done a great deal to restore the UK's influence and standing in this area. We must be sure that the application of the EUROPES system does not cause us to throw away our position by adopting an intransigent approach to the next round of Framework decisions.

Recycled Paper

dti

the department for Enterprise

I am sending copies of this letter to the Prime Minister, the members of E(ST) and to Sir Robin Butler.

DOUGLAS HOGG

ING2042

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c. Hurl pres

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

16 March 1990

PRESENTATION OF POLICY ON THE EUROPEAN COMMUNITY

Thank you for your letter of 15 March covering the booklet highlighting the main points and developments in the European Community in the second half of 1989. The Prime Minister has no problems with the content of the booklet but hopes that the version attached to your letter was only a mock-up. The quality of paper and printing was extremely low - indeed she has described it as a "shoddy production". Perhaps you could reassure me on this point and let me see a copy of the final version.

C. D. POWELL

Richard Gozney, Esq.,
Foreign and Commonwealth Office

(1)

Prime Minister

Agree to launch of this pamphlet? (I hope the paper + printing will be better)

Yes not Sodal - it is a very shoddy production

Foreign and Commonwealth Office

London SW1A 2AH

15 March 1990

Dear Charles, CDP 15/3.

Presentation of Policy on the European Community

The Government produces a six-monthly White Paper on developments in the European Community. We have proposed that the format of the next White Paper, covering developments in July to December 1989, should be improved to make it more attractive and accessible. We have also suggested that the White Paper should be accompanied by a short popular booklet highlighting the main points. These changes were welcomed by other Ministers, (correspondence started with the letter of 12 February from PS/Mr Maude).

I enclose the latest draft of the booklet. It includes the bull points of the White Paper, and aims to improve popular awareness of recent Community developments and of the UK's role. The booklet highlights progress on practical issues, such as transport liberalisation, and other aspects of the Single Market. The text has been agreed inter-departmentally. Work is still in hand to improve illustrations and photographs.

If the Prime Minister is content, we plan to launch it on 3 April. It would be distributed to all MPs and MEPs, selected members of the House of Lords, universities, libraries, schools, business and other organisations and the media.

Yours ever,

Richard Gozney

(R H T Gozney)
Private Secretary

C D Powell Esq
10 Downing Street

Ref. A090/694

PRIME MINISTER

Cabinet: Community Affairs

The Chancellor of the Exchequer may report on the ECOFIN Council which he and the Economic Secretary attended on 12 March. Key points were:

- EMU Stage 1 legal texts (on convergence and on central bank cooperation) were formally adopted;

- a satisfactory common position was reached on revision of the Financial Perspectives (the Community's budget forecasts). Figures agreed for spending on Eastern Europe were 500 mecu for 1990, 850 mecu for 1991 and 1 becu for 1992;

- Herr Waigel, giving a progress report on German economic and monetary union, said that no timetable had yet been set; the FRG was still undecided on the Deutschmark/Ostmark conversion rate. Several member states expressed concern at the short-term implications, particularly for inflation and interest rates. Herr Waigel indicated that there were no immediate plans to raise interest rates to counter inflationary pressures;

- the European Bank for Reconstruction and Development is likely to be discussed at the informal ECOFIN meeting at the end of March, probably focusing on outstanding points such as the site and the President. The Chancellor emphasised the suitability of London;

- a Council Declaration was agreed on the Commission's Annual Report on Fraud. The United Kingdom welcomed the report: progress had been made but the pressure to root out fraud had to be kept up.

2. The Secretary of State for Trade and Industry may report on a rather uneventful Industry Council meeting on 13 March.. Mr Hogg represented the United Kingdom. Key points were:

- general discussion of shipbuilding and the automobile industry. Sir Leon Brittan underlined the importance of firm control of state aids;

- discussion of Commission's annual report on textiles: predictable calls from southern member state for extra Community funding, firmly resisted by the northern member states.

3. In addition, the Secretary of State for the Environment may report on the North Sea Conference held in Dublin last week.

4. Forthcoming EC meetings are:

- Environment Council, 22 March
- Agriculture Council, 26 March onwards (price-fixing).

FER.B.

ROBIN BUTLER

14 March 1990

File No

ands sent out on 14/3.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

13 March 1990

Dear Stephen.

I enclose a copy of a letter to the Prime Minister from Sir Leon Brittan containing a review of developments in the European Community in the year since he took up his post as Vice President of the Commission. You will see from the final manuscript sentence that the letter is being sent to all Conservative MPs.

I should be grateful in due course for comments and a draft reply for the Prime Minister's signature if you think that necessary. My overall impression, after a quick reading, is that the Prime Minister might find the letter a shade complacent.

I am copying this letter and enclosure to the Private Secretaries to the members of OD(E) and to Sonia Phippard (Cabinet Office).

Yours ever,

Charles

CHARLES POWELL

J. S. Wall, Esq.,
Foreign and Commonwealth Office.

THE RIGHT HONOURABLE
SIR LEON BRITTAN, QC
VICE-PRESIDENT OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

RUE DE LA LOI, 200
1049 BRUSSELS - TEL. 235 25 14
235 26 10

L(B)/3

12th March 1990

Dear Prime Minister,

It is now more than a year since I took up my appointment as Vice-President of the Commission. In view of continuing misunderstandings in Britain about the direction of Community policy, it has been suggested to me that it might be useful for me to report on some of the developments that have taken place during this period, particularly in the areas of competition and financial services for which I have direct responsibility.

Although events in Eastern Europe have obviously occupied the Commission increasingly, the completion of the 1992 process has remained our central task.

Yet at the beginning of 1989 there were still two open questions:

- would the Community's internal policy be based on a free market approach or would it be interventionist and restrictive?

- would the Community be open to the outside world, or would it be protectionist?

In all the Community institutions there have been pressures in both directions, but the outcome is now no longer in doubt. Since the beginning of 1989 a series of major decisions have been taken which are of a decisively free market and anti-protectionist character.

(1) In Competition Policy, after sixteen years negotiation the Commission succeeded in persuading the Member States to adopt unanimously a Merger Regulation. This Regulation removes a burden from industry and gives greater certainty by providing a one-stop shop, whereby the largest mergers will normally be considered exclusively by the European Commission and all other mergers will normally be considered exclusively by the national authorities. In considering mergers the Commission will be following competition-based criteria, and will not be seeking to implement an industrial policy.

(2) State Aids: a number of tough decisions have been taken, aimed at creating fairer conditions of competition across Europe. To give but three examples: 399 million ECUs of aid provided to Alfa Romeo was ordered to be repaid; it was decided finally that the Bagnoli steel plant should be shut down; and it was decided that 12 billion French francs aid to Renault should be repaid, unless the originally-agreed conditions on which it was given were met.

The Commission has also embarked on a new policy of reducing the total amount of state aid in the Community by examining the largest existing schemes under which aid is granted in the various countries, with a view to ending those schemes which are no longer justified.

(3) Telecommunications has perhaps been the area of greatest controversy. People in Britain are now used to liberalisation, but in most of the Community the concept of requiring public telecommunications networks to be opened up to the private suppliers of services was a highly novel one. And yet this is precisely what the Commission decided to do and it is now accepted by the Member States that this is what will happen.

(4) Air Transport: the Commission has put forward a proposal for major liberalisation, designed to lead to increased choice, lower fares and the development of regional airports. The Member States have already agreed in principle to it.

(5) Financial Services: all the Community's banking legislation passed last year, a full year earlier than expected. The legislation provides for the creation of the largest single banking market in the world, in which a licence granted (on the basis of agreed criteria) in any one country will entitle the holder of the licence to carry on banking business anywhere else in the Community.

(6) One problem was how to deal with non-EC countries in the financial services area. The reciprocity provisions in the earlier draft of the banking legislation caused major anxieties about "Fortress Europe", particularly in the United States. I therefore made it a priority to modify the legislation so that there could be no justification for refusing licences to those coming from outside the Community, unless the countries from which they came clearly discriminated against European banks, as compared with their own banks. All this strengthens our hand in arguing for more open access to international markets. This change has been regarded as providing a clear indication of the Community's rejection of narrow protectionism.

(7) Cars: the Commission has launched a policy under which existing restrictions on the import of cars from outside the Community would gradually be lifted, as we eliminate barriers to trade in this sector within the Community.

(8) Insurance: the first steps have been taken towards creating a Community-wide open market. The Council of Ministers reached a crucial political agreement on the Second Life Insurance Directive last year, and they have now given general approval to my programme for much wider liberalisation of the insurance market.

(9) European Company Statute: There is much misunderstanding in Britain about the content and impact of this proposal. The proposal that has now been put forward does not, for example, require those who wish to set up a European Company to agree to put workers on the board. It only requires consultation on the implementation of major decisions. As such it corresponds to the best UK practice. And in any case the Statute only applies to those who wish to take the wholly voluntary option of setting up a European Company. It is not generally realised in Britain how great the change has been. In my view the proposal as it now stands should be acceptable in Britain.

There are still difficult discussions ahead. In the discussions on the Social Charter the Community missed the opportunity for securing unanimous agreement on a Charter which would set legitimate aspirations, without seeking to establish standardised rules on working conditions and impose unreasonable burdens which were not suitable for all members. But the Charter itself has no legal effect, and everything depends on the legislation that will be put forward to implement it. That legislation will have to be debated by the Member States and the European Parliament in the usual way.

With regard to the EMS, there is a strong desire on the part of our partners that Britain should join. The conditions set by the Government should be met by the middle of the year. I am convinced that there should be no further delay. Membership is essential if Britain's proposals for the next stage of Economic and Monetary Union are to be taken seriously. Work on that stage starts in December. There is very little time in hand.

There is much work that remains to be done, but the examples that I have given show the decisive way in which the Community can be persuaded to move in a free market and non-protectionist direction. It is in that direction that I shall continue to work.

This is being sent to all Conservative Members, and I hope it will be of interest & assistance. I thought I should, therefore, send you a copy.

Yours, Ian

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

11 March 1990

Dear Stephen,

PRESENTATION OF UK POLICY TOWARDS THE EC

The Prime Minister has looked at the paper on presentation of UK policy towards the EC circulated under cover of the Foreign Secretary's memorandum. She is in general content with it and agrees it would be most useful if Mr. Maude continued to chair periodic meetings of junior ministers responsible for European issues, to coordinate the presentation of policy.

I am copying this letter to the Private Secretaries to members of OD(E).

Yours sincerely,

(C. D. POWELL)

J.S. Wall, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL

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

Telephone 01-273 . . 5802
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Secretary of State

CSPC

CDT 9/3

The Rt Hon David Waddington QC MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

9 March 1990

Dear David

EUROPEAN COMMUNITY IMMIGRATION ISSUES Alap Pt 44

Thank you for your letter of 21 February setting out current EC Immigration issues. I am generally content that we should continue to take the line you propose. There are two issues on which I would like to comment.

I agree that we should not make changes in the basic visa requirements for East Europe until the position has been assessed and the general review commissioned by the EC Presidency has been discussed. However, I do not see any case simply on employment grounds for us to be less generous in relaxing requirements than other Member States. The effective inclusion of East Germany in the EC labour market seems inevitable, whether or not the territory joins the Community itself, and it is likely to have positive rather than negative effects on labour supply. It is certainly no more of a threat in employment terms than the existing access from other Member States. We would also want to encourage rather than discourage suitable employment links with other East European countries. Some relaxation of the visa regime could be a positive help in this, and I hope we will approach further negotiations with this in mind.

My second point is on the draft convention on external frontiers. The Eurovisa proposals would be benefical to tourism, and I hope that we can give positive support. By the same token, I would want to keep other formalities on entry and exit of tourists through the external frontiers to the necessary minimum. We need to ensure that computer checks do not create annoyance or delay, and I share your misgivings about these proposals in the draft convention.

Secretary of State
for Employment

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

Yours ever

Michael

MICHAEL HOWARD

EURO POL: Budget Pt 45

PRIME MINISTER

PRESENTATION OF UK POLICY TOWARDS THE EC

You may like to glance - no more - at the attached OD(E) paper on presentation of our policy towards the European Community. The key paragraphs are 1-3 and 28-32.

Francis Maude has been chairing a regular meeting of junior Ministers responsible for European issues, to discuss presentation of our policy, both on individual EC issues and more widely. Although the group has no place in the formal Cabinet Committee structure, it does very useful work - as the Foreign Secretary's covering note to this paper says - and helps co-ordinate the Government's approach politically as opposed to bureaucratically. You might like me to minute out that you appreciate the work which this group does and would like it to become a permanent feature for co-ordinating presentation of our policy towards the EC. Agree?

CDP

CHARLES POWELL
8 March 1990

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CABINET

OD(E)

PRESENTATION OF UK POLICY TOWARDS THE EC

Memorandum by the Secretary of State for Foreign and Commonwealth Affairs

1. I commend this paper. Across the range of EC policies, Britain has a good story to tell. We need to be out telling it and we need to get other people to tell it. We can present our policies more actively. We can take positive initiatives to influence other member states; their Governments; their media - and ours; and other opinion formers on Europe. The paper sets out some of the different techniques we shall need to apply.

2. Our overall theme is unchanged: our liberal, deregulatory, market forces approach to Community business will get the Community where it wants to go more reliably and more quickly than any dirigiste plan for European union. Ours is a practical, problem-solving approach.

3. This exercise has to be concerted. It needs to be centrally coordinated in Whitehall. Here in the Foreign Office Francis Maude already chairs a regular meeting of junior ministers responsible for European issues. I propose that this group should be charged with coordination.

D H

PRESENTATION OF UK POLICY TOWARDS THE EC
PAPER BY THE MINISTER OF STATE, FOREIGN AND COMMONWEALTH OFFICE

I INTRODUCTION

1. The next 12 months will be crucial for the Community and our place in it. Our liberal, market-led approach must be sustained against pressures for centralist regulation. Yet our commitment to the EC, and the lead we have taken in creating policy across the board, have not been reflected in press coverage or public perceptions of our policy, either at home or abroad. We are regarded as stuck in the mud. This paper discusses how we can improve our presentation so as to help achieve our policy goals: it is harder to form negotiating alliances if we are thought, however wrongly, to be negative. A positive presentation of our policies is therefore essential.

2. Section II surveys six main policy issues. In each area - EMU, institutional reform, social, environment, single market, and external - we have a distinctive approach: liberal, deregulatory, outward-looking and conscious that national governments have an irreplaceable role. In one area - the Single Market - we are recognised as being ahead of the pack. But on the other internal issues, we have found ourselves at a presentational disadvantage, despite the substance of our policy. External issues are not a problem at present. The main conclusion is that, in most areas, there is no policy constraint on presenting our position more positively and that there is scope for new UK initiatives.

3. Section III examines how we can best promote our policies abroad. It stresses the need for a more targeted approach in each policy area. Section IV addresses presentation in the UK.

II POLICY ASPECTS

EMU

4. Debate on the substance of EMU/IGC will start in earnest with the Commission paper to the Informal March ECOFIN. Our 2 November paper remains on the table. Its reception has been mixed. It tends to be seen as a valid contribution to discussion on an enlarged Stage 1 (or possibly Stage 2) but as unsatisfactory by definition in falling short of an acceptable EMU. It needs to be made more substantial, whether or not there are policy developments. We need to play up doubts in other capitals about the Delors prescription. We must first identify who our allies might be on different aspects of the Delors report; and how to develop our arguments to encourage rejection of Delors Stages 2 and 3.

Institutional Reform

5. We believe that further institutional reform is both unnecessary and undesirable so soon after the SEA; and that the IGC starting at the end of 1990 should be EMU-specific. But the IGC will set its own agenda. Some member states want wider Treaty amendments, either because of their perceived merits, or as a reaction to German unification. The most likely are increased EP powers; all social and environment provisions made subject to QM voting and the cooperation procedure; and further development of EPC.

6. This area presents more threats than opportunities for the UK. But there could be gains for us, such as:

- more EP powers to monitor Commission activity, and an enhanced role for the EP Budgetary Control Committee (which has already done good work on fraud), so that it acts more like the Public Accounts Committee;

- an EP role in monitoring implementation;

- EP contacts with emerging democratic legislatures in Eastern Europe;

Social Action Programme

7. The Commission's proposed Social Action Programme aims to set the framework for new legislation on social policy. The first detailed proposals are expected this spring. Most should be acceptable or at least negotiable for us. But we shall have major difficulty with directives to regulate working hours, part-time work, and to protect the rights of pregnant women and young children at work; and measures for consultation of the workforce.

8. Our policy aims, all open to positive presentation, will be to:

- press for better implementation of existing legislation, ideally through regular Commission reports;

- concentrate our fire on items where we can show adverse effects on industry - costs, or (better) jobs;

- thereby avoid isolation when we are sympathetic to the basic ideas (eg health and safety at work), but have doubts about the detailed scope of particular measures;

- bid vigorously for the Health and Safety Institute on which a proposal is due soon;

- stress the need for job-creation, so avoiding an undue focus on workers' rights.

Environment

9. Our record of active support for Community measures has not always been fully appreciated. We have often been portrayed as at loggerheads with the Commission. Yet we want progress at the EC level on a range of issues eg public access to environmental information; habitats; and a more coherent waste policy with an emphasis on recycling. We are pressing for a Community-wide scheme of eco-labelling; a system of integrated pollution control; and proposals to cover heavy goods vehicle and diesel emissions. We strongly support proper implementation of environmental legislation throughout the Community. We know the Italians will press during their Presidency for action on environmental taxation. The issue is being considered in MISC 141 and there may be scope for a UK initiative.

10. In all these areas we take a positive and forward position. The right presentation of these objectives, emphasising our lead, should help us to achieve them. It will have a wider presentational benefit as well.

Single Market

11. We have long been in the vanguard, and seen to be so. Our immediate concerns are to:

- press for better implementation of 1992 measures;

- achieve the Strasbourg Single Market priorities by pressing the Commission and Irish Presidency;

- maintain a liberalising, deregulatory thrust in new legislation;

- stress the "people" aspects of the programme, eg the Brittan proposals on insurance, air liberalisation;

- stress continuity of policy beyond 1992, in areas such as competition policy, state aids, implementation and compliance.

Frontiers

12. Recent discussion of frontiers policy has generally gone our way. There is growing recognition that issues such as drugs and illegal immigration must be tackled properly before frontier controls can be reduced. The difficulties of Schengen (regarded, whether we like it or not, as the forerunner of frontier abolition by the 12) have shown as much. We stand more chance of winning support for our policy if we present our need for residual controls as essential for geographical/water's edge reasons, which may well not apply for other member states. We should give high profile to the reductions which we plan post-1992 in customs and immigration checks. We should also highlight the problems which have delayed and diluted the Schengen arrangements; if things are that difficult for 5 countries with only land frontiers, it lends support to our concerns.

External Relations

13. Our reputation is sound on the main EC external issues - EC/Eastern Europe, GATT, EC/US, EC/Japan and EC/EFTA. Our aims on Eastern Europe are:

- to encourage a coherent and sustained EC/G24 policy towards the emerging democracies, maintaining differentiation and political/economic conditionality;

- to sustain economic reform through liberalisation of trade and enlargement of the private sector;

- to secure London as the site for EBRD.

We can rightly take credit for the speed and generosity of our help to reform in Eastern Europe.

14. On GATT, our aim is a successful and liberal outcome to the Uruguay Round negotiations due in December.

III PRESENTATION AND ACTION ABROAD

15. In all these policy areas, we have at best an excellent "European" story to tell, and at worst a perfectly defensible one. But careful presentation and lobbying are essential if we are to create the right backdrop for winning our case in policy negotiations. Techniques for getting our views across will vary according to the issue. The main tools will be Ministerial visits; bilaterals; lobbying in EC capitals, Brussels and Strasbourg; speeches; press articles and interviews; and targetted inward visit programmes. There will in each policy area, and in each member state, be key opinion formers, whom we should be aiming systematically to influence. The following suggestions are illustrative only. It will be necessary for each Department to develop, in conjunction with the FCO, a detailed operational plan.

EMU

16. On Stages 2 and 3 of the Delors Report, we need to emphasise different aspects of our concerns in different capitals, and often with different interlocutors in the same capital. For example, we can play on the fears about losing political control over the activities of Central Banks which a number of governments have, particularly in France and Spain. We can encourage resistance to the loss of national economic, in particular budgetary, independence, which the full Delors Report prescription implies. Economic Ministries (including FRG) and parliamentarians (across the political spectrum and in most countries except Italy), are

likely to be most susceptible to this argument. Northern governments will have doubts about increased resource transfers (to the South and also to the GDR), but in particular we should target the other net contributors (FRG, France, Italy), and the financial and business community in the north. In contrast, an important point to press in southern capitals will be a recognition of the full rigours of EMU, and the economic discipline it will bring. Academic views have been especially helpful, and we should seek to stimulate some more dissenting analyses. Neither should we neglect financial and economic commentators. But we must not overlook the scale of the problem we face in getting our ideas across, so that they form a real part of the debate in the run up to and at the IGC. Knocking copy will not be enough without a clearer understanding of our alternative approach.

Institutional Reform

17. We need to market our ideas (as in para 6) primarily with:

- British and other MEPs;

- national parliamentarians, especially in France, Denmark, Netherlands, Greece, Ireland;

- political commentators outside government.

Social

18. Although the line-up at Strasbourg on the Social Charter was 11 to 1, this conceals the fact that some Member States, or at least lobbies within them, privately agree with us about Community regulation in sensitive areas. Our interest lies in exposing these differences of view. Our priority should be the southern Member States; we need to convince them that northern pressure (particularly FRG and Benelux) will erode their comparative economic advantage.

Because the southerners stand to lose most, they are also the Member States where implementation of future Action Programme measures is most likely to be slipshod. So strong emphasis on implementation, both direct and through the Commission, may discourage swift acquiescence in burdensome legislative proposals. Elsewhere we will want to target Industry and Finance Ministers who, unlike Labour Ministers, do not necessarily favour social regulation. Where bad proposals are being run hard, we should be ready to stand alone but our aim should be to garner support on each occasion.

19. Our principal arguments against Community regulation are subsidiarity and job creation, but we need more precise, statistical ammunition. We might encourage:

- employers organisations in other member states to speak out against Community regulation. Multinational companies (eg Ford, IBM) might weigh in against Community-wide levelling up of social provision, harmonising working hours etc;

- more rigorous assessment of the business cost implications of new social legislation (ie extension to the social field of the fiches d'impact procedures used for Single Market legislation);

- EDG MEPs to speak out on specific pieces of legislation;

- a series of bilateral seminars between UK officials and businessmen, and their counterparts in other member states, to educate them in the cost to business and hence jobs of excessive regulation. The Enterprise and Deregulation Unit mounted a series of such seminars, to good effect. More can be done.

Environment

20. Our image is improving. But we start with two problems. Environmental groups, from the Friends of the Earth to the National Trust, are more vociferous and influential in the UK than elsewhere. So UK breaches of EC law are more likely to be noticed and taken up by the Commission. Second, we have been forthright in opposing proposals we dislike, allowing other member states to hide behind us.

21. On the first, we need to encourage greater vigilance by lobby groups in other member states, and by the Commission. There is a growing understanding in the Commission of the importance of implementation. We should encourage this, for example by achieving a more systematic review process, eg in the Environment Council, or in the EP. On the second, we should avoid always being out front in criticising proposals when we know others are determined to oppose them too - let them make the running sometimes: we must identify on each issue where the opponents lie and encourage them to take a higher profile when we too have difficulties.

22. Just as, in the past, criticisms of us have originated in Brussels, so we should encourage the Brussels press corps (via UKRep) to see us as a positive influence on Community policy. We should be seen to be supporting green proposals vigorously where we can. Whitehall press offices may need to be readier than in the past to take the offensive on Commission activity. These points apply in other policy areas too.

Single Market

23. The Dutch, Danes and Irish are our best Single Market allies, then France, and the FRG, depending on the sector. On air transport the same three are the most enthusiastic liberalisers, with Spain and (paradoxically) Italy; Germany and France are resistant. On shipping, the split is essentially north/south.

24. We should:

- continue to push liberal 1992 and post-1992 vision;

- maximise public exposure of non-implementation, both through Commission action and publicity nationally;

- get industry, at home and abroad, to push for deregulation particularly in air transport, including calls by the CBI and UNICE and direct lobbying of the Commission;

- encourage consumer groups in laggard states to put pressure on governments for liberalisation and deregulation;

- work for press articles, by us and allies, which will stimulate public interest in other states; this may pay particular dividends on transport liberalisation, insurance and financial services.

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25. On frontiers policy, our main allies remain the Danes, Irish and Greeks. But the French (at least the Interior Ministry) are proving increasingly sympathetic to our views. With other member states, we should encourage them to focus on the real threats which most concern them in a frontier free Europe: illegal immigration (Benelux, Italy, FRG); asylum policy (Denmark); drugs (FRG, Spain, Benelux). We should mainly seek to influence politicians, but there will be value in influencing eg law enforcement agencies; and in stimulating media discussion of these issues.

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26. The Community response to Eastern Europe has been quick and largely uncontroversial. We have been seen to play a major part in formulating it. But our strict approach to

the revision of the Financial Perspectives will need careful presentation to partners.

27. On GATT, the best instruments of persuasion will probably be bilateral meetings, stimulating pressure by overseas consumer lobbies, where they exist, and generating media comment.

IV PRESENTATION IN THE UK

28. Our European image at home feeds in part on perceptions relayed from abroad, not least because much reporting on EC issues comes from Brussels. But it is also a direct function of how we present domestically our EC policies, themes and achievements.

29. The general perception is that we are negative, obstructive and isolated. Most stories are written in terms of confrontation, with the favourite headlines being "Britain isolated" or "Britain gives way".

30. We need to be seen to be involved, influential, positive, with a vision for EC development and, good at solving problems. At the same time we need to maintain the best aspects of the present perception of Britain in the Community, that we are practical, good at implementation and compliance, as well as committed to the Single Market.

Themes to use

31. There are a number of themes that we can deploy:

- Peoples' Europe, not politicians' Europe; lower air fares, widening consumer choice, life insurance etc.

- Britain the best European; our record on implementation, compliance and enforcement second to none.

- Britain winning arguments, and hence providing leadership; budget reform, CAP reform, Single Market, frontiers, indirect tax, etc.

- The creation of a Single Market on British Conservative lines, open, decentralised etc.

- Britain setting agenda for future; EC/US, EC/EFTA, development of political cooperation etc.

- Britain setting the pace on the Community's relations with Eastern Europe.

32. All of these themes display us as positive, committed, and influential. They need to be reinforced by news stories about, for example, bad compliance by other member states, other governments resisting for example air transport proposals which would benefit their people, and so on. Our EC Posts should be trawling for and reporting such examples continuously.

Third Party Endorsement

33. All of this is more persuasive if we have endorsement by others. Our best ally on much of this is the European Commission, and it carries weight when we can point to their support for our approach and performance. Endorsement by almost any Europe-wide body is helpful: support by UNICE and the European Round Table for our approach to the Social Charter came too late, but will be useful again when the debate on the Social Action Programme resumes. We should stimulate and exploit support from any Europe-wide trade bodies, from the European Consumers' Group, from similar national groups in other member states, from other member

state governments and other politicians, and so on. Support from MEPs is also important, and the work already in hand to improve consultation with the EDG will bear significantly on this. Much of this should flow naturally from the work programme suggested in Part III above.

Policy Initiatives

34. There is considerable scope for claiming British policy initiatives more frequently and more effectively. This is more a matter of presentation than of substance. We made less of our framework paper on relations with Eastern Europe than we might, but obtained reasonable coverage for our proposal on EC/US relations by deliberately selling it as a major initiative. There will be scope here on the whole range of Community issues, on external matters, on the environment, on European institutions (for example developing the role of the European Parliament on budgetary control) and so on. Not much of this will be the stuff of front pages, but a steady flow of ideas and proposals, even where the substance is thin, will assist the perception of Britain as positive, pro-active and forward looking.

Media

35. Deploying all this with the media is much less straightforward than for ordinary domestic policy. Most EC stories come from the Brussels press corps, who are fed by Brussels insiders. We will need to do more to target them, especially by Ministers in Brussels for Council Meetings spending time to brief them.

36. Even where a story is already tilted in our direction - or could be made to do so - these standard headlines frequently prevail. For example, the Environment Commissioner, Ripa di Meana, recently made an announcement about member states' records on implementing environmental directives. This was broadly good news for us: as in other

areas, our record on implementation and compliance is generally good, and we are keen to see others' poor performance highlighted by comparison. He eschewed the temptation to attack us, and directed his fire especially on Italy and Belgium. But the story of Ripa's initiative was fed directly to the Brussels press corps, who relayed it back to London where it was served up - in one major daily at least - as standard knocking copy. We had advance warning of the story, and if we had reacted more quickly and actively, and in Brussels as well as London, we could have put our own spin on it, and gained considerable credit.

37. In addition to the lobby and the Brussels press corps, the principal target will be commentators, specialist and trade correspondents, to a limited extent diplomatic correspondents, and the London correspondents of the continental media.

Other Activities

38. We are improving the presentation and accessibility of the six-monthly EC White Paper, and starting to produce an accompanying short, popular, glossy booklet, highlighting the UK policy and achievements in the EC. It will be distributed widely: to MPs, MEPs, schools, colleges, libraries and so on.

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PRESENTATION OF UK POLICY TOWARDS THE EC

I INTRODUCTION

1. The next 12 months will be crucial for the Community and our place in it. Our liberal, market-led approach must be sustained against pressures for centralist regulation. Yet our commitment to the EC, and the lead we have taken in creating policy across the board, have not been reflected in press coverage or public perceptions of our policy, either at home or abroad. This paper discusses how we can improve our presentation so as to help achieve our policy goals: it is harder to form negotiating alliances if we are thought, however wrongly, to be negative. A positive presentation of our policies is therefore essential.

2. Section II surveys six main policy issues. In each area - EMU, institutional reform, social, environment, single market, and external - we have a distinctive approach: liberal, deregulatory, outward-looking and conscious that national governments have an irreplaceable role. In one area - the Single Market - we are recognised as being ahead of the pack. But on the other internal issues, we have found ourselves at a presentational disadvantage, despite the substance of our policy. External issues are not problematic at present. The main conclusion is that, in most areas, there is no policy constraint on presenting our position more positively and that there is scope for new UK initiatives.

3. Section III examines how we can best promote our policies abroad. It stresses the need for a more targetted approach in each policy area. Section IV addresses presentation in the UK.

II POLICY ASPECTS

EMU

4. Debate on the substance of EMU/IGC will start in earnest with the Commission paper to the Informal March ECOFIN. Our 2 November paper remains on the table. Its reception has been mixed. It tends to be seen as a valid contribution to discussion on an enlarged Stage 1 (or possibly Stage 2) but as unsatisfactory by definition in falling short of an acceptable EMU. We need to play up doubts in other capitals about the Delors prescription. We must first identify who our allies might be on different aspects of the Delors report; and how to develop our arguments to encourage rejection of Delors Stages 2 and 3.

Institutional Reform

5. We believe that further institutional reform is both unnecessary and undesirable so soon after the SEA; and that the IGC starting at the end of 1990 should be EMU-specific. But the IGC will set its own agenda. Some member states want wider Treaty amendments, either because of their intrinsic merits, or as a reaction to German unification. The most likely are increased EP powers; all social and environment provisions made subject to QM voting and the cooperation procedure; and further development of EPC.

6. This area presents more threats than opportunities for the UK. But there could be gains for us, such as:

- more EP powers to monitor Commission activity, and an enhanced role for the EP Budgetary Control Committee (which has already done good work on fraud), so that it acts more like the Public Accounts Committee;

- more contact between the EP and national parliaments;

- more use of Question Time in Strasbourg (originally a UK EDG innovation);

- an EP role in monitoring implementation;

- EP contacts with emerging democratic legislatures in Eastern Europe;

Social Action Programme

7. The Commission's proposed Social Action Programme aims to set the framework for new legislation on social policy. The first detailed proposals are expected this spring. Most should be acceptable or at least negotiable for us. But we shall have major difficulty with directives to regulate working hours, part-time work, and to protect the rights of pregnant women and young children at work; and measures for consultation of the workforce.

8. Our policy aims, all open to positive presentation, will be to:

- press for better implementation of existing legislation, ideally through regular Commission reports;

- concentrate our fire on items where we can show adverse effects on industry - costs, or (better) jobs;

- thereby avoid isolation when we are sympathetic to the basic ideas (eg health and safety at work), but have doubts about the detailed scope of particular measures;

- bid vigorously for the Health and Safety Institute on which a proposal is due soon;

- stress the need for job-creation, so avoiding an undue focus on workers' rights.

Environment

9. Our record of active support for Community measures has not always been fully appreciated. We have often been portrayed as at loggerheads with the Commission. Yet we want progress at the EC level on a range of issues eg public access to environmental information; habitats; and a more coherent waste policy with an emphasis on recycling. We are pressing for a Community-wide scheme of eco-labelling; a system of integrated pollution control; and proposals to cover heavy goods vehicle and diesel emissions. We strongly support proper implementation of environmental legislation throughout the Community. We know the Italians will press during their Presidency for action on environmental taxation. The issue is currently being considered in MISC 141 and there may be scope for a UK initiative.

10. In all these areas we take a very positive and forward position. The right presentation of these objectives, emphasising our lead, should help us to achieve them. It will have a wider presentational benefit as well.

Single Market

11. We have long been in the vanguard, and seen to be so. Our immediate concerns are to:

- press for better implementation of 1992 measures;

- achieve the Strasbourg Single Market priorities by pressing the Commission and Irish Presidency;

- maintain a liberalising, deregulatory thrust in new legislation;

- stress the "people" aspects of the programme, eg the Brittan proposals on insurance, air liberalisation;

- stress continuity of policy beyond 1992, in areas such as competition policy, state aids, implementation and compliance.

Frontiers

12. Recent discussion of frontiers policy has generally gone our way. There is growing recognition that issues such as drugs and illegal immigration must be tackled properly before frontier controls can be reduced. The difficulties of Schengen (regarded, whether we like it or not, as the forerunner of frontier abolition by the 12) have shown as much. We stand more chance of winning support for our policy if we present our need for residual controls as essential for geographical/water's edge reasons, which may well not apply for other member states. We should give high profile to the reductions which we plan post-1992 in customs and immigration checks. We should also highlight the problems which have delayed and diluted the Schengen arrangements; if things are that difficult for 5 countries with only land frontiers, it lends support to our concerns.

External Relations

13. We do not currently have image problems on the main EC external issues - EC/Eastern Europe, GATT, EC/US, EC/Japan and EC/EFTA. Our aims on Eastern Europe are:

- to encourage a coherent and sustained EC/G24 policy towards the emerging democracies, maintaining differentiation and political/economic conditionality;

- to sustain economic reform through liberalisation of trade and enlargement of the private sector;

- to secure London as the site for EBRD.

14. On GATT, our aim is a successful and liberal outcome to the Uruguay Round negotiations due in December.

III PRESENTATION AND ACTION ABROAD

15. In all these policy areas, we have at best an excellent "European" story to tell, and at worst a perfectly defensible one. But careful presentation and lobbying are essential if we are to create the right backdrop for winning our case in policy negotiations. Techniques for getting our views across will vary according to the issue. The main tools will be Ministerial visits; bilaterals; lobbying in EC capitals, Brussels and Strasbourg; speeches; press articles and interviews; and targetted inward visit programmes. There will in each policy area, and in each member state, be key opinion formers, whom we should be aiming systematically to influence. The following suggestions are illustrative only. It will be necessary for each Department to develop, in conjunction with the FCO, a detailed operational plan.

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16. On Stages 2 and 3 of the Delors Report, we need to emphasise different aspects of our concerns in different capitals, and often with different interlocutors in the same capital. For example, we can play on the fears about losing political control over the activities of Central Banks which a number of governments have, particularly in France and Spain. We can exploit the uncertainties created by imminent GEMU. We can encourage resistance to the loss of national economic, in particular budgetary, independence, which the Delors Report implies. Economic Ministries (including FRG) and parliamentarians (across the political spectrum and in most countries except Italy), are likely to be most susceptible to this argument. Northern governments will have doubts about increased resource transfers (to the South and also to the GDR), but in particular we should target the net contributors (FRG, France, Italy), and the financial and business community in the north. In contrast, an important

point to press in southern capitals will be a recognition of the full rigours of EMU, and the economic discipline it will bring. Academic views have been especially helpful, and we should seek to stimulate some more dissenting analyses. Neither should we neglect financial and economic commentators. But we must not overlook the scale of the problem we face in getting our ideas across, so that they form a real part of the debate in the run up to and at the IGC.

Institutional Reform

17. We need to market our ideas (as in the previous para) primarily with:

- British and other MEPs;

- national parliamentarians, especially in France, Denmark, Netherlands, Greece, Ireland;

- political commentators outside government.

18. It might be sensible to have on the record, in advance of the IGC, a major Ministerial speech on the UK approach to institutional reform.

Social

19. Although the line-up at Strasbourg on the Social Charter was 11 to 1, this conceals the fact that some Member States, or at least lobbies within them, privately agree with us about Community regulation in sensitive areas. Our interest lies in exposing these differences of view. Our priority should be the southern Member States; we need to convince them that northern pressure (particularly FRG and Benelux) will erode their comparative economic advantage. Because the southerners stand to lose most, they are also the Member States where implementation of future Action Programme measures is most likely to be slipshod. So strong emphasis on implementation, both direct and through the

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29. Our European image at home feeds in part on perceptions relayed from abroad. But it is also a direct function of how we present domestically our EC policies, themes and achievements.

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37. Deploying all this with the media is much less straightforward than for ordinary domestic policy. Most EC stories come from the Brussels press corps, who are fed by Brussels insiders. We will need to do more to target them, especially by Ministers in Brussels for Council Meetings spending time to brief them.

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Department of the Environment
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8 March 1990

Dear Chris,

ELECTRICITY PRIVATISATION AND THE EC LARGE COMBUSTION PLANT DIRECTIVE

Thank you for your letter of 2 March in reply to mine of 21 December 1989. I am most grateful to you and to your officials for the constructive role your Department has played in producing the compromise arrangement enabling the generators to carry on operating within revised plant quotas which they have proposed to HMIP without having to wait for them to be processed. This meets my concern that there should be flexibility within a "company bubble", while safeguarding the position of HMIP.

This letter is about other interactions between the Directive and electricity privatisation.

It has always been common ground between us that the UK must meet the emission reductions specified in the Directive for the target years 1993, 1998 and 2003. When the Directive was agreed in 1988, the expectation was that the CEGB would be able to meet their limits on sulphur emissions by retrofitting 12GW of large coal fired plant. At that stage it was assumed that the additional costs incurred in meeting the limits by retrofitting FGD would be recovered by the CEGB from the electricity consumer.

The electricity trading system we are now setting up is more competitive than that envisaged in 1988. This means that National Power and PowerGen will be unable to be sure of recovering increased costs from the consumer. So it is imperative that they be given the flexibility to meet their sulphur limits in the most economic way. They could import more coal than the CEGB did in the past: imported coal generally has a lower sulphur content than that produced by British Coal. They could also burn low sulphur oil rather than British coal. Both

these possibilities were envisaged in 1988. What has changed since then is that it is now clear that there is likely to be a substantial move towards the burning of gas for power generation, resulting in lower emissions of both SO_2 and CO_2. This holds out the prospect that the necessary SO_2 reductions could be achieved by a combination of FGD retrofits, coal imports and the introduction of CCGTs, and at less cost than the full 12GW programme.

I have had to assure the generators that I will take full account of FGD requirements when setting their capital structures for privatisation. They contend that they should receive cash injections to cover the entire capital and operating cost of whatever FGD programme they need to undertake in order to meet the Directive. I am not disposed to put in cash, but am obliged to recognise that the massive FGD investment requirement (up to 1.4 billion for 8GW, 1.6 billion when low NO_x burners are taken into account) detracts from the debt which I might otherwise be able to put into the companies.

My officials' discussions with the generators lead them to believe that in order to meet the 1998 reductions there is little practical alternative to retrofitting 8GW of FGD, 4GW each for National Power and PowerGen, the two CEGB successor companies. However, on the basis of plausible views about the introduction of CCGTs and the burning of low sulphur fuels, the further reductions required by 2003 could be made without further retrofits. Your officials have scenarios produced by my economists showing how this could be done.

FGD is a retrograde technology. The way forward to cleaner coal combustion lies through other devices such as gasification or the various fluidised bed concepts. FGD is environmentally disruptive, requiring the quarrying and transport of vast quantities of limestone. It produces an end product, gypsum, in larger quantities than is likely to be capable of being used, and which is likely therefore to have to be disposed of in some way. It also results in higher carbon emissions per unit of electricity generated. These factors point to minimising its use, and working with the grain of the market to get cleaner technologies in.

I propose therefore to set capital structures for National Power and PowerGen on the basis of 4GW of FGD for each company. These 8GW plus other measures such as imports of coal and the burning of gas in CCGTs will secure the 1998 reductions. We are deliberately abandoning centralised state planning of the electricity industry: provided we can be satisfied, as I think we can be, that the 2003 reductions can be achieved without more FGD, I am sure that we should not commit ourselves to any more. This will be a sensible and defensible posture, both for general public use and for the presentation you have to make to the Commission of the UK's intentions. I am reinforced in this view

by the consideration we are now giving to stabilising CO_2 emissions at some stage.

Our officials have exchanged correspondence about the question of limits in the years between the "milestone" years 1993, 1998 and 2003, and particularly between now and 1993. Whatever the legal position, and I believe it is not wholly straight forward, it is most regrettable that the possibility of a requirement for reducing limits in these years should not have been drawn to Ministers' attention when the Directive was being negotiated in 1988. The fact is, as my Department made clear at that time, that there can be no guarantee that emissions from the generation industry will fall before the effect of the first FGD starts to be felt, and if electricity demand rises, as expected, they will have to rise. With my encouragement, the generators and British Coal have concluded a 3 year minimum take agreement for 1990-91, 1991-92 and 1992-93. This puts the generators emission levels largely at the mercy of extraneous factors like nuclear output and supplies over the French link. The generators believe they can achieve the required reductions in 1993, with the aid of substantial coal imports. Thereafter they will increasingly get the benefit of FGD and new CCGT plant.

If declining limits for SO_2 emissions between 1990 and 1993 were to be set, the force majeure provisions in the coal contracts would have to allow the generators some relaxation of the minimum take obligation, negating one of their chief purposes, the provision of certainty for both British Coal and the generators in the early years of the privatised electricity industry. A reduction of 10,000 tonnes of SO_2 requires a switch of about 700,000 tonnes of coal, the implications for British Coal could be severe, including further colliery closures. The alternative, obliging the generators to maintain their minimum take, stockpile British Coal and burn other fuels would be enormously costly in terms of proceeds. I believe therefore that we will have to explain to the Commission that we will meet the 1993 target, but do not intend imposing limits before then.

The implications for British Coal at the end of the decade if 12GW are not retrofitted could be severe. But in the light of growing concern about carbon emissions it is hard to see how we can encourage coal burn. I will be writing separately to the Chancellor.

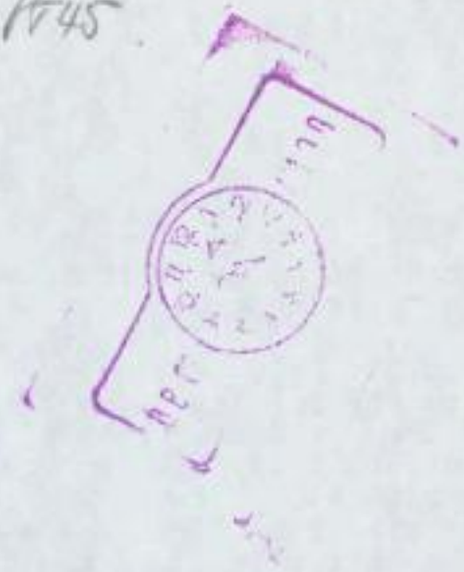
I am copying this letter to the Prime Minister, Geoffrey Howe, John Major, Malcolm Rifkind, and to Sir Robin Butler.

Yours ever

JOHN

JOHN WAKEHAM

EURO POL : Budget Art 45.



47a/2 pmg.vd/docs/waddington

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon David Waddington MP
Secretary of State
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

8 March 1990

Dear Secretary of State,

EUROPEAN COMMUNITY IMMIGRATION ISSUES

I have seen a copy of your letter of ~~21~~ February to Douglas Hurd.

You suggest that you should concur with a proposal that third country nationals entering the UK should be subject to a computer check, and that agreement to this proposal would have resource implications. Since you do not say what these implications are, I assume you are prepared to meet them out of existing provisions.

I am content that you should continue to resist the proposal on embarkation controls which would represent a fundamental change for us both practically (in terms of additional expense and queues) and politically.

I am copying this letter to recipients of yours.

Yours Sincerely

pp THE EARL OF CAITHNESS
(approved by the Paymaster General and signed in his absence.)

EUROPOL . Budapest PTG

AG

MR. MILLS

EC COLLECTIVE REDUNDANCIES AND TRANSFERS DIRECTIVES:
INFORMATION PROCEEDINGS

Your note of 6 March.

I wonder whether it is really worthwhile winding the Prime Minister up to intervene on this issue in the way you suggest, demanding a significant commitment of her time and attention.

The following seems to me the relevant considerations:

- Michael Howard is going ninety per cent and more in the direction we want, i.e. a robust rebuttal of the Commission's main complaints;

- his judgment is that we should concentrate our fire-power on the really important points and not clutter our case with less important ones. The Attorney-General agrees (although you had not of course seen his note when you wrote yours);

- in view of the comments made by our own courts (and I take them as more reproachful than you do) in relation to the complaints made by the Commission in paras. 3 and 9 of their letter, the chances of our winning our point must be zero. Our <u>own</u> courts clearly think we are wrong;

- I agree that there could be <u>some</u> political embarrassment in relation to the 1981 regulations, although I think it would be minor and is to some extent already incurred by the comments of our own courts;

- but you never - or very rarely - get one hundred per cent in the Community. It's sometimes better to throw some of the smaller fish back into the pond. We might even attract <u>more</u> attention to ourselves by fighting this point and losing than by letting it go.

C.D.P.

(C. D. POWELL)
8 March 1990

CONFIDENTIAL

cc PC

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Foreign & Commonwealth Office
Downing Street
London
SW1A 2AH

CBF 873

8 March 1990

Dear Secretary of State,

EC COLLECTIVE REDUNDANCIES AND TRANSFERS DIRECTIVES:
INFRACTION PROCEEDINGS

WILL REQUEST IF REQUIRED

Michael Howard has copied to me his letter of 5 March in which he seeks your agreement, and that of OD(E) colleagues, to the sending of a reply to the EC Commission's Article 169 letter which would contest a number of the allegations made. We are still, of course, at an early stage in the infraction proceedings, and I note that Michael intends to seek my views on the strength of the UK's case, and the arguments we might deploy, before receipt of the Commission's reasoned opinion expected in the autumn.

It may be helpful, however, if I were at this stage to give a preliminary assessment of the likelihood of a successful defence before the European Court in respect of the various complaints made by the Commission.

As far as the obligation to consult workers' or employees' representatives is concerned (paragraph 1 of the Commission's letter), the outlook is not at all promising. Whilst both the relevant Directives leave it to the law and practice of Member States to provide for workers' or employees' representatives, it seems clear that the obligation to consult such representatives pre-supposes that such representatives do exist, or are capable of being brought into existence in the Member States. The European Court will not be convinced by the argument that the obligations to consult need only be complied with where a trade union has been recognised by the employer. The Commission will be able to argue, with some force, that such an interpretation makes the existence of obligations

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under the Directives dependent on the unilateral decision of the employer. It is very probable that the court will accept the Commission's arguments on this point.

As regards paragraph 7 (collective agreements) and 8 (obligation to preserve status and function of representatives) the arguments put forward in the draft letter of reply are respectable, but their outcome is at best uncertain. In relation to collective agreements, our argument would be consistent with the main principle of the Transfer of Undertakings Directives, namely that rights and obligations should transfer intact from transferor to transferee. There is, however, a real risk that in endeavouring to safeguard the rights of employees the European Court will find that the Directive requires collective agreements, which are otherwise unenforceable, to be enforceable for a limited period after a transfer. Our arguments on paragraph 8 could well be dealt with in a similar way. We can certainly argue that our 1981 Regulations do effectively transfer rights and duties, so that a recognised trade union in a transferred undertaking will be in the same position as it was before transfer. However, the Court's approach is likely to be coloured by its attitude to the complaints in paragraph 1 as to our arrangements for securing employee representation generally.

I note that Michael wishes to contest the Commission's criticism of the definition of "undertaking" in Regulation 2 of the Transfer Regulations (paragraph 6 of the letter). No doubt this is a matter which will be returned to at the reasoned opinion stage, but you may recall that as long ago as 1983 the then Law Officers advised that there was a significant risk that the European Court would take the view that the term "undertaking" in the Transfer Directive was not limited to activities of an economic or commercial nature. Given the broad interpretation given by the UK Courts to Regulation 2, there may not be any substantial difference between us and the Commission, but the Regulations could well be thought to be narrower in scope than the Directive and it seems likely that the Commission will succeed in so persuading the Court.

I see no difficulty in contesting the remaining points advanced by the Commission, subject to examining them more closely at the reasoned opinion stage. At present, it would seem that there is a reasonable prospect of success

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on each point.

Accordingly I am content that Michael should reply to the Commission at this stage along the lines he has suggested. I have little doubt but that the Commission will return with a reasoned opinion. It will be important for us to undertake a careful review of our tactics at that stage, when some additional considerations will be relevant.

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

Yours sincerely,
Michael Carpenter

APPROVED BY THE ATTORNEY GENERAL
AND SIGNED IN HIS ABSENCE

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FCS/90/054

HOME SECRETARY

European Community Immigration Issues

1. Thank you for your letter of 21 February. Work has clearly moved on quickly since Strasbourg.

2. I foresee growing political pressure to abolish the Visa requirement for the GDR and for other East European countries. I agree we should review it after the GDR elections and before the Foreign Affairs Council discussion in early April.

3. As for the convention on external frontiers, we have already agreed a line on Euro-visas. I have no difficulty with the line you propose on common refusal lists. On embarkation controls, I agree we should reserve our position for the time being. There is some attraction in our appearing more relaxed than our partners, although we may need to look again if a coordinated system of computerised checks becomes the norm.

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

DH

(DOUGLAS HURD)

Foreign and Commonwealth Office
8 March 1990

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EUROPOL: Budget 1995

Ref. A090/639

PRIME MINISTER

Cabinet: Community Affairs

The Foreign Secretary may report on the 5 March Foreign Affairs Council, which he and the Secretary of State for Trade and Industry attended. The main points were:

- acceptance by the Council that the Commission should open preliminary discussions with the Japanese on car imports; Council debate largely a rehearsal of traditional protectionist vs liberal views;

- general discussion of progress on the GATT Uruguay Round; all agree on need for an early Commission proposal on dispute settlement; general recognition that integration of developing countries into GATT is a key objective and that agriculture and textiles are important if difficult issues;

- little progress in settling the sites for the European Bank for Reconstruction and Development (EBRD), Environment Agency, Community Trade Mark Office, and Training Foundation for Eastern Europe;

- some helpful clarification by Genscher of the constitutional path to German unification, in response to questions from the Foreign Secretary and others.

2. The Minister of Agriculture, Fisheries and Food may report on the 5-6 March Agriculture Council. The main points were:

- limited progress on the 1990 price-fixing;

- some pressure for a cut in the basic coresponsibility levy for cereals;

- Presidency aiming to reach an overall settlement at the Council beginning 26 March;

- Germany asked for discussion of the agricultural implications of unification: this too will be taken at the 26 March Council.

3. Forthcoming meetings are:

ECOFIN Council, 12 March
Industry Council, 13 March

F.E.R.B.

ROBIN BUTLER

7 March 1990

CONFIDENTIAL

cc PM
CST PC
B

THE "FRENCH" PACKAGE: 3 EC TAX MEASURES TO ENCOURAGE CROSS-BORDER CO-OPERATION BETWEEN COMPANIES

A Paper by HM Treasury

Await comments from ...

Objective

This objective of this paper is to help determine the UK negotiating stance on this package of EC tax measures to encourage cross-border co-operation between companies before it is next discussed at ECOFIN (prospectively 23 April).

2. The constituent measures, which date from the 1960s and 1970s, were brought together by the French Presidency in 1984. They are:

(i) the Parents/Subsidiary Directive which would eliminate taxes on dividends paid by subsidiaries to their parent companies across EC borders;

(ii) the Mergers Directive which would remove tax obstacles (particularly CGT) on mergers and takeovers across EC borders; and

(iii) the Arbitration Procedure, a multilateral convention to resolve transfer pricing disputes between member states.

Each of the measures and therefore the package requires unanimity.

3. The general UK line on direct tax measures proposed by the Commission is that centrally imposed harmonisation is both undesirable and unnecessary. Such harmonisation as is required will be achieved through the operation of market forces. On this particular package, however, the view was taken, with the previous Chancellor's approval, that, provided certain UK problems could be resolved (the exclusion of Petroleum Revenue Tax from 2(iii) and the recognition that Advance Corporation Tax was not a withholding tax, and hence caught by 2(i)) the UK should not waste powder and shot opposing these relatively limited tax harmonisation measures per se. Indeed, the UK already allows the kind of tax relief

provided for by the Mergers Directive and imposes no withholding tax on dividends leaving the UK. Accepting the Package would not involve the UK Exchequer in any additional costs, and 2(i) would increase the UK tax take on dividends flowing in from other member states.

4. In fact, UK and European Industry anticipate considerable benefits from the adoption of this package. 2(i) would enable parent companies to receive dividends in full from their foreign subsidaries, improving their cash flow and encouraging distribution of profits. 2(ii) would remove tax disincentives to cross-border takeovers and mergers. And 2(iii) would relieve businesses from double taxation resulting from overlapping fiscal authorities. The CBI has therefore indicated its full support for these proposals and UNICE (the European equivalent) has described the package as being of "particular importance". The measures were also given priority in the conclusions to the Strasbourg Council.

Article 14a(1)

5. There is, however, a non-tax problem with this package in its present form. This relates to an amendment to 2(ii), the Mergers Directive (article 14a(1), text attached) designed to safeguard the worker participation (WP) arrangements in force in Germany. This provides for a derogation whereby member states may refuse the tax benefits of the Directive if, as a result of a merger or transfer, a company no longer meets the conditions it previously met for worker representation "on company organs".

6. The UK is opposed to mandatory WP and we are committed to preserving our voluntary employee involvement arrangements. The UK has therefore been resisting attempts by the Commission to impose compulsory WP on British companies through measures such as the 5th Company Law Directive, the European Company Statute (ECS) and the proposals for implementing the Social Charter. Clearly in order to uphold this negotiating line successfully it is important to avoid any inconsistencies between the UK's position on individual measures. Article 14a(1) therefore raises a general problem in that it effectively provides for a specific tax

incentive in certain circumstances for the adoption of a particular system of WP.

7. A particular problem with article 14a(1) arises from the fact that it would provide for special treatment for this particular type of institutionalised worker participation. Representation on company organs means board-level representation, which is an integral part of the WP arrangements of Germany, Denmark and (after a fashion) the Netherlands. This system no doubt suits those countries just as our voluntary system suits the UK. However we do not consider such arrangements to be in any way superior to UK arrangements and therefore to merit special treatment. But it is the stated aim of Germany to ensure that workers in German establishments retain a system of WP which Germany consider to be materially equivalent to board level representation, wherever the Board of the company may be based. Germany does not consider any systems of WP other than ones involving board level representation to be materially equivalent to their system.

8. This is of immediate concern for the UK because of the deadlock we have been able to engineer in discussions on the WP provisions in the 5th Directive - where the UK, together with Germany and Ireland, hold a blocking minority. All that is stopping Germany from accepting the WP provisions in this Directive (which include a model based on the Germany system) is their wish to have included in the Directive an acknowledgement that while Works Council arrangements (the French System) are an acceptable minimum provision, they are inferior to systems involving board-level representation. But they might feel that their point was adequately met if they could point to the Mergers Directive as an adopted Community instrument which acknowledged the special status of board level arrangements. They might then cease blocking the WP provisions of the 5th Directive.

9. The WP provisions of the 5th Directive, which would impose WP on all large PLCs, are a matter on which the UK may well find itself isolated at some stage, and the possibility of having to invoke the Luxembourg compromise cannot be excluded. Our ability

to employ this tactic might be brought into question if it could be claimed that the UK had, in another context, departed, however slightly, from a purely voluntary approach to WP.

Practical Effect of Article 14a(1)

10. The Mergers Directive provides for tax deferral for mergers across EC borders. The UK already allows this, but not all EC countries do. Such relief is only to be available under the Directive where mergers are achieved through an exchange of shares and there is no more than a nominal (10%) cash transaction. The mergers which stand to benefit from the tax advantages of the Mergers Directive could in principle be of the following main types:

(a) A company exchanges its own shares for all or some of the shares in a company incorporated in another member state, but both companies continue as separate legal entities;

(b) A company holding, or acquiring as above, all the shares in a company in another member state, winds that company up, and integrates its assets and liabilities with its own business; or

(c) Two (or more) companies from different member states merge their operations in a single company, which subsumes the original companies.

(d) A company acquires, in exchange for shares, part of the operations of a company in another member state.

Article 14a(1) would not necessarily apply in (a). The acquired company would continue to be subject to the legal requirements of the state in which it was registered, including any requirements on WP. Compliance with those requirements would also meet the WP requirements of article 14a(1), and it would not be necessary to introduce WP arrangements in the acquiring company in order to secure the tax benefits of the Directive. But, if the acquired company had belonged to a group which had WP on the company board because employment in the group as a whole was higher than a

specified threshold, then workers in the company being acquired and/or the remaining group could lose their WP rights. Article 14a(1) could then apply.

11. The article would, in theory, also apply to mergers (b), (c) and (d). But neither (b) nor (c) are practical possibilities at present. Both would, however, become possible if the 10th Directive on Company Law were agreed, although the Commission does not seem to be giving it any priority at present. (c) would become possible under the proposed European Company Statute, which has objectionable WP provisions of its own.

12. Thus the Mergers Directive may not have many practical implications for WP in UK firms at present. But we have to assume that at some point forms of merger will become possible which, if they involved a UK company and a company in a member state with statutory requirements for board-level WP, would present the UK firm with a choice between itself adopting that form of WP, or forgoing the tax benefits of the Directive.

Article 14a(2)

13. A further point arises from the second clause of article 14a. This clause was inserted with the intention of removing the derogation under article 14a(1) whenever provisions were agreed on WP generally in the 5th Directive. But the actual wording of article 14a(2) in the current draft does not achieve this, because it provides for the derogation to continue until subsumed by provisions requiring board-level WP. The 5th Directive however recognises other forms, and would not therefore remove the derogation. In any case, the 5th Directive would not disapply the derogation entirely anyway because it will not apply to all companies covered by the Mergers Directive. We would be likely to get more support for an amendment on this point than on article 14a(1), and it may therefore be worth pressing even if it is decided to go along with the present 14a(1).

Negotiating History

14. It has proved impossible over a number of years to budge the Germans on Article 14a(1). In early 1989, in the light of

difficult negotiations in which the UK secured its key requirements on other aspects of the package, the UK maintained its formal reservation, but indications were given to our EC partners (and by the then Chancellor to the Commission) that the UK would be able to agree to article 14a in the context of an overall agreement on the package. Had it not been for an unrelated dispute between the Dutch and the Germans, the package as currently worded would have been adopted at either the April or June 1989 ECOFINs. However, the UK has recently had to give greater emphasis to its objections to mandatory WP, notably as a key objection to the Commission's proposed Social Charter, which the Prime Minister declined to endorse at the Strasbourg European Council last December. It was therefore subsequently agreed between Employment and Treasury Ministers that the article should be resisted because of its implications for the UK's wider stance on WP. Given the history, to press this objection at this stage would attract considerable criticism from other member states and the Commission.

The Options

15. There are a number of options which might therefore be pursued. These are:

1. Oppose the package as a whole unless satisfactory amendments to article 14a can be negotiated;

2. Oppose the Mergers Directive unless amended, but propose that the other two measures might be adopted without it;

3. (i) Seek only to amend article 14a(2), and (ii) attempt to secure an agreed Council and Commission Minutes Statement to the effect that the Directive is without prejudice to member states' positions on WP generally, and that it does not imply recognition by the Community of the superiority or primacy of any particular form of WP;

4. Option 3(ii), without 3(i); or

5. Agree the package, but try get the Commission and as

many member states as possible to agree a unilateral Minutes Statement to the same effect as for option 3(ii).

Discussion

16. Alternative wordings with similar effect have been put forward at different stages (eg by France, who specifically objected to German protectionism), but the Germans have always stood firm. An amendment that would reconcile German and UK interests is not easy to envisage. The UK might also be seen by the Germans to be deliberately trying to undermine the German system, although we would not accept that this was the intention or the effect of the changes we might propose. Option 1 would therefore, to all practical effects, mean blocking the package. This would remove any threat to the UK's wider position on WP, but against this must be weighed the undoubted political difficulties of appearing to reopen the compromise package at a late stage, with the attendant dangers that other concessions won would then be lost. Blocking would also lose the tax benefits for business, and so might well invite some criticism from business as well as our EC partners. However, against that, the UK line on WP is supported by both the CBI and UNICE.

17. Untying the package (option 2) does not present a real alternative. The Commission does not regard them as an inseparable whole, but the package approach has been important in resolving other outstanding difficulties on the measures it contains. Informal soundings indicate no enthusiasm for untying. The Germans in particular would be under no pressure to agree the individual elements (which all require unanimity) if they could not get their way on article 14a. Nevertheless, if we decided to block, it could be tactically better to take the position of blocking the Mergers Directive alone, rather than the whole package.

18. If blocking the Directive is considered too unattractive, either politically, or because of the benefits of the package that would be lost, then the UK could best protect its line on WP by negotiating an agreed Council and Commission Minutes Statement (options 3 or 4). Indications from the Commission suggest that

this should be obtainable and would be supported by other delegations including the French. This would minimise the repercussions of accepting the article for the UK stance on WP in other contexts, including the ECS, the Social Charter and the 5th Directive, but it would not eliminate them. It would also ensure that the Germans could not claim that the primacy of their system had been accepted by the Council and the Commission. But it would not prevent the Mergers Directive imposing real financial constraints on UK companies freedom to conduct their business without having to adopt any prescribed form for worker representation.

19. A Minutes Statement on its own could not solve the secondary problem of the unsatisfactory terms of 14a(2). It could be used to make a declaration of intent, but as this would need to contradict rather than interpret the letter of the primary text, it could have only limited legal force. The benfits of properly resolving this problem would need to be assessed in light of the sympathy shown by other member states to the possiblility of an amendment.

20. Option 5 would allow the UK subsequently to deny inconsistency in opposing mandatory WP arrangements in other contexts. But it would only commit those member states who could be persuaded to support the Statement. And it would not prevent the imposition of restraints on UK firms' freedom to choose their own form of WP.

HM TREASURY
MARCH 1990

TITLE VI

FINAL PROVISIONS

Article 14a

1. A Member State may refuse, or withdraw, the application of all or any part of the provisions of Titles II, III and IV if the merger, division, transfer of assets or exchange of shares:

- has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that one of the operations referred to in Article 1 is not carried out for valid commercial reasons such as the restructuring or rationalization of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;

- results in a company, whether participating in the operation or not, no longer fulfilling the conditions required for the representation of employees on company organs according to the arrangements which applied prior to that operation.

2. The second indent of paragraph 1 will apply as long as and to the extent that the Community law provisions containing equivalent rules on representation of employees on company organs are applicable to the companies covered by this Directive.] (1)

(1) Text contained in the Presidency compromise, point I.

CONFIDENTIAL

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

The Rt Hon John Wakeham MP
Secretary of State
Department of Energy
1 Palace Street
LONDON
SW1

2 March 1990

Dear Secretary of State

EC LARGE COMBUSTION PLANT DIRECTIVE: IMPLEMENTATION MACHINERY

Thank you for your letter of 21 December. I have also received Peter Lilley's letter of 22 December. You and Peter expressed concern at what you believed to be the implications of my Department's proposed machinery for enforcing the Large Combustion Plants Directive (not to be confused with discussions in other fora on the nature of the ESI pollution abatement programme). There is no issue between us on UK determination to meet this Directive, but you were concerned with the reserve enforcement powers that I believe are necessary to ensure that the UK meets its international commitments.

It has been common ground throughout that the electricity generators must not exceed the sulphur limits granted to them but this should not mean that they should have substantially to over-perform to keep within those targets. To assist the economic attainment of these limits my Department's proposals from the outset have reflected the opportunity for the industry to allocate its sulphur limits amongst its plant. I trust this reassures Peter Lilley regarding his concern on efficiency.

It is our common intention that the generators should manage their plant to meet the limits efficiently, keeping HMIP informed of progress. With you I would hope that there should never be the need to exercise enforcement mechanisms, but I need effective mechanisms in place. The UK must be able to make a good account to the European Commission on its proposals. I am sure you agree that we do not wish the Commission to challenge our approach publicly as privatisation approaches.

Since you wrote, our officials have met twice with the generators. I believe all now understand why we could not accept the proposal put forward by the generators in the Autumn. However, I am pleased

EMO Pol: Budget 1944

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to say that, with a constructive approach on all sides, it has been possible to produce a compromise arrangement which enables the generators to carry on operating within revised plant quotas which they have proposed to HMIP without having to wait for them to be processed. HMIP can thereby allow complete operational flexibility provided a generator is keeping on course while retaining adequate powers to intervene if he is clearly not doing so. I believe the arrangement will be sufficiently robust to convince the Commission. It will also avoid the need for complex and visible amendments to the Environmental Protection Bill.

I understand that only minor points now remain to be sorted out. I know for example that the generators have residual concerns about public access to information about their quotas and actual emissions. We have been able to give them substantial help with the presentational aspects relating to this directive. More generally, the system of Integrated Pollution Control introduced by the Bill provides for commercially confidential information to be withheld from the registers, and the generators recognise that it would be for them to mount cases in due course.

I am copying this letter to the Prime Minister, Geoffrey Howe, John Major, Peter Lilley and Malcolm Rifkind and to Sir Robin Butler.

Yours sincerely

R Baker

pp CHRIS PATTEN

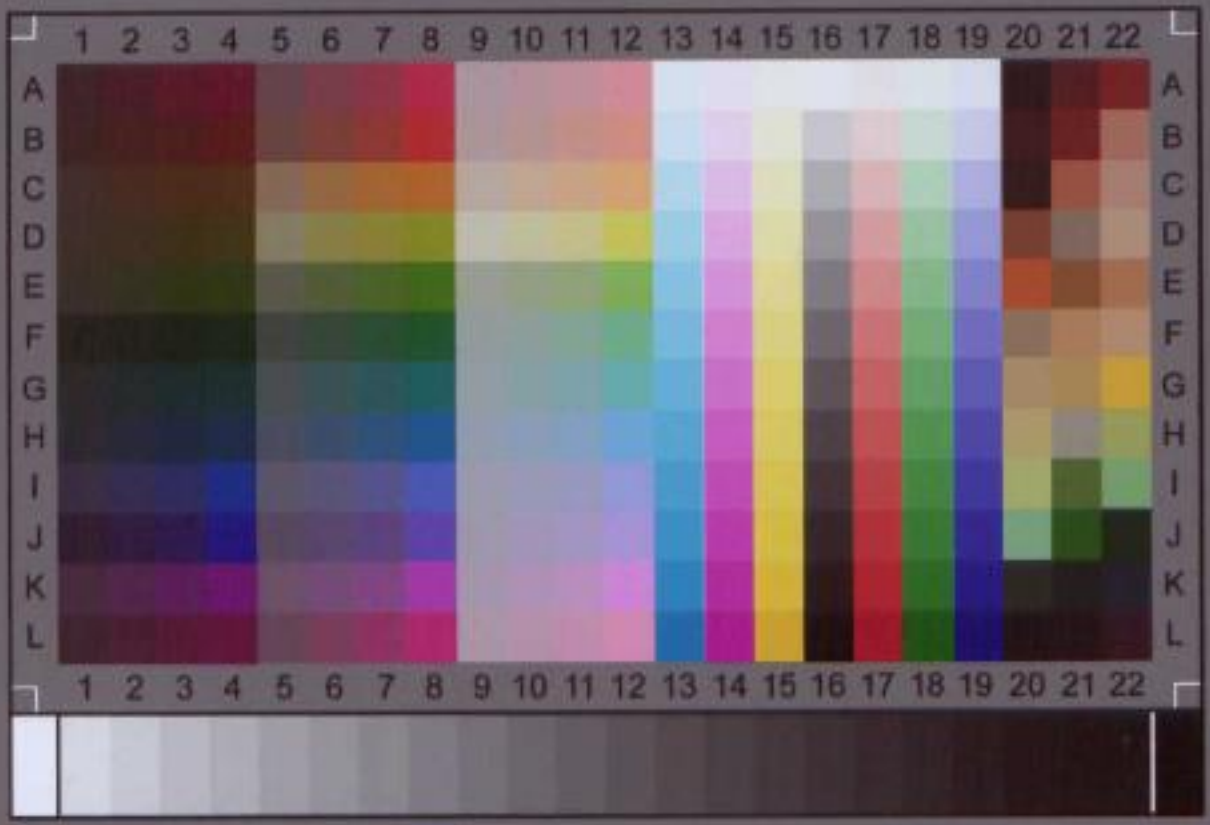
(Approved by the Secretary of State and signed in his absence).

PART 44 ends:-

FORMS TO PM 28.2.90

PART 45 begins:-

SS/ENV to SS/Energy 8.5.90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