



Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

COMMUNITY BUDGET REFUNDS

You will recall that we are having trouble with other member states, particularly France and Germany, over securing the balance of our Community budget refunds for 1980 and advance payments for 1981. This minute discusses what our next steps should be. One decision - paragraph 16 below - is urgent.

Amounts still owing

2. On our own 'minimum net refund' interpretation of the 30 May agreement, the Community still owes us some 211 million ecus gross in respect of 1980, and our gross entitlement for 1981 is some 1805 million ecus. The provision made in the Community budgets for 1980 and 1981 and the draft budget for 1982 are consistent with this interpretation.

3. On a 'minimum net contribution' interpretation, and assuming that the Commission's latest estimates of uncorrected net contributions are accepted, we have already received more than our total gross entitlement in respect of 1980. We ought therefore to repay some 123 million ecus gross. Our estimated gross entitlement for 1981 falls on this interpretation to some 992 million ecus. (See further the tables at annexes A and B.)

4. The reason why the minimum net refund and minimum net contribution interpretations produce such different results is that the Commission have reduced their estimates of the UK's uncorrected net contributions for 1980 and 1981 by as much as 900 million ecus since the time of the 30 May 1980 agreement. Their estimate of our uncorrected net contribution for 1980 has fallen by 263 million ecus; and that for 1981, by 635 million ecus.

Impending hurdles

5. There are three main hurdles which need to be surmounted if we are to secure the balance of our refunds for 1980 and advances for 1981 before the end of the year.

(i) Financial mechanism transfer

The 1981 budget provision for the financial mechanism needs to be transferred to supplementary measures, now that we have again failed to qualify for the financial mechanism.

(ii) Supplementary measures advances transfer

The provision of 150 million ecus for advances in the 'reserve' chapter of the 1981 budget needs to be transferred on to the supplementary measures line of the budget so as to enable the Commission to pay it out to us.

(iii) Council agreement to advances

In accordance with the supplementary measures regulation, the Council have to decide on advance payments of supplementary measures.

6. The Commission have put forward proposals on each of the above. Their proposals on the two transfers (items (i) and (ii)) will prevail automatically unless a qualified majority of the Council has taken a contrary view by 21/22 December. We can prevent such a qualified majority from forming so long as the Commission's proposals are supported by at least one large member state (such as Italy) besides the UK. We are seeking to confirm that the Commission share our interpretation of the rules.

7. For approval of the supplementary measures advances (item (iii)), however, a decision is needed in the Council. Without such a decision, our advances will be postponed from December to March.



8. The Commission's proposals are not ideal from our point of view. In particular:-

(a) The supplementary measures transfer provides for only 150 million ecus of advances as against the figure of at least 200 million ecus envisaged in the agreed Council minutes entry of October 1980.

(b) There have been signs that the Commission may try to carry through the financial mechanism transfer at a set of exchange rates which would be to our disadvantage.
We are protesting.

9. Subject to these two points, however, it is clearly in our interests that the Commission's proposals should go through. Without them we cannot obtain the balance of our refunds for 1980 or advances for 1981.

10. A further hurdle is that the ad hoc committee of member states has to be consulted about the supplementary measures decisions before any further money can be paid to us. The committee meets tomorrow, Thursday. The Foreign Secretary has urged French and German Ministers not to obstruct its work.

Attitudes of other member states

A. | 11. Since 25 November when my Private Secretary sent Michael Alexander a background note on this issue, the French position seems if anything to have hardened. The French representatives have now argued explicitly in COREPER and elsewhere that the 30 May agreement provides for a minimum net contribution by the UK, not a minimum net refund. On this basis, they contend that we have already received more than our total entitlement to refunds for 1980 and should not, therefore, receive any more (see further paragraph 3 above). They are also arguing strongly against our receiving any advances for 1981. France contributes about 30 per cent of our net refunds. But the primary French motive seems to be to link the issue of our refunds to the mandate negotiations.



12. The Germans have continued to insist in COREPER on discussion in the Council on the minimum net refund issue, in accordance with the agreed entry in the Council minutes of October 1980 (see paragraph 4 iv. of the background note). They contribute about 40 per cent of our net refunds and their uncorrected net contribution has turned out significantly larger than foreseen on 30 May last year. They too are evidently tempted by the thought of linking the refunds issue with the mandate negotiations. But it is less clear how far they want to press the matter.

13. The other member states seem, for the time being at least, prepared to acquiesce in the Commission's immediate proposals.

Next steps

14. Our short term objectives must be to secure payment as soon as possible of (a) the balance of the 1981 budget provision for our 1980 refunds (some 211 million ecus gross) and (b) supplementary measures advances for 1981.

15. I hope we can rest on inertia to secure the refunds for 1980 and the two transfers (paragraph 5 (i) and (ii)). As explained above, the Commission's proposals will prevail automatically on 21/22 December, unless reversed by the Council. If other member states demand a Council vote, I would propose to make very clear the potentially serious political implications in the UK if the rest of the Community appears to be re-opening the 30 May agreement.

16. Obtaining Council agreement on advances for 1981 will be more difficult and present indications are that we should lose in the Council if a vote were taken this week. Yet we cannot obtain these advances for 1981 without a Council decision (paragraph 7 above). That points to bringing the matter to ECOFIN on 14 December, since that is the only suitable occasion left this month and Sir Michael Butler needs instructions tomorrow on whether to inform his colleagues that this issue will be on the draft agenda.

17. I myself see a strong argument for putting it on the agenda, namely that it would be better for us to be voted down than to give up our



case without fighting it through to a vote. Better a public grievance than an ignominious surrender. To concede that our refunds should be paid even further in arrears than they are already would not only cost us real money and set a bad precedent; it would also cast doubt on our firmness of purpose and encourage others to believe that we were prepared to renegotiate the refunds arrangements. (We might, however, agree to take 150 million ecus of advances only, instead of the 200 million ecus figure envisaged by the Council last October.)

18. On the other hand, a vote against us would bring the present disagreement right out into the open, and so risk public misunderstandings. Unfortunately it would coincide with the informal meeting of Foreign Ministers in London. It might only produce an unhelpful hardening of positions.

19. The compromise I propose is to ask our Ambassador to give notice in COREPER tomorrow that I shall want to raise the matter over lunch when ECOFIN meets. At the lunch, I should then make two main points:-

- (i) We look to the Council to proceed as envisaged in the agreed Council Minutes entry of October 1980, which committed the Council to consider the scope - in practice, the budgetary scope - for at least 200 million ecus of advances for the UK this year. There is no question that such scope exists.
- (ii) Payment of advances would in no way prejudice the position of any member state with regard to our total entitlement. What is at issue is simply how far in arrears the refunds are made.

After lunch, I would sum up the discussion for the Council record. If there is sufficient goodwill, I would put the matter to a vote.

20. If not, I would let it rest, and redouble the efforts we are already making to persuade the Commission to make proposals to enable

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the 150 million ecus provision for advances in the 1981 budget to be carried forward into 1982 so that it is not lost altogether. If they do, their proposals will prevail unless overturned by the Council.

21. As and when others raise the 'minimum net refund' issue, I propose that we should take the line at Annex C. This takes account of the legal advice at Annex D.

22. If we run into serious trouble, we shall need to consider how to react further. There are various options. But sufficient unto the day.

23. I am copying this minute to the Foreign Secretary and to Sir Robert Armstrong.

G.H.

9 December 1981

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ANNEX AUK BUDGET REFUNDS FOR 1980 AND 1981
(Minimum net refund interpretation)

Million ecus (rounded)

	<u>1980</u> <u>Budget</u>	<u>1981</u> <u>Budget</u>	<u>1982</u> <u>Budget</u>
<u>Amounts due for 1980 and 1981</u>			
Net	1175	1410	..
Gross	1438	1805	..
<u>Budget provision</u>			
Financial mechanism	-	469	-
Supplementary measures (except advances)	-	775	1654
Supplementary measures advances	194	150 (Ch.100)	-
Total	194	1394	1654
<u>Payments received to date from each</u> <u>budget</u>			
Financial mechanism	-	352	-
Supplementary measures (except advances)	-	681	-
Supplementary measures advances	194	-	-
Total	-	1033	-
<u>Balances due</u>			
Financial mechanism	-	-352	-
Supplementary measures switched from Financial mechanism	-	469	-
Other Supplementary measures (except advances)	-	94	1654
Supplementary measures advances	-	150	..
Total	-	361	1654 (excl.advances)

ANNEX BMINIMUM NET REFUND AND CONTRIBUTION INTERPRETATIONS COMPARED

(million ecus)

	<u>1980</u>		<u>1981</u>	
	<u>MNR</u>	<u>MNC</u>	<u>MNR</u>	<u>MNC</u>
1. Net refunds entitlement for 1980 and 1981	1175	902	1410	775
2. Gross entitlements corres- ponding to (1)	1438	1104	1805	992
3. Gross amounts received to date	1227		-	
4. Gross amounts still due	211	-123*	1805	992

*Repayment

LINE TO TAKE ON MINIMUM NET REFUND

- In the UK view, the 30 May agreement provides unequivocally for a fixed net refund to the UK for 1980 and 1981 unless our uncorrected net contributions exceed the projections mentioned in the agreement. This view is based on historical as well as legal arguments.

- Historical arguments. We argued strongly in the negotiations leading up to the 30 May settlement for a fixed net contribution. Other member states argued strongly for a fixed refund. We eventually conceded the point - on the understanding that if our actual uncorrected net contribution exceeded the Commission's projections, the difference would be split between the UK and other member states. The final stages of the negotiation were thus specifically concerned with the size of our refunds. It is unreasonable for other member states to change horses now.

- Legal arguments.
 - a. The agreement states (paragraph 3) that 'the United Kingdom contribution, based on the e' calculations, is reduced for 1980 and 1981 2585 meua (1175 + 1410)'. Our corrected net contribution is clearly treated as a residual witness the fact that it was left unrounded at 609 million ecus for 1980.

 - b. The agreement provides (paragraph 4) for our refunds to be increased in certain circumstances. There is no provision whatever for them to be reduced. If the Council had wanted to make such provision, it could have done so.

 - c. The only reason why the agreement mentions net contribution figures as well as the net refund figures is in order to define the circumstances in which our refunds are to be increased under the 'risk sharing' arrangement.

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- October 1980 Council Minutes entry. The Council Minutes for October record that member states reserved their positions in the event of a shortfall in our uncorrected net contribution. But this cannot possibly displace the obligation in the Council agreement of 30 May. Nor is it any clear aid to the construction of that agreement. It may create an obligation to discuss the new situation; but discussion must start from the proposition that the agreement continues prima facie to apply.

- Political. UK Ministers accepted the 30 May agreement only in a spirit of compromise, and as a temporary arrangement. The agreement left the UK as a substantial net contributor even though it is one of the less prosperous member states. If events have turned out in such a way that our corrected net contribution will be less than earlier expected, that is a matter for satisfaction - and not a ground for re-opening the agreement. If other member states persist in seeking to re-open the agreement, the political consequences in the UK could get rapidly out of hand.

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be addressed to

THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our Ref: 400/79/289

8 December, 1981

Dear Richard,

EC BUDGET: UK REFUNDS

1. I am writing to record the advice which the Attorney-General gave orally in conference on Wednesday 2nd December when you, together with Karl Newman, Michael Saunders, Fred Burrows and Andrew Edwards, discussed with him the legal problems identified in EQR(81)27.
2. The Attorney-General agreed with what I think was the view of all present on the central issue of law, namely, that we have perfectly respectable arguments - indeed, strong arguments - for contending that paragraph 3 of the Council's Conclusions of 30th May 1980 (which was repeated in paragraph 3 of Annex II to Council Regulation 2744/80 of 27 October 1980) is the "dominant" provision of the instrument, in which case we are entitled to the refund specified in it even if our actual contributions for 1980 and 1981 turn out to be less than was originally estimated. In coming to this view, the Attorney-General had regard to the legal considerations set out in the revised version of Annex C to EQR(81)27 and also to the further consideration, which Fred Burrows drew to our attention, that paragraph 10 of the European Parliament's Resolution of 18 September 1980 (commenting on what became Council Regulation 244/80) described the arrangements as ones "setting specific ceilings for national contributions" - as contrasted, that is, with specific levels.
3. The Attorney-General warned, however, that the contrary view, i.e. that the refunds envisaged by paragraph 3 of the Conclusions should be abated to the extent that our actual net contributions fall short of the contributions originally estimated, is by no means manifestly untenable. It is a view which he thought could conceivably commend itself to the European Court: he was not able to predict with any assurance how the Court would react on this question.
4. A further alternative interpretation of the legal position which the Attorney-General thought might possibly appeal to the Court is

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that the agreement recorded in the Conclusions failed altogether to deal with the situation in which we now find ourselves, i.e. that that situation is a genuine casus omissus. He considered that, if the Court took that view of the matter, it would be very unlikely to take it upon itself to legislate for the casus omissus by specifying what refunds we are now entitled to: it would almost certainly regard this as a political decision which could only be taken by the Council of Ministers.

5. In this context the Attorney-General considered the significance of paragraph 8 of the Council Minutes of October 1980. He took the view that this paragraph did not, as a matter of law, qualify the interpretation which should otherwise be placed on the Council's Conclusions of May 1980 and he therefore did not regard it as precluding us from maintaining our claim to be entitled to the full refund specified in paragraph 3 of the Conclusions. However, he thought that the Council Minutes clearly imported some obligation - its exact status was unclear - to enter into discussions with our Community partners for a resolution of the difference between us on this issue and he further thought that, whatever the inhibitions on the Court being told about, or taking formal cognisance of, these discussions, there would be a real risk that any failure by us to adopt a reasonable position during them would in fact become known to the Court and would incline it to give an unsympathetic hearing to our arguments on the strict legal construction of the texts.

6. Summarising the practical effect of these various conclusions, the Attorney-General advised as follows:

- (a) We have strong arguments, which add up to a very respectable case, for maintaining that we are legally entitled to the full refund specified in paragraph 3 of the Council's Conclusions.
- (b) However, it is impossible to predict what the European Court would decide if the issue were taken to it.
- (c) If the issue does get to the European Court, the Court's natural distaste for what it will probably see as a discriminatory arrangement in our favour will be increased if it appears that we have been unwilling to enter into discussions for an accommodation in pursuance of the entry in the Council Minutes or have adopted an unreasonable posture in those discussions.

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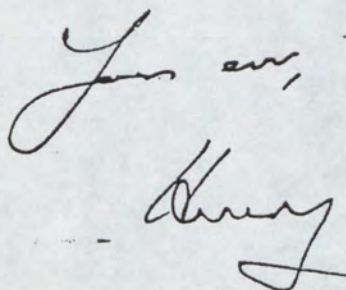
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- (d) If the Court rejects both our view that paragraph 3 of the Council's Conclusions is the dominant provision and the alternative view that the factor which determines the size of our refund is the contributions actually found to be due from us, i.e. if it holds that we are now faced with a true casus omissus, it is unlikely that it will itself determine what the proper level of refund should be: it will almost certainly take the view that that issue requires a political decision by the Council of Ministers.

7. I am copying this letter to the others who were present at the conference.



H. STEEL

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