

PRIME MINISTER

EUROPEAN COMMUNITY: INTERGOVERNMENTAL CONFERENCE

You will remember that at the Luxembourg Council you put a reserve on the new Article 118A and insisted that majority voting be retained for it.

There is now a proposal to add a new clause to the Article saying that directives made under it "shall avoid" imposing administrative and legal constraints on small business. This would be in the text of the Treaty.

what about financial constraints?

It is suggested that this should enable us to drop our insistence on unanimity. The Foreign Secretary, the Employment Secretary and the Trade and Industry Secretary are content to do so.

It's not an easy choice. Who is to judge whether a particular directive imposes administrative and legal constraints?
Answer: a majority of members of the Council. So there's no doubt that we would not have the same protection as unanimity would give.

On the other hand, if all other issues were resolved satisfactorily (i.e. if others drop their reserves), we would look a bit unreasonable if we held out on this. I think what is proposed would be defensible in the House. (I attach Hansard for your statement after Luxembourg.)

Since your principal colleagues are content, agree in the context of all other reserves on the points agreed at Luxembourg being lifted without significant changes?

C.D.P.

Would agree to drop reserve provided the Council get the small business exception right - see above note

C.D. POWELL
16 January 1986

"ARTICLE 118A

1. Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made.

2. In order to help achieve the objective laid down in the first paragraph, the Council, acting by a qualified majority on a proposal from the Commission, in co-operation with the European Parliament and after consulting the Economic and Social Committee, shall adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.

3. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with the Treaty."



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MR POWELL

EUROPEAN COMMUNITY: INTERGOVERNMENTAL CONFERENCE

At the European Council on 2-3 December the Prime Minister maintained a reserve on the proposed Article 118A (working environment) because she insisted that it should not be used in such a way as to impose unfair regulatory and administrative burdens on small and medium-sized businesses. This was in direct line with the United Kingdom initiative on deregulation which has been broadly accepted within the Community. At the Foreign Affairs Council on 16-17 December the Foreign and Commonwealth Secretary maintained the reserve.

The Dutch Presidency is working for the signing of the texts incorporating the results of the Intergovernmental Conference at the Foreign Affairs Council on 27 January. Although the position of the Italian and Danish governments has not been decided, their general reserves may be lifted. The Italian government is trying to find grounds to do this. The Danish government, which is playing for high stakes at home, may sign and challenge the opposition by announcing its willingness to hold a national referendum. The Dutch Presidency has therefore been seeking to resolve all issues, including the United Kingdom reserve on the proposed Article 118A. For this purpose the Dutch Presidency proposed that the United Kingdom's insistence on avoiding burdens on small and medium-sized businesses should be met by a declaration of the Commission or of the Conference. We rejected this in summary fashion, stating that we must have an amendment of the text. We continue to advise that the United Kingdom needs the legal protection afforded by a Treaty text.

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In the light of our refusal the Dutch Presidency has now proposed an amendment of the text and has a reasonable chance of carrying other member states with them. The proposal is to add:

"Such directives shall avoid imposing administrative and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings".

Although we have not obtained a requirement of unanimity for voting, which we sought at Luxembourg, the text above would be a new legal requirement clearly barring the potentially burdensome regulatory proposals against which our reserve was entered and maintained. The wording is closely based on the conclusions on deregulation of the European Council of 29-30 March 1985. I should stress that the voting provisions of Article 118A relate to minimum requirements on health and safety of workers, member states being free to maintain or introduce higher standards. Our national standards are likely to be higher than those of, for example, Portugal. The extent to which any proposal would bite on the United Kingdom may be limited. We consider, therefore, that we would be justified in relying on the ban on burdensome regulations which would be imposed by the text above. We seek agreement to accept it if, and only if, all other member states accept it.

The Foreign and Commonwealth Secretary and the Secretary of State for Employment have been consulted and agree with this recommendation.

I am sending copies to Colin Budd (FCO), Leigh Lewis (Department of Employment), John Mogg (Department of Trade and Industry) and Sir Robert Armstrong.

D F Williamson

D F WILLIAMSON

16 January 1986

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