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10 DOWNING STREET

*From the Private Secretary*

17 March 1986

1986 COMMUNITY BUDGET:

RESPONSE TO THE COURT'S INTERIM MEASURES DECISION: 17 MARCH

The Prime Minister has considered the Economic Secretary's minute of 14 March about our response to the expected judgement on 17 March of the European Court of Justice on our application for suspension of the disputed part of the 1986 Community Budget.

The Prime Minister agrees that we should respond in the terms suggested in paragraph 8 of the Economic Secretary's minute.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary, the Lord Privy Seal, the Law Officer's Department, the Chief Whip and Sir Robert Armstrong.

CHARLES POWELL

Mike W. Norgrove Esq.,  
H.M. Treasury

BMG



PRIME MINISTER

MS

Prime Minister  
Agree that we should go on paying our contributions to the Community budget in full, even if judgment in the interim case goes against us.  
From: PETER BROOKE  
14 March 1986  
CAP 14/3

1986 COMMUNITY BUDGET : RESPONSE TO COURT'S INTERIM MEASURES DECISION, 17 MARCH

We expect to receive on 17 March the judgment of the European Court of Justice on our application for suspension of the disputed part of the 1986 Community budget. We need to react quickly and confidently to the Court's decision, and this paper seeks your approval for the way in which the Chancellor and I would like to proceed.

2. Whatever its form, the judgment will have implications for the size of our contribution towards the Community budget. Parliament has so far approved ex gratia payments towards the disputed part of the budget for the first quarter of 1986. However a further payment falls due on 1 April, and the Government will need to decide in the light of the Court's judgment whether to continue making such payments in full.

[Most unlikely]

3. If the Court finds in our favour, there are two main forms which its ruling might take. It could order suspension of the disputed expenditure and contributions pending final judgment. Or it could order the Commission to postpone expenditure of the disputed amounts pending final judgment, on the basis that member states should continue to contribute in full. In either case, we suggest that the Government's reaction should be to welcome the Court's decision as vindicating our arguments, either in full or in substance. We would presumably contribute or not contribute to the disputed sums in accordance with the Court's ruling.

4. Should we lose the interim case, the Court might base its judgment on the Granaria doctrine, whereby Community acts are deemed valid until the Court has ruled otherwise. If the Court were to apply this doctrine to the budget, failure by the UK to contribute in full to the disputed amounts would amount to a breach of Community and hence domestic law. Consequently we have little choice in such circumstances but to announce that we intend to continue paying in full until the judgment on the Council's and national cases is given later in the year.

5. Unfortunately, rejection of our application by the Court is unlikely to be so clear cut. It may simply take the view that we have failed to establish that we would suffer substantial and irrecoverable loss if our application was refused. In such circumstances, it would be tempting to stop payment towards the disputed elements of the budget, particularly since the Government's earlier decision to pay in full was substantially influenced by the desire not to prejudice the interim measures application itself. That argument, ex hypothesi, would no longer apply.

6. However, the arguments for continuing to pay in full are compelling:

- First, we would have to reckon with the virtual certainty that the Commission would bring a case against us, putting us on the defensive and, assuming we lost, rendering ourselves liable to penal interest charges.
- Second, the Court would be bound to see failure to pay as an irritant, even if it did not affect its consideration of the legal cases themselves.
- Third, we would upset many other member states if we decided to break ranks and withhold payment at a time when the Council needs to present as united a front as possible to the Court.

- Fourth, such action would almost certainly stimulate efforts in the European Parliament to interfere with our abatement.
- Fifth, refusal to pay in full might appear to be a reversal of policy more likely to attract criticism than congratulations from the Government's backbench critics.
- Sixth, supporters of the Community in the House would undoubtedly be most critical if the Government appeared to be rebuffing the Court.

7. Our conclusion therefore is that, if the Court refuses our application without specifically referring to the Granaria doctrine, we should continue to pay in full until judgment on the substantive cases is received later this year.

8. If you and colleagues agree, our intention is to respond to the Court's judgment on Monday by saying simply that we are studying the terms of the judgment closely. This we would follow with an answer to an arranged Parliamentary Question the following day (Budget day) announcing our intention to continue paying in full. Such an arrangement would give us time to consider seriously the precise nature of the judgment without delaying our response for so long that it encouraged speculation of and pressure for a change in policy. And on the assumption that we had to continue making ex gratia payments, we would draw on the arguments set out below:

- i. we naturally regret that the Court did not find in our favour, but will study the ruling carefully;
- ii. we do not see this as a major setback: what really matters is that the Council and member states should win the substantive cases;

- iii. we have no regrets about having brought the application for interim measures. The application may have been an important element in influencing the Court to give earlier judgment on the substantive cases;
- iv. the Government sees no reason to change existing policy of paying in full towards the 1986 budget on an ex gratia basis. All other member states are continuing to do so.
- v. to stop paying would mean breaking ranks with other member states at a time when the Council needs maximum unity in its main action against the Parliament.

9. I am copying this minute to the Foreign and Commonwealth Secretary, Lord Privy Seal, the Law Officers, Chief Whip and Sir Robert Armstrong.

P.B.

PETER BROOKE



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