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Secretary of State for Trade and Industry

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6 October 1986

The Rt Hon Lord Young of Graffham
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
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EDP
7/x

Dear Lord,

REMOVAL OF BARRIERS TO BUSINESS IN EUROPE

In my letter of 27 August ^{at 11ap PT32} I promised a substantive reply to yours of 31 July when I had reviewed this Department's major targets for deregulation.

I have been able to identify seven substantial existing Community measures for inclusion among our priority lists of targets for deregulation. These are:

- i) The Fourth Company Law Directive;
- ii) The Sixth VAT Directive;
- iii) Equal Treatment Directive;
- iv) Directive on Equal Pay for Men and Women;
- v) Directive on Collective Redundancies;
- vi) Acquired Rights Directive
- vii) Directive on the Conservation of Wild Birds

... I attach notes in the form that you requested. Generally we are seeking revision and amendment rather than repeal.

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I agree that we should press ahead with our efforts to secure active examination of these at an early stage.

We must as you say also ensure a substantial input by the CBI and UNICE into the Belmont Study, as I made a point of stressing when I addressed a special CBI conference earlier this month. I hope that they will do so, although the signs are that the principal concern is with proposed rather than existing legislation. In the past the CBI has, of course, opposed a number of measures which are now part of the EC regulatory framework. But in most cases they declined to nominate these as targets for deregulation, on the grounds that their members generally found deviation from the status quo more troublesome than the substance of the measure itself.

The list identifies - as your letter requested - the targets which we might aim to secure as a result of action flowing from the Belmont Study. There are, however, a number of other deregulatory objectives which we should keep in mind but which it will be difficult to pursue either through the Belmont Study or through the 'fiche' system which the Commission have now begun to implement for new proposals. The first is a general point and involves the Commission's whole approach to company law. The Commission should, I am sure, spend less time on making new law and more on refurbishment. Commercial practices change, and it is standard UK procedure to review provisions regulating companies from time to time in order to establish whether they are still relevant. But there is no such procedure at Community level. In theory the Contact Committee system provides the necessary machinery, but the machinery does not function to this end. Secondly, there are a number of EC proposals which have been under discussion for a long time. They may involve unwelcome impact costs but since they are strictly not new proposals, the Commission are not willing to subject them to the rigours of the fiche system. They will not be under review by Belmont, and we must be careful that they do not slip through the net. Thirdly, the administration of directives (or rules under the Treaty) can be burdensome irrespective of the substance. Again, this is not a matter which Belmont will be addressing, but one which may well have a part in our response to the report. We might consider all of these points at your proposed meeting.

I have also seen Nicholas Ridley's letter to you of 19 September and agree, of course, that there is a tension between deregulation and environmental protection. But the same applies in other areas such as consumer protection, and our concern should be to ensure

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that a balance is struck between the potential benefits of regulation and its cost to industry. Equally, I agree that environmental protection can bring benefits to certain sectors of industry - but these should not blind us to the costs they impose on industry as a whole. The balance of advantage in industrial terms is rarely likely to tip in favour of regulation.

I am copying this letter to the recipients of yours of 31 July.

ms,
PAUL CHANNON *Paul*

THE FOURTH COMPANY LAW DIRECTIVE (78/660/EEC)

a. Purpose

With the seventh company law directive, it specifies reporting duties of firms including form and content of annual reporting.

b. Burden

This Directive makes it impossible for us to reverse the decision taken in 1967 requiring accounts to be filed at the Companies Registration Offices by all private companies, irrespective of their size. This arguably puts an unnecessary burden on very small companies and creates problems in terms of enforcement. The case for changing present requirements would need careful consideration but we would like to have room for manoeuvre.

c. Solution

Review the requirements of the Directive.

d. Prospects of Agreement

Realistically, very slim. Some member states have not even implemented the Directive yet and there is no evidence to suggest that we can expect any support. The UK has far more very small companies - around half a million - than any other member state: we are therefore in a very different position to anybody else.

THE SIXTH VAT DIRECTIVE (77/388/EEC - ARTICLE 24(2))

a) PURPOSE: .

Allows Member States to set an exemption limit for registration for VAT by small businesses and, if the limit was above the minimum at the time the directive was implemented, to maintain the value in real terms.

b) BURDEN:

Member States unable to be sufficiently flexible in determining the limits.

c) SOLUTION:

Directive should be amended to recognise the differences in the control of small traders in each of the Member States and to allow a harmonised upper threshold not less than that of the highest already permitted, ie Ireland's at £25,000(Irish)

d) PROSPECTS OF AGREEMENT:

The UK has been pressing this matter for some time. An uphill task - a number of Member States are concerned about loss of VAT revenues.

EQUAL TREATMENT DIRECTIVE (76/207/EEC)

a. Purpose:

Requires equal treatment of men and women in access to employment, vocational training, promotion and working conditions.

b. Burdens:

Potentially onerous for SMEs. UK implementing legislation (Sex Discrimination Act 1975 and parallel N Ireland legislation) currently provides exemption for SMEs employing five or less people. ECJ in November 1983 upheld Commission's case that this (and other features) did not meet requirements of directive. The UK has implemented the judgement for diplomatic reasons.

c. Solution:

Amend directive to allow exemption for small firms.

d. Prospects for success:

Mr King when Secretary of State for Employment tried personally to negotiate an exemption for SMEs without success. The chances of success on such a fundamental directive are frankly small. Any initiative would have to be carefully presented to avoid the impression of an attack on equality rather than on unnecessary burdens.

DIRECTIVE ON EQUAL PAY FOR MEN AND WOMEN (75/117/EEC of Feb 1975)

a Purpose

To eliminate all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

b Burden

There is no problem with equal pay as such but regulations on equal pay for work of equal value had to be introduced in the UK with effect from 1 January 1984 following a ruling of the European Court of Justice that UK law failed to comply with the Directive. When the Directive was agreed, the UK Government was assured by the Commission that the UK legislation (the Equal Pay Act 1970) did comply. The new Regulations disrupt established bargaining structures, could increase labour costs and damage competitiveness. Until now it has been felt that while increased costs to employers are potentially considerable it would be better to wait and see what effect individual judgements have.

c Solution

Amend the Directive to remove the "Equal Value" element.

d Prospects for Success

On the face of it not great. Much will depend on what actually happens in the UK as a result of the regulations and on whether this concerns employers in other European countries.

DIRECTIVE ON COLLECTIVE REDUNDANCIES (75/129/EEC)

a. Purpose

Requires both advance notification (to SOS for Employment) of redundancies of 10 or more employees and advance consultation with recognised trade unions.

b. Burden

Compliance cost and reduction of flexibility in labour market.

c. Solution

Increase threshold level to 100 employees. (Above that, Directive probably on balance useful to Government).

d. Prospects for Success

It is difficult for us to assess as this subject is a D/Em lead and has not had a very high profile.

ACQUIRED RIGHTS DIRECTIVE (77/187/EEC of February 1977)

a. Purpose:

To protect employees' rights on transfer of a business by providing for:

- automatic transfer of employees' contracts of employment from the ~~transferor~~ to the transferee; and
- employee representatives to be informed and consulted prior to the transfer of the business or parts of it.

Directive implemented in UK by the Transfer of Undertakings (Protection of Employment) Regulations 1981.

b. Burden:

Obligations on employers reduce likelihood of business being transferred as going concern, so reducing employment. Creates legal and practical uncertainties, delays commercial decisions and reduces business flexibility and reorganisation. Consultation procedures and disproportionate amount of litigation also impose costs and administrative burdens.

c. Solution:

Repeal totally, or remove SMEs from scope by introducing threshold of (say) 100 employees.

d. Prospects for Success:

Not very great but D/Em are best placed to judge.

DIRECTIVE ON THE CONSERVATION OF WILD BIRDS (79/409/EC)

a. PURPOSE

To establish general arrangements for the protection of all species of wild birds in Member States. Member States are required inter alia to classify suitable territories as special protection areas for conservation of particularly vulnerable species and to avoid "pollution and deterioration of habitats or any disturbance affecting the birds insofar as these would be significant (for their survival and reproduction)".

b. BURDEN

Experience has shown that the Commission regards the Directive as precluding almost any developments in protection areas - or even areas the Commission considers ought to have been protected. Problems have already arisen at sites in Scotland and may grow as protection areas are extended into major estuaries.

c. SOLUTION

Modify the measure to give Member States greater discretion to allow development.

d. PROSPECTS OF AGREEMENT

Seven Member States (not including the UK) have been taken to Court for failing to implement the Directive properly in the time allowed. This suggests that there may be a fair chance of securing agreement to modification. Action in this area has obvious political difficulties which will need careful handling.

EURO POL: Budget PT33

