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Secretary of State

*Slade, W*  
*You already had*  
*copy fixed to us*  
*his mailing*  
*Christophe*

Stephen Wall Esq CMG LVO  
Private Secretary  
10 Downing Street  
LONDON SW1A 2AA

*22<sup>nd</sup>* November 1991

*Dear Stephen,*

**PRIME MINISTER'S BILATERAL WITH PRIME MINISTER LUBBERS**

Further to my letter to you of yesterday's date, I attach a revised sheet of points to make on the Working Time directive which incorporates some additional points suggested by my Secretary of State. I have sidelined the changes made.

I also attach, in case you have not seen it, as copy of the press release issued yesterday by the CBI.

I am copying this letter to Richard Gozney (Foreign and Commonwealth Office) and to Sonia Phippard (Cabinet Office).

*Yours sincerely*

*Steve Turner*

**STEVE TURNER**  
Private Secretary



Employment Service  
Health and Safety Executive · ACAS





## POINTS TO MAKE

- \* Must emphasise how deeply difficult this proposal is for UK.
- \* Strong resentment that working time measures are proposed on spurious health and safety grounds, when they are clearly political or social in aim.
- \* Bureaucratic restrictions on working time go against our whole philosophy of freeing the labour market over the last 12 years. We have never had such legislation nor has there been any pressure for it from either side of industry in the UK.
- \* Others may not accept or understand the UK approach, but we are entitled to differ. These provisions make a nonsense of subsidiarity.
- \* Glad some changes have been made. Welcome exclusion of transport and extension of implementation period. But this proposal is simply not ready for Council decision. Has been no substantive discussion by the Social Affairs Council - orientation debates have been postponed three times over the past six months.
- \* We still have very fundamental difficulties. The 48 hour week will be immensely costly to employers and unpopular with employees. 16% of UK employees - 2.5 million people - regularly work more than 48 hours a week. Derogations will not help. Moreover, the 48 hour week was not included in the Commission's original proposal, and the Commission resisted attempts by the EP to introduce this into the directive.
- \* Commission's original proposal would have had an impact cost of over £2 billion in the first year alone. The 48 hour week would increase this impact cost to £5 billion in the first year.
- \* The Sunday rest provision is extremely contentious in the UK. This is a multi-cultural society and a provision of this sort would be deeply offensive to many people. No remotely plausible justification for having it in a Directive. It may well be challenged in the courts by affected interests. Have nonetheless made a number of suggestions to make the Sunday rest clause permissive, which would make it easier for us to accept.
- \* If the Presidency succeed in getting a Common Position or 'political agreement' on 3 December by isolating the UK it will damage the prospects for agreement at Maastricht. There will be a public row, strong adverse publicity, and Parliamentary criticism only days before Maastricht. Almost nothing could make the prospects for Maastricht worse.
- \* Apart from the big political issues, there are still many unresolved and vitally important practical matters. Even basic points like definitions of night work are still uncertain. If the Directive turns out to be unworkable it will bring the Presidency no credit.
- \* The Dutch Presidency has already achieved a major success in the Social field with the Pregnant Worker Directive. Can they not be content with an orientation debate on Working Time without pressing it to a decision on 3 December?



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P.250.91

"EUROPE'S WORKING TIME PROPOSALS  
MUST BE REJECTED" - CBI

Mr John Banham, Director General of the Confederation of British Industry said tonight (Thursday): "Europe's latest Working Time proposals must be rejected. Limits on daily hours, weekly hours, days people can have off, limits on deals on holidays - the list is staggering. These proposals can only damage jobs, customer service and the wealth generation necessary to meet real social needs.

"They are the worst example yet of the half-baked social engineering which is earning the Brussels bureaucrats the gratitude of all our competitors from Michigan to Malaysia. It defies comprehension that the Commission can dream up such proposals - and Europe's Parliamentarians support them when the need to promote business competitiveness is so pressing.

"These proposals would:

- \*\* COMPROMISE Europe's competitiveness
- \*\* HIT Britain especially hard because of the country's flexible working arrangements, and
- \*\* CUT right across good working practices.

He warned: "That means lost orders, lost jobs, and lost earnings for many workers. The restrictions could hardly be tighter, but the Commission's case for bringing them in could hardly be looser: the use of this crippling straight-jacket is justified in the name of health and safety. That's simply a device to force majority voting on social issues, come what may at Maastricht."



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Mr Banham, who was speaking in Abingdon, said: "The consequences include:

\*\* SHIFTS: The end of many innovative shift arrangements, including ironically, the "continental" shifts worked in many firms

\*\* OVERTIME: NO overtime once an employee has worked a 48 hour week, hitting the pay packets of millions of people and industry's capacity to meet orders

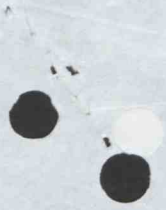
\*\* BREAD: A threat to fresh baked bread every morning because bakers shifts simply wouldn't fit the rules

\*\* DOCKS: Serious problems for our docks and all those who use them, as ships would miss the tides while compulsory breaks were taken.

He added: "The single market should be the great dynamic leap that takes us out of recession and into a new era of growth. But not if Europe's business is to be shackled in this sort of way."

21 November 1991







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Secretary of State

*Prime Minister*

*Points to make based on this are  
in the checkbook.*

*21<sup>st</sup> November 1991*

*John*

*24/11*

Stephen Wall Esq CMG LVO  
Private Secretary  
10 Downing Street  
LONDON SW1A 2AA

*Dear Stephen,*

**PRIME MINISTER'S BILATERAL WITH PRIME MINISTER LUBBERS**

Following discussions at Cabinet this morning, I now attach an additional briefing note on the draft directive on Working Time for the Prime Minister's meeting with Prime Minister Lubbers tomorrow. As you know, my Secretary of State this afternoon discussed this directive over the telephone with his Dutch counterpart, Mr De Vries. In spite of the Secretary of State's forceful exposition of the problems that this directive poses for the UK, Mr De Vries gave the clear impression that he was looking towards reaching an agreement at the Social Affairs council on 3 December. The Secretary of State said that this was a matter of particular concern to the Prime Minister, and that he expected it to be raised at tomorrow's meeting.

While you already have briefing on social affairs in the context of the IGCs, I thought that it might also be helpful to draw your attention to the remarks made by my Secretary of State at the informal meeting of labour and social affairs Ministers in September. This sets out UK thinking on the basis of the Community's social dimension in a way which was generally well received by other Ministers, and a number of them, including Mr De Vries, subsequently asked for and received copies: it is just possible that Mr Lubbers may refer to it tomorrow.

I am copying this letter to Richard Gozney (Foreign and Commonwealth Office) and to Sonia Phippard (Cabinet Office).

*yours sincerely*

*Steve Turner*

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## MEETING WITH MR LUBBERS: WORKING TIME DIRECTIVE

### BACKGROUND AND STATE OF PLAY

#### 1. Key points of Directive (latest Presidency proposals):

- limit of 48 hours to average weekly work over 2 month reference period
- minimum daily rest period of 11 consecutive hours
- minimum weekly rest period of 35 hours (24 where justified on technical/organisational grounds), in principle to include Sunday
- restrictions on night work (now largely irrelevant in view of general 48-hour week)
- 4 weeks minimum paid annual holiday
- transport industries excluded from scope (important new provision)
- long list of derogations (covering most of our specific concerns, e.g. electricity, postal services, tourism) but normally requiring 'compensatory rest' (and therefore does not solve 48-hour week problem)
- derogation for collective agreements (extent of this may still be controversial)
- implementation required within 3 years of adoption of Directive (i.e. probably by mid-1985) - a major improvement on original text.

2. This package is a result of hectic recent negotiations between the Dutch Presidency, Germany, France, Belgium, Luxembourg, and Spain. The Dutch have succeeded in reconciling most differences between Germany and France. Italy and Greece will probably also accept it. These countries sufficient for QMV.

3. Presidency now likely to press for Common Position (or 'political agreement' - leaving only minor details to settle) at 3 December Social Affairs Council and stand a very good chance of getting it.

4. The new package has some welcome elements: exclusion of transport, a longer implementation period, and (apparently) a broad derogation in cases where employers and workforce agree.

#### 5. But still falls far short of UK aims, notably:

- No change to the damaging 48-hour week provision
- Highly contentious provision on Sunday rest
- Scope of Directive and other important practical issues.



## POINTS TO MAKE

- \* Must emphasise how deeply difficult this proposal is for UK.
- \* Strong resentment that working time measures are proposed on spurious health and safety grounds, when they are clearly political or social in aim.
- \* Bureaucratic restrictions on working time go against our whole philosophy of freeing the labour market over the last 12 years.
- \* We have never had such legislation nor has there been any pressure for it from either side of industry in the UK.
- \* Others may not accept or understand the UK approach, but we are entitled to differ. These provisions make a nonsense of subsidiarity.
- \* Glad some changes have been made. Welcome exclusion of transport and extension of implementation period.
- \* But we still have very fundamental difficulties. The 48 hour week will be immensely costly to employers and unpopular with employees. 16% of UK employees regularly work more than 48 hours a week. Derogations will not help.
- \* The Sunday rest provision is extremely contentious in the UK. This is a multi-cultural society and a provision of this sort would be deeply offensive to many people. No remotely plausible justification for having it in a Directive. It may well be challenged in the courts by affected interests.
- \* If the Presidency succeed in getting a Common Position or 'political agreement' on 3 December by isolating the UK it will damage the prospects for agreement at Maastricht. There will be a public row, strong adverse publicity, and Parliamentary criticism only days before Maastricht. Almost nothing could make the prospects for Maastricht worse.
- \* Apart from the big political issues, there are still many unresolved and vitally important practical matters. Even basic points like definitions of night work are still uncertain. If the Directive turns out to be unworkable it will bring the Presidency no credit.
- \* The Dutch Presidency has already achieved a major success in the Social field with the Pregnant Workers Directive. Can they not be content with making good progress towards a solution on Working Time without pressing it to a decision on 3 December?



SUBSIDIARITY AND THE PROPER POWERS OF THE EUROPEAN  
COMMUNITY IN EMPLOYMENT AND SOCIAL AFFAIRS

Remarks given by Mr Michael Howard, UK Secretary of State for Employment, at the Informal meeting of EC Ministers for Employment and Social Affairs, in the Netherlands on 22<sup>nd</sup>-23<sup>rd</sup> September 1991

1. I very much welcome the opportunity which the Dutch Presidency has given us to address subsidiarity in the field of Community action on social affairs. Very important matters are at stake. I believe that, following the methodical approach of the Presidency's helpful paper, we may find there is much common ground on which to build.

2. The Inter-Governmental Conference has so far tended to consider Treaty powers in the abstract. Today we have the opportunity to inject greater realism into the process, drawing on our own, very practical experience as Social Affairs Ministers.

3. During our discussions yesterday and again this morning, I have been struck forcibly by the point made by many colleagues - Luc Van den Brande, Knud Kierkegaard, Jean Claude Juncker, you yourself - Mr Chairman and others - all of whom stressed the huge diversity of arrangements and traditions in social affairs in the various Member States.

This diversity is I believe key to discussions of subsidiarity and indeed of Community competence and decision-making more generally.

4. Let us look at the facts.

5. The wealthiest country in the Community has an income per capita 2½ times higher than the poorest. There is great variety in the relationships between employers and trade unions. There are wide variations in the level of trade union membership - from barely 10% in some Member States to over 50% in others. Similarly, there are wide differences in our records on productivity; in whether the Member States look to central legislation, collective bargaining or other voluntary means as the main engine of social progress; in the distribution of our workforces as between different sectors and types of employment; and in our social security systems; and so on.



6. As the Labour and Social Affairs Ministers, we simply cannot afford to ignore these diversities, which I suggest are almost greater in the field of social affairs than in any other sphere of Community activity. We must recognise also that social affairs are one of the most sensitive and politically difficult domains. It is therefore we here today who do and will bear the direct responsibility for the consequences in our countries of action taken at Community level. And, given our responsibilities, there are some realities we simply have to face up to.

7. First, the financial disciplines of greater Economic and Monetary Union mean that inflationary increases in labour costs caused by wider Community social standards will add to the Community's 15.5 million unemployed. Rising unemployment is a burden - social and financial - we cannot afford and which we must prevent. Economic and Monetary Union means that, unlike in the past, a Member State cannot rely on devaluation and exchange rate fluctuations to protect its economy from the effects of such increases in costs. Rather those effects will inevitably mean higher unemployment and lower standards of living.

8. Secondly, we must face up to growing competition for inward investment, especially from newly emerging democracies in Central and Eastern Europe. The OECD has long warned us all of the declining competitiveness of many Community countries relative to many non-European countries. Our labour costs for over a decade have tended to increase more rapidly than our productivity. Greater uniformity of social standards and costs, unmatched by the growth in productivity, will discourage investment. Some of the Community's leading firms are shifting production capacity to outside the Community. And that is before we feel the full force of competition from Eastern Europe. The Community will have to open its markets to our neighbours there, if it is to support the economic development they need to sustain fragile democratic reforms. EC Member States - starting with the weakest - will find it tough to compete with those economies if they are saddled with regulation and costs which are unmatched elsewhere.

9. Third, we need to maintain the ability of the poorer economies in the Community to compete effectively. Community powers which enable the costs of richer Member States to be imposed on the poorer, will remove one of the few competitive advantages enjoyed by less wealthy Member States. Successive Commission reports have underlined that differences in labour costs and conditions should reflect differences in wealth and



productivity. That is the real world. Competition on that basis cannot be unfair. The alternative is an enormous cost in terms of financial transfers within the Community, ie. a cost to the tax payer at the end of the day, a development which will itself further impair both enterprise in the Community and its competitiveness.

10. Finally, we must not forget that throughout the industrialised world the trend is clearly away from collective representation and towards individual choice and responsibility. As the OECD put it in its Economic Outlook this year:

"A renewed effort is needed to identify and remove impediments to higher employment ... this will involve a shift in the orientation of labour market policies towards those which encourage access to employment and away from those that induce ... dependency on benefits, that discourage labour turnover, or that support wage bargaining in which real wages are pushed up to the point where they limit the growth in jobs."

11. Mr Chairman, I believe this is absolutely right. And we will need to adopt different recipes in each of our countries to achieve the changes which the OECD advocate. I can think of no greater impediment to change than a Community which attempts to regulate from the centre across the broad range of employment policy - protecting those who have jobs at the expense of those who do not.

12. For all these powerful reasons, Mr Chairman, I conclude that it is the Member States who must continue to take the lead in most areas of employment and social policy. That seems to me to be the clear conclusion also of the Presidency paper. Subsidiarity may be defined in a number of ways, as the Presidency paper says. But its essence is that the Community should act where an agreed Community objective can be achieved effectively only by collective action. And if subsidiarity is to work, it needs a Treaty which is clear about Community objectives, and which provides powers which are in proportion to the role we expect of the Community relative to Member States.

13. The Presidency's useful paper asks for our views on the principles which Treaty provisions on social affairs should follow. Here are mine.



14. Firstly, the Treaty should acknowledge, as it does now, that the primary responsibility for policies to improve living standards and working conditions must rest with the Member States. Whatever our differences over certain action programme proposals, I believe that most colleagues would share my view that the Community should not determine the bulk of the employment and social policy decisions which they have to take. I therefore agree with the analysis on page 3 of the Presidency paper, which identifies only two areas - free movement of workers and health and safety - which are unequivocally matters for the Community.

15. Secondly, specific powers to take binding action under the Treaty should concern only those areas where the Community, unequivocally, should be in the lead. To free movement and health and safety could be added, for example, mutual recognition of qualifications where this is necessary to achieve a competitive single market. However, no case has been made for the Community to have a leading role in, for example, such huge and ill-defined areas as "working conditions", "the working environment", "information and consultation", and "the vocational integration of the unemployed" - as has been proposed in the draft Treaty text. Indeed, work done by my Department indicates that this would encourage costly, binding Community action in virtually the whole range of employment policies for which we as Ministers are accountable to our electorates. I really do doubt very much whether in the foreseeable future the people of our Member States would be willing to see all these areas of national life effectively removed from the control of national Parliaments.

16. Thirdly, where there is a proposal for Community action outside the areas where the Community has a leading role, that action should be justified on the basis of its contribution to wider Community policies on the merits of each case. As the Presidency paper points out, there can be no specific Treaty provision for such action. General powers are already provided in Article 100 and 235. And successive European Councils have laid down the criteria needed to evaluate the need for Community action in these circumstances:

- does it contribute to employment in the Community?
- can it genuinely be justified on grounds of subsidiarity?



- does it really respect the vital diversity of Member States?

17. Last but not least, the Treaty should encourage us to learn from one another. A Community will not be constructed by imposing on Member States centralised legislation which does not serve their interests. But I do believe that there is immense scope for us to learn and teach by example.

18. Mr Chairman and colleagues - we face a critical choice. That choice is sometimes - but wrongly - portrayed as whether there should be a social dimension or not. Of course there should be -but that is not the real question. The real choice is between on the one hand a Community social dimension which tackles truly Community issues but leaves us the maximum scope to determine the remainder of the social dimension in our own way and in our own countries; and, on the other, a dimension which centralises decisions in order to achieve a uniform Community approach without regard to the diversity in our Member States and without regard to the need to create jobs and raise productivity.

19. Mr Chairman, concern about the role of the Community in employment and social affairs is growing in the United Kingdom. Committees of both our House of Commons and Lords - composed of all political parties - have published reports recently which underline the importance of maintaining national control over key social policies, in order to encourage employment.

20. We the Council must continue to differentiate clearly and effectively in the Treaty between those areas where the Community should lead and those where the Member States should continue to have the principal responsibility. If we do not, we will not only damage the competitiveness of our economies in the short-term; but we may in the long-term find that we have created a situation which many of the citizens and national Parliaments of our Member States no longer feel they have control nationally over key areas of their lives. And I think that recent events elsewhere in Europe have shown just how potent and unpredictable the consequences of such a situation can be.

21. Thank you.