



PM/83/104

PRIME MINISTER

The Prime Minister thought that this was excellent and agree that it should be despatched as proposed. **TE RB**

1. We agreed at Cabinet that we should send a formal letter requesting the Community to remedy its failure to fulfil by 31 December 1983 its obligations over part of our 1982 risk-sharing refunds. I enclose a draft of the letter.
2. The purpose of the letter is to obtain the remaining element of our refund. If we do not succeed, either separately or as part of a general settlement we shall then have a choice between taking a case to the European Court or withholding. The letter gives formal notice of the Community's default on its legal obligation but does not itself constitute the start of legal proceedings. The Law Officers have advised that our chances of success in a legal action are poor.
3. I have carefully considered the suggestion that you should write to other Heads of Government. The legal advice is that, as we are asking for action in the first instance by the Commission, the letter must be addressed to the President of the Commission. In view of the importance that we attach to this issue I shall of course ensure that a copy of the letter is sent to Member States so that they are clear about our determination not to accept the Community's default on the sum owing to us. If asked what we are doing about the failure to pay us this sum in 1983, we shall need to refer in public to the steps we are taking.
4. A number of colleagues in Cabinet mentioned the possibility of putting the sum concerned in a suspense account. This would of course be a form of withholding and would be seen as such. We are all agreed, of course, that we may at some stage come to that. I have, as

/colleagues



colleagues suggested, looked for a way of freezing the £42 million, but have not found any way of doing so short of withholding. And I am sure that it is tactically better to bring that point to a head only when we know where we stand on the 1983 refunds.

5. I am copying this minute and its enclosure to the Lord Chancellor, the Chancellor of the Exchequer, the Attorney General, the Lord Advocate and the Secretary of the Cabinet.

A handwritten signature in blue ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office
23 December 1983

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:

Reference

Sir Geoffrey Howe

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

TO:

Your Reference

- Top Secret
- Secret
- Confidential
- Restricted
- Unclassified

His Excellency Monsieur Gaston

Thorn

Copies to:

PRIVACY MARKING

SUBJECT:

.....In Confidence

CAVEAT.....

1. I wish to draw your attention to the following issue relating to the risk sharing element of the UK refunds in respect of 1982.

2. The Council conclusions of 26 October 1982, state that compensation for the United Kingdom in respect of 1982 should be 1092 mecus gross, 850 mecus net, on the basis of a reference figure of 1530 mecus (the Commission's estimate of the UK's net contribution in respect of that year). If the UK's net contribution (the reference figure) turned out to be higher or lower than 1530 mecus, risk sharing arrangements were provided to come into operation. These conclusions were given juridicial effect in Council Regulations 624/83 and 625/83.

Enclosures—flag(s).....

3. When these conclusions were reached it was agreed that the UK should receive refunds in respect of 1982

DSR 11C

which would effectively be net of the cost to the UK of the UK refund itself and of the UK's share of the payment of 210 mecus to Germany subsequently given effect under regulation 625/83. Regulation 624/83 expressly stated that the sum due was net. The basic refund of 1092 mecus gross in respect of 1982 was duly paid.

4. After the end of 1982 the UK's uncorrected net contribution for that year was calculated by the Commission to have been 2036 mecus. This calculation was correctly based on the payments basis which has always been used for the calculation of net balances. The Commission therefore proposed in draft supplementary and amending budget No 2 for 1983 that a further 385 mecus should be paid to the UK under the risk sharing provisions of Regulation 624 /83. Contrary to the 1982 agreement, which provided that the United Kingdom refunds be effectively net of its share of German refunds, the risk sharing payment proposed by the Commission (385 mecus) did not compensate the UK for its share of the further German refunds.

5. At its meeting of 22 July 1983, the Budget Council established a figure for risk sharing refunds to the UK in respect of 1982 of 307.5 mecus. The United Kingdom formally recorded the following objections:

"The United Kingdom declares that in its view, the sums entered in draft supplementary and amending budget no 2, 1983 in respect of risk sharing payments to the UK do not discharge in full the obligation

entered into by the Council in paragraphs 1, 3^{DSR 11C} and 5 of its conclusions of 26 October 1982. The United Kingdom recalls^{that} paragraph 5 of these conclusions specified that the risk sharing adjustments should be entered in the budget for 1983, and accordingly calls upon the Community institutions to take the necessary action as a matter of urgency to ensure that the UK receives its entitlement in full as agreed."

6. The United Kingdom raised the matter again in similar terms at the Foreign Affairs Councils of 19 September and 17/18 October and at the Special Councils of 9-11 and 28/29 November. Nonetheless, the supplementary and amending budget no 2, 1983 was adopted by the Parliament on 24 October 1983 without further amendment to the figures established by the July Budget Council.

7. The United Kingdom considers that neither the gross provision proposed by the Commission, nor that established by the Council, fully discharges the requirements of Regulation 624/83. In^{the} view of the United Kingdom, the correct figures which ought to have been established and entered in the 1983 budget on the basis of the Commission's calculation of an uncorrected net contribution by the UK in respect of 1982 of 2036 mecus are 408 mecus gross for the UK and 87 mecus gross for the FRG. The figure of 370 mecus established by the Council to cover both the United Kingdom and the Federal Republic was arbitrary and insufficient.

8. In the light of the above, I wish to inform you that my Government considers that the failure to make the required provision in the 1983 Budget in accordance with Regulation 624/83 constitutes non-fulfilment by the Community of its legal obligations. I therefore request the Commission to initiate the budgetary action to discharge in full the requirements of regulations 624/83 and 625/83.

9. I shall be grateful if you would inform me of the action you propose to take.



Clk

10 DOWNING STREET

From the Private Secretary

23 December 1983

1982 Refunds: Risk-Sharing Elements

The Prime Minister was grateful for your Secretary of State's minute of 23 December, and for the draft letter to M. Thorn about the risk-sharing element of the UK 1982 refunds.

The Prime Minister thinks that the draft is excellent, and agrees that it should be despatched as your Secretary of State proposes.

I am sending a copy of this letter to the Private Secretaries to the recipients of your Secretary of State's minute.

DAVID BARCLAY

Roger Bone, Esq.,
Foreign and Commonwealth Office.

DSS



Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister.

To note.

3 January 1984

A.D.C. 3/1.

John Thorn,

1982 Risk Sharing Refunds

The Prime Minister has approved the draft letter from Sir Geoffrey Howe to M. Thorn, sent to her under cover of Sir Geoffrey Howe's minute of 23 December. The Foreign Secretary has instructed Sir Michael Butler to deliver the message before M. Thorn visits here on 6 January; M. Thorn will not be able to receive the letter until 4 January. Sir Geoffrey has also instructed our representatives in other EC posts to draw it to the attention of the government to which they are accredited.

In his minute of 23 December Sir Geoffrey Howe said that, if asked by the press or in Parliament what we were doing about failure to pay the sum owing in 1983, we should need to refer to the steps we were taking. This situation is now upon us with the Daily Telegraph article of 3 January.

The Foreign Secretary agreed that in response to questions (none were put at the daily press conference at noon) we should say that we have repeatedly made clear that the £42 million remains outstanding, following the majority decision of the Budget Council in July arbitrarily to reduce the amount entered in the 1983 Supplementary Budget. Now that the Community has failed to make the money available by 31 December, we shall be pressing the Commission and our partners to take the appropriate steps to make good the outstanding sum. But he considers it would be a mistake to announce the action we have taken or to release the text of the letter before Sir Michael Butler sees Thorn tomorrow. To do so would reduce our chances of persuading the Commission to give us a positive reply. (Realistically, we should not expect too much of the Commission's response. But that is a further reason, given the weaknesses of our legal position in the eyes of the European Court, for our not appearing to press the Commission to reply too quickly. An early reply by the Commission could require us to take a premature decision on whether to initiate legal or other action.)

After Sir Michael has seen Thorn, we propose to confirm that the Foreign Secretary has sent a letter to the President of the Commission pointing out that the sum established by the Budget Council for our risk sharing payment was arbitrary and insufficient and that failure to make the required provision

/constituted

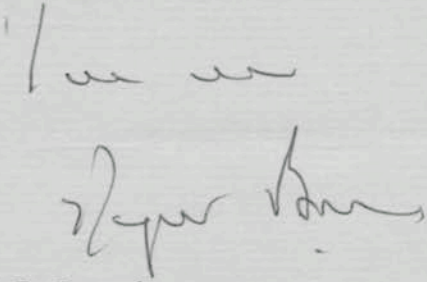


constituted in our view non-fulfillment by the Community of its legal obligations. We have therefore requested the Commission to initiate the necessary budgetary action to ensure that the sum due (£42 million) was paid. We shall confirm, if asked, that we have kept other Member States in the picture but will point out that the request to initiate action is addressed to the Commission and not to them.

If asked about the possibility of bringing a case in the Court or of withholding, we propose to say that before taking any decision of that sort we intend to exhaust all possible alternatives. Now that the Community has failed to meet its obligations in 1983, we have taken the necessary formal steps to draw the facts to the Commission's attention and to ask for remedial action. We hope that the Commission will give detailed and careful consideration to our approach. Should it prove impossible to resolve the issue through this means, then we should have to consider other means of safeguarding our position.

If asked whether the Community can afford to pay us, given its present cash crisis, we shall say that we expect the Community to meet its obligations and that it will be for the Commission, in any proposals they make, to recommend how the money should be found, including any necessary offsetting savings.

I am copying this letter to the Private Secretary to the Chancellor of the Exchequer and to the Private Secretary to Sir Robert Armstrong.


(R B Bone)
Private Secretary

A J Coles Esq
10 Downing Street

EURO POE : budget
Pte



3 JAN 1981
LONDON

020
Europ. Budget

CONFIDENTIAL

~~CF: to assist FCS
minute~~

Qz.03511

MR COLES

cc: Sir Robert Armstrong

RISK-SHARING ELEMENT OF 1982 REFUNDS

As the Foreign Secretary's minute will make clear, the draft letter can serve as a prelude either to legal or to other action if the Commission fail to initiate the necessary budgetary action on the outstanding element of our 1982 risk-sharing refunds.

2. Following the official discussion I have been asked to draw your attention to one related point. If, subsequently, the Government decided to follow up the letter to Monsieur Thorn with legal action, that action would have to be under Article 175 of the EEC Treaty which deals with infringements of the Treaty arising from a failure to take action. An alternative legal route would be action under Article 173 of the EEC Treaty under which the European Court of Justice can be asked to review the legality of acts by Community institutions. Under Article 173, however, legal action has to be taken within two months from the relevant act (publication of the relevant budget) and would thus have to be taken before the end of January. Since it could be embarrassing if the Government, having initiated legal action, then decided to pursue a non-legal route by withholding, it would be better not to precipitate legal action under Article 173. There are no similar time limits under Article 175. The course proposed by the Foreign Secretary therefore keeps the option of non-legal action open at a late date in a way which Article 173 action would not.

Df Williamson

D F WILLIAMSON

23 December 1983

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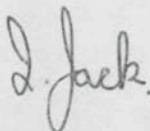
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Private Secretary to the Secretary of State
FCO

1982 Budget Refunds : Risk-Sharing Elements

The Lord Advocate has seen the minute of 23rd December by your Secretary of State to the Prime Minister and her Private Secretary's reply of that date. He has no objection to the terms of the proposed letter to Mr. Thorn.

Copied to the Private Secretaries to the Prime Minister and the other recipients of your Secretary of State's minute.



Iain Jack
PRIVATE SECRETARY
30.12.83



*nbpm
Dubs
30/12*

SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

1982 REFUNDS: RISK-SHARING ELEMENTS

In the Attorney General's absence, I have seen a copy of your minute to the Prime Minister, relating to our 1982 risk-sharing refunds. I am content with the draft attached to your minute.

I am sending a copy of this minute to the recipients of yours.

A.B.B.M.

30th December, 1983

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