

CONFIDENTIAL

Qz.03565

MR BARCLAY

AGRICULTURAL STRUCTURES

*I think we must wait to see whether we have legal authority to make payments or*

Prime Minister<sup>(2)</sup>

*Community legislation under which we pay grants to hill farmers has expired. Mr Jopling wants to make the payments anyway, in the belief that they will be authorised retrospectively. Chief Sec'y would prefer to await the Law Officers' Opinion.*

Flag A

You asked about the rather complicated issues referred to in the letter of February from the Minister of Agriculture, Fisheries and Food to the Chief Secretary, Treasury. I summarise the situation as follows:-

*Dms 3/2*

(i) the Community legislation on agricultural structure is the authority for certain payments to farmers including the capital grants and the various special aids to farmers in the hills and other less favoured areas. Normally the money is paid from United Kingdom funds with partial reimbursement by the Community. Expenditure in the United Kingdom is running at about £95 million a year on these capital grants (described in Mr Jopling's letter as "AHDS" ie agricultural and horticultural development scheme) and about £95 million a year on aids for livestock on hill farms (described in Mr Jopling's letter as "HLCAs" ie hill livestock compensatory allowances);

(ii) the essential provisions of the Community directives expired on 31 December 1983. There has so far been no agreement in the Council of Ministers (Agriculture) on their replacement and, in particular, whether they should be simply rolled over for a further period or revised in various ways. The result is a legal void, with differing legal views in the Community about whether payments can or should be made in the interim. The opinion of the United Kingdom Law Officers has been sought. The Commission has made clear that it will propose that any roll-over arrangements eventually agreed by the Council of Ministers should be applied retroactively to 1 January 1984. It is very probable, therefore, that the problem is short term;

/(iii)

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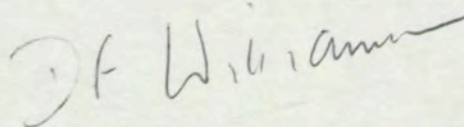
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(iii) in view of the legal uncertainty, the United Kingdom has suspended payments of the capital grants on new plans and of the aids for hill farmers. This is the period of the year when most of the hill farmers' aids are normally paid (about 85% of the hill livestock grants are normally paid in the January - March quarter). The Minister of Agriculture, Fisheries and Food is right to point out that delay in these payments would be a hard blow for some of these farmers, particularly on the Scottish and northern hills which have had very bad weather conditions;

Now received  
Flag B

(iv) the Chief Secretary, Treasury, is likely to reply that, before deciding whether to resume payments, we should await the opinion of the Law Officers. This seems sensible, as it should only take a few days. It should then be possible to take a final view on the risk of losing Community reimbursement if payments are resumed before the Community has taken a decision on roll-over or revised directives (for which the United Kingdom is still pressing in Brussels). At present it looks as if the chances of losing reimbursement are slight, because there will eventually be retroactive Community legislation. Accordingly the resumption of payments is not likely to carry any great risk.

I am sending a copy to Sir Robert Armstrong.



D F WILLIAMSON

3 February 1984



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Bre



10 DOWNING STREET

*From the Private Secretary*

6 February 1984

European Community: Structures Directives

The Prime Minister has seen the correspondence on this subject ending with Mr. Jopling's letter of 3 February.

It is the Prime Minister's view, that before deciding on the action we should take, the Law Officers' opinion should be awaited. She hopes that it will be available soon.

I am copying this letter to the Private Secretaries to other members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

B/K

A. J. COLES

Ivor Llewelyn, Esq.,  
Ministry of Agriculture, Fisheries and Food

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RW





Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Michael Jopling MP  
Minister of Agriculture, Fisheries  
& Food  
Ministry of Agriculture, Fisheries  
& Food  
Whitehall  
LONDON  
SW1A 2HH

8 February 1984

N.S.I.R.

A.J.C. 7/2

Dear Minister,

EUROPEAN COMMUNITY : STRUCTURES DIRECTIVES

*- in PM'S BOX*  
In the light of the Law Officers' advice, I agree that you and other Agriculture Ministers should resume payment of hill livestock compensatory allowances, grants under the Agricultural and Horticultural Development Scheme and the other schemes on which payments have been held up.

I am copying this letter to the Prime Minister, other Members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

yours sincerely

PETER REES



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Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Michael Jopling MP  
Minister of Agriculture, Fisheries & Food  
Department of Agriculture, Fisheries & Food  
Whitehall Place  
LONDON  
SW1A 2HH

6 February 1984

*Stan Michael*

*N. S. P. R.*

*A. S. C. 2/2*

EUROPEAN COMMUNITY: STRUCTURES DIRECTIVES

Thank you for your letter of 3 February.

I am grateful for your reassurance that you do not intend to support costly alterations in the structures directives in order to secure the LFA extension.

The question of what we should do and say if the present Council does not agree on a 'rollover' is more difficult. As I said in my letter of 2 February, I appreciate that you, George Younger, Nick Edwards and Jim Prior are under intense pressure to resume these payments, and reports that other Member States are contemplating doing so only increases that pressure. On the other hand there is prima facie a serious risk of disallowance. You yourself say that you accept that there would be a risk in relation to the 25% of the cost of these schemes that is normally reimbursed by FEOGA. As for Guarantee expenditure on beef and sheep, I very much hope you are right that the risk of disallowance would be remote: but I understand that it is a risk which MAFF lawyers have seen fit to refer to in seeking advice from the Law Officer. I remain therefore of the view that it would be premature, before we have received, considered and if necessary discussed the Law Officers' opinion to make any announcement which commits the Government to make these payments without proper legal basis and without a reasonable expectation of avoiding FEOGA disallowance.

I am afraid that I would therefore be unable to agree to any statement more forthcoming than:

'In the light of the Council's failure to agree a rollover I shall be discussing immediately with the other Ministers concerned what steps are open to the Government in respect of the grant payments concerned.'

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I very much doubt whether it would be appropriate to go any further than that in reporting to the House this Wednesday: I cannot see that we will by then have had a chance properly to digest the Law Officer's advice.

When we do consider what steps the Government should take I am afraid that I shall be bound to give due weight to the consideration that even in a normal year most of the payments concerned would not have been made by now. You said in the House on 2 February that very few Hill Grants are paid before the second week of February and the vast bulk of the payments are made later in February and during March: I understand that the normal expectation would be for between one-third and one-half of the sums in question to have been paid by the end of February.

I am copying this letter to the Prime Minister, other Members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*Yours now  
Peter*

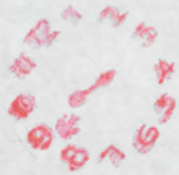
PETER REES

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EURS. POL : CAP : P12

ET FEB 1984







MINISTRY OF AGRICULTURE, FISHERIES AND FOOD  
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

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The Rt Hon Peter Rees QC MP  
Chief Secretary to the Treasury  
Treasury Chambers  
Parliament Street  
LONDON  
SW1P 3AG

Prime Minister<sup>(2)</sup>  
A later development on  
Agricultural Structures. There is  
a reasonable chance of agreement  
on the form of words overleaf.

3 February 1984

Dms  
3/2

EUROPEAN COMMUNITY: STRUCTURES DIRECTIVE

Thank you for your letter of 2 February.

In your second paragraph, you misunderstand the negotiating position with which I shall be faced next week. It is not a question of us making concessions. Other Member States are staking demands for changes in the structures arrangements as the price for a rollover. I have no intention of giving support to a costly package in order to secure the LFA extension. But, in the circumstances, I cannot avoid bringing our request for the LFA extension into the negotiations. This does not, after all, involve any change in the structures arrangements; as the Commission have confirmed, it simply involves allowing us the extension to which we are entitled under the rules.

Your description in the third paragraph of the risks involved is grossly misleading. I accept, of course, that there would be a risk in relation to the reimbursement under these particular schemes. But the idea that the Commission are seriously likely to contemplate major additional disallowances on FEOGA expenditures on beef and sheep in all the Member States involved is, in my view, remote.

I came under very severe pressure in the House during Question time yesterday about our failure to go ahead with HCLA and AHDS payments. It is generally known that most other Member States are contemplating making these payments without further delay. If there is no rollover and it is clear that other Member States are

/making payments, we ...



Euro P87: CAP pt 12

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making payments, we shall be in an indefensible position politically if I say no more than you are suggesting in the penultimate paragraph of your letter. I shall have to be ready to make a more positive statement than you suggest at the end of next week's Council. I should want to speak along the following lines:-

"In the light of the Council's failure to agree a rollover and what I know of the intentions of other Member States, I shall be discussing immediately with the Chancellor and the Law Officers what arrangements can be made to pay these allowances"

This will enable us, on my return and before my statement next Wednesday, to consider how we should proceed in the light of the Law Officers' advice.

I am copying this letter to the Prime Minister, other members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*James E. ...*  
*Michael*

MICHAEL JOPLING

7 8 9 10 11 12 1 2 3 4 5 6  
12-3 FEB 1991



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*Await advice from  
Mr Williamson*

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Michael Jopling MP  
Minister of Agriculture, Fisheries & Food  
Ministry of Agriculture, Fisheries & Food  
Whitehall Place  
LONDON  
SW1A 2HH

2 February 1984

*Dear Minister,*

EUROPEAN COMMUNITY: STRUCTURES DIRECTIVES

Thank you for your letter of 1 February.

On the terms of the roll over I remain of the view that there should be no question of our agreeing to potentially expensive concessions in exchange for the designation of our 'marginal land' as less favoured areas. Nor do I see why we need to contemplate such concessions: there appears to be a clear majority of Member States in favour of a simple 'roll over' of the existing directives.

I appreciate that you are under heavy pressure to resume payment of HLCA (and AHDS grant on schemes approved after 31 December); but I am afraid I cannot agree to your announcing that we will find ways of resuming these payments on our own initiative, unless and until it is clear that there is no significant risk of our thus incurring disallowance. The sums potentially at risk are very large: for example, the Commission might take the view that to pay HLCA without proper legal authority would mean that IBAP expenditure on supporting the beef and sheep markets (running at an annual level of over £350 million) must be disallowed, as well as refusing to reimburse 25% of our expenditure on HLCA (about £100m a year). And the legal position is obscure as regards both our authority to make payments and the Commission's responsibility to reimburse them. You are no doubt aware of the Commission lawyers' own comment at the Special Committee for Agriculture on 24 January: "It was for each Member State to take its own responsibilities and the financial risks when deciding whether or not to pay out structural aids". (UKREP telegram No. 211 of 24 January).

The correct course is therefore, I am sure, to await the Law Officers' views; when we have their advice we can consider whether we should resume payment. In the meantime all that can be said publicly is something to the effect that Council have

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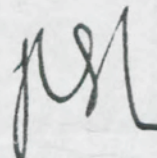


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have failed to agree on rollover but we shall continue to press for agreement. In the meantime the Government will examine the implications of this situation in the light of all the relevant considerations.

I am copying this letter to the Prime Minister, other Members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely



for PETER REES

(approved by the Chief Secretary & signed in his absence).

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Envo - Bot : CAP 1712.

23 FEB 1984

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MINISTRY OF AGRICULTURE, FISHERIES AND FOOD  
WHITEHALL PLACE, LONDON SW1A 2HH



From the Minister

Rt Hon Peter Rees QC MP  
Chief Secretary  
H M Treasury  
Parliament Street  
London SW1P 3AG

1 February 1984

*CC NO*

*WMM-AJC*

Thank you for your letter of 30 January about the EC agricultural structures directives. Things have in fact moved on considerably since the exchange of letters between myself and George Younger; I am now writing to you about what we propose to do if the Agricultural Council next week again fails to agree to roll-over the Directives.

I doubt whether there will be agreement on roll-over next week. I have always made clear that I could accept a simple roll-over and so would a number of other delegations. But the Commission is opposed and some Member States are apparently adamant in their wish to see amendments and conditions introduced. Agreement on a simple roll-over is therefore unlikely, as is a roll-over modified only by a total ban on dairy aids (which I could accept). In these circumstances, and if other Member States insist on introducing other conditions for a roll-over, I shall have to insist that our LFA extension should also be considered. How far I would persist with this line would of course depend on the progress of the discussions and the contents of any package which might emerge.

In the absence of roll-over measures, we have so far been able to maintain with increasing difficulty the position that, given the legal uncertainties, we should suspend payments - meanwhile continuing to process the applications we receive - in the hope that matters would soon be resolved in Brussels and we could then resume paying. But, unless roll-over is agreed in Brussels next week, we can no longer hold that line: firstly, because it is now clear that other countries are planning to go ahead with their payments notwithstanding; and secondly because of the mounting pressures on us to delay no longer in making these payments to the farmers concerned.

The Germans have already made it clear that they intend to go ahead with the payments on their own initiative, and are making necessary arrangements. So are the French; and it appears from our enquiries that, if there is no roll-over next week, most, if not all, other

/Member States will ...



Member States will be following suit. You will appreciate that this would place the Government in an impossible situation politically. Many of the farmers whose payments are being held up are amongst the hardest pressed in the agricultural community: especially in a difficult year like the present one, HLCA payments can represent all or most of a hill farmer's net income; and even a week or two's delay could be critical to them in the difficult winter months. MPs of all parties who have agricultural constituencies, farmers' leaders and the media are all well aware of these facts and I and my colleagues are under intense pressure. Indeed, the farmers' organisations might seek to take legal action against us on the HLCA front and I understand that EQO(L) recognised that this was a real possibility at their meeting on Monday.

If therefore next week's Council fails to agree on a roll-over, I should want to announce that the government proposes urgently to find means of making the HLCA and AHDS payments (on plans approved after the end of 1983) on its own initiative.

On the legal position, I understand that EQO(L) thought that the argument could go either way though the complexities were such that the matter would need to go to the Law Officers; the necessary papers should be with them later on this week. When we have their views, we could decide on how to proceed with payments, if the need arises.

I should make it clear that I have not overlooked the question of reimbursement for the Community's share of the payments we would be making during what may be an interregnum, nor that we might be vulnerable under the state aid provisions of the Treaty. On the first point, however, the Commission has made it plain that - as soon as the way is clear - they will be proposing that the renewal of the Directives and the associated financial provisions be made retroactive to 1 January; and, on the second, they told the SCA last week that there would be no need for Member States who decided to continue payments on their own initiative to notify them as state aids.

I should be glad to know if you see any difficulty about the course I am proposing. I am copying this letter to the Prime Minister, Members of the Cabinet, the Law Officers and Sir Robert Armstrong.

MICHAEL JOPLING