



Foreign and Commonwealth Office

London SW1A 2AH

8 May 1984

1983 Refunds: Legal Case

with AC — At Question Time on 3 May, the Prime Minister said that the agreement on our 1983 refunds was not a legally binding one. As you know (my letter of 2 May) Whitehall Legal Advisers are of the view that it is highly uncertain that the Stuttgart conclusions on UK refunds can be regarded as creating a binding obligation in Community law. But the Foreign Secretary is seeking the advice of the Law Officers on this point so that Ministers will have an authoritative view.

The Foreign Secretary believes that, while recourse to the ECJ looks like being a very uncertain option, until we have advice from the Law Officers in that sense, we cannot be sure that we could not bring a successful case. He therefore thinks that we should not rule out the option at this stage. He suggests that the Prime Minister might draw on the following form of words, if asked again about the Community's obligation to pay us the 1983 refunds: "Heads of Government in the European Council entered into a clear commitment to pay refunds to the United Kingdom for 1983. Those refunds were written into the Community budget for 1984. We expect the agreement by the Heads of Government in the European Council to be honoured. The refunds are due to be paid during the current year."

If the Prime Minister were specifically asked about the legal nature of the Community's obligation, she might say: "the agreement is a clear commitment. The Stuttgart conclusions did not specify that the refunds would be paid by 31 March (the date mentioned in the question on 3 May). There was therefore no binding obligation to pay by that date."

If asked:

- (i) whether an obligation will arise at some time in the future, or;
- (ii) whether, in view of the last sentence in the 3 May reply, at some time in the future withholding would not be contrary to international law, the Prime

/Minister

Top Copy  
- Questions

*[Handwritten signature]*



Minister might wish to take the following line,  
"I have said what I expect to happen and I do not  
wish to speculate about the future. I expect the  
refunds to be paid."

I am sending a copy of this letter to the recipients  
of my letter of 2 May.

*Yours  
R B Bone*

(R B Bone)  
Private Secretary

A J Coles Esq  
10 Downing Street