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Prime Minister

Agree?

CDP 20/6

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PRIME MINISTER

1982 Risk Sharing Refund

1. Before next week's European Council we need to consider what to do about the outstanding £42 million of our 1982 risk sharing refund.
2. The action we have so far taken with the Commission (my letter to Thorn at the turn of the year) and with the Presidency (my letter to Cheysson of 13 March) has not resolved the issue. Nor did we expect that it would. Our aim was to keep the issue actively before the Community so that it could either be resolved at a European Council or so that, if we eventually decided to go to the European Court, we would not have allowed our claim to lapse by inaction in the meantime.
3. It is now clear that we shall get no action either from the Commission or the Presidency. Our main choices are therefore:-
  - (a) to resolve the matter at the June European Council;
  - (b) to initiate legal proceedings in the European Court of Justice; or
  - (c) to withhold the sum involved.
4. It is clear from the past history of the case that other Member States do not accept our claim that we were underpaid. They are therefore most unlikely to agree, in the European Council, to conceding the £42 million which they have not been willing to agree to over the last year. Nor could we make payment of the £42 million an extra condition of our agreement to an overall budget solution without jeopardising the prospects for a settlement.
5. I have considered whether we might be able to offer to waive the £42 million claim in return for securing something of importance to us in the budget negotiations. Since part of

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the argument over the £42 million rests on our claim that the refund should have been calculated on the Payments Basis, it might be possible to agree to waive the £42 million provided that it was agreed that henceforth the Payments Basis would be used in measuring our VAT contribution and therefore in assessing the budget burden for which we will be compensated under the budget system.

6. I would not rule this out. But since neither other Member States nor the Commission think we have a good case on the £42 million our willingness to waive it does not give us very much leverage. Moreover, we would need to be very careful not to alert Member States to the very great importance which the Payments Basis has for us in terms of our refunds in 1985 in particular. Other Member States do not seem to have yet appreciated that a combination of exchange rate factors and the effects of this years' budget on VAT collection at UK ports will increase our VAT share/expenditure share gap on the payments basis in 1985 by about 360 mecus and hence the refund we will receive if the payments basis is endorsed as the method of calculation. We can only judge how to handle this at Fontainebleau itself.

7. If we cannot use our willingness to waive our claim in order to secure a concession of this kind, we should consider whether, in the event of an agreement being reached on the wider budget negotiations, we should anyway drop the claim given that we would have taken it as far as we can in the Council and with the Commission.

8. Of the alternatives, withholding the sum of £42 million alone has never been a serious option. This leaves the possibility of bringing a case before the European Court. The advice of the law officers has so far been that it would be very difficult to get the Court to consider the case in the first place since it is far from clear that the Article of the Treaty under which we would need to act (Article 175)



can be held to apply to the exact circumstances of our case. If we did succeed in establishing a case the law officers' advice is that our chances of success would be poor.

8. In summary, I see no scope for pursuing our claim in the Foreign Affairs Council. If we get a successful outcome at Fontainebleau, I would not favour recourse to the court. Our chances of success are not high enough to warrant it. The right course in my view would be to pursue the matter no further. We should need to say so in the House, if asked,

9. If we do not get a success at Fontainebleau, we should consider court action but we would need to consult the law officers again first and must recognise that the odds are against a success.

10. I am copying this minute to Members of OD(E), the Lord Chancellor, the Attorney General, the Lord Advocate and the Solicitor General and to Sir Robert Armstrong.

GEOFFREY HOWE

Foreign and Commonwealth Office  
19 June, 1984