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MR POWELL

3 August 1984

EUROPEAN COMMUNITY: STANDARDS

Paul Channon has proposed a way of breaking the log-jam on product harmonisation, which has impeded the development of a genuine Common Market.

The current approach tries to achieve unanimously agreed harmonisation of technical requirements. This is a painfully slow process and its outcome - Eurosausages or lawnmowers or whatever - invite well-deserved ridicule. DTI propose instead that member states should unanimously agree the health and safety objectives and requirements for each product area, leaving open the question of how conformity is achieved. Where harmonised standards exist, fine. Where they are needed, qualified majority voting would prevent one member blocking a directive, as at present. Where standards are a long way off, the onus would then be placed on the member state(s) bent on blocking imports to show why others' standards do not meet their own health and safety requirements. Qualified minority voting would, for example, require France to secure the agreement of Italy, or Germany, in order to sustain their objections to others' products.

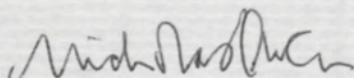
This approach is better suited to British ways. Our disadvantage in the harmonisation business is that as a country, we place less emphasis on standards in health and

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safety regulations than do some of our continental colleagues and for this reason, have fewer standards to offer as a basis for harmonisation. The exercise launched by the Prime Minister to identify product areas which would be of most benefit in opening up the internal market will help us choose which directives to go for. It may not yield many specific British standards which we could propose for them. In contrast, France and Germany have agreed around 100 standards in their bilateral exercise. Even if we were included in a trilateral discussion, we would not have much to put on the table. Hence the importance of this initiative, which puts the onus on the importing country to show that others have not achieved equivalent levels of safety.

We recommend that the Prime Minister approve what is proposed and encourage the FCO and DTI to attempt to win acceptance in time for the Dublin Council in December.


NICHOLAS OWEN

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hle eu

bc pc

10 DOWNING STREET

From the Private Secretary

2 August 1984

EUROPEAN COMMUNITY: STANDARDS

We spoke about the Minister for Trade's letter of 2 August to the Foreign and Commonwealth Secretary outlining a UK proposal to the European Community on standards.

BA
You will recall the personal interest which the Prime Minister has taken in this subject. She will clearly need to be consulted about the proposal in Mr Channon's letter. I should prefer to wait for the views of OD(E) to be established before doing this. I suggest that your Secretary of State might thereafter minute the Prime Minister, explaining the significance of the proposal and whether further UK initiatives in this field are in the pipeline.

I am copying this letter to the Private Secretary to the Minister for Trade and to Richard Hatfield.

Colin Budd, Esq.,
Foreign and Commonwealth Office

ls



CCNO

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From the Minister for Trade

The Rt Hon Sir Geoffrey Howe MP
Secretary of State for Foreign and
Commonwealth Affairs
Foreign & Commonwealth Office
Whitehall
London
SW1H

2 August 1984

Dear Geoffrey.

EUROPEAN COMMUNITY: STANDARDS

Brussels
OD(E) 3rd meeting considered an interim report by officials on the scope for a UK initiative in the Community on standards which the Prime Minister had asked to be set in hand in the aftermath of Fontainebleau.
12.6.84

2. In opening up the internal market by simplifying standardisation requirements we must avoid inadvertently exposing consumers, workers and others to imports of dangerous products. Equally, however, I am convinced that, if we are seriously to tackle technical barriers in the internal market, we have both to improve and speed up the harmonisation of product standards and get a framework in which Member States' accept others' standards in their markets, provided always that these do not undermine their health and safety legislation. I propose a UK proposal to the Community (set out in more detail in Annex's A and B) to:

- i. Develop lists of national standards that are presumed to conform to the Community health and safety objectives set out in the Directive;
- ii. Oblige Member States to give free access to their markets for products complying with such national standards unless and until they are shown not to meet the health and safety objectives;



iii. Oblige Member States wishing to withdraw free access on the grounds that the health and safety objectives are not being met, to seek the support of a qualified minority of votes. This would mean in the case of the UK, pre-Enlargement, persuading one other large Member State or two/three smaller ones that the safety doubts about the standards were justified. I believe such a voting system to be necessary to prevent Member States from invoking the safeguard clause frequently and for protectionist reasons.

3. This proposal seems to me to be an improvement on the present situation. It also will avoid the criticism from industry that in order to get free access to the internal market they have to agree to a Single Technical Standard imposed after Community discussion and compromise and which can stifle innovation and impose unnecessary extra costs.

4. My officials have already set in hand a wide ranging consultation with industry to determine the product areas which would be of most benefit in opening up the internal market. The CBI's recent letter to you is also a useful general list of non-tariff barriers which officials are following up. I hope that you and other OD(E) colleagues will take the opportunity in your contacts with industry to help push home the need for a positive and considered reaction from them if the UK is to take full advantage of the opportunity that now exists.

5. As you know the French and Germans have for some time now held discussions designed to open up their markets to each others' exporters by giving full legal equivalence to each others' standards across a wide range of products. These now appear to be beginning to bear fruit. This means that time is not on our side. We must try to head-off a Franco-German agreement covering the market and obliging us to adopt their standards.

6. I understand that my proposal has met with broad agreement at official level. I am satisfied that it contains adequate safeguards for health and safety to serve as a suitable basis for more detailed discussion in the Community. I hope that you and other OD(E) colleagues will agree to my making this proposal in the Internal Market Council on 9 October seeking to get an agreed framework for standardisation directives to enable the Dublin European Council to set a timetable for the first list of new-style directives to be presented to the Internal Market Council during the first part of 1985.



7. Copies of this letter go to the Prime Minister, Members of OD(E), Peter Walker and to Sir Robert Armstrong.

Yours,

PAUL CHANNON

Paul



UK CONTRIBUTION TO THE COMMISSION WORKING GROUP ON GENERAL REFERENCE
TO STANDARDS

The United Kingdom attaches great importance to the completion of the Community internal market which implies the creation of an homogeneous regulatory environment throughout the Community so as to facilitate free competition between suppliers of industrial products, to the benefit of the consumer and wider international competitiveness. To this end the United Kingdom has consistently maintained its commitment to harmonising standards within the Community in support of the programme for the elimination of technical barriers to trade under Article 100 of the Treaty of Rome. Recognising, however, that existing procedures for harmonising legislation with a view to eliminating disparities in regulations and standards have not produced results sufficiently quickly, the United Kingdom welcomed the comprehensive initiative set out in Document 10888/83 of 28 November aimed at accelerating and strengthening standardisation in the Community.

2 In endorsing the principles contained in Document 10888/83 the United Kingdom clarified its understanding of the fourth indent viz that in future Article 100 Directives would establish the necessary conditions of health and safety and protection of consumers to which technical standards adopted in respect of products covered by those Directives would have to conform. This reflects the United Kingdom Government's firm view that it is for the national authorities to establish and maintain levels of health and safety and that this responsibility cannot be delegated to private standards bodies. More precisely, it reflects the fact that national governments are responsible to their own citizens for the maintenance of health and safety levels. This being the case, any new Article 100 procedures must not entail a lowering of existing levels of health and safety in Member States. Harmonisation must therefore take place at the higher end of the spectrum of safety levels existing within the Community - levelling up as opposed to levelling down.



3 It is noted also that at its first meeting on 18 May the Working Group decided to interpret its terms of reference (which mention only the technique of general reference to standards) broadly and that its task should in fact be to examine how standards might be used in Article 100 Directives and to recommend a model Directive.

The UK Approach

4 The present approach to harmonisation of Member States' technical laws is fragmented, in terms both of product coverage and of the structure of individual Directives. Commitment to an homogeneous internal market suggests the need for an overall framework which deals with the widest possible range of products; which provides a menu of uniform mechanisms capable of coping with the wide variety of product types and the uneven degree of consensus among Member States on the appropriate technical requirements to protect health and safety and the environment; and which facilitates and provides an impetus towards early harmonisation of these requirements.

Overall Framework

5 The UK suggests that a Model Directive should include articles covering product scope, general safety objectives, essential mandatory safety requirements, references to harmonised standards, provisions for dealing with the situation where harmonised standards do not yet exist, arrangements for demonstrating conformity with the safety objectives and a safeguard clause embodying procedures for resolving difficulties. Such a model Directive when agreed can be applied sector by sector according to priorities.

Scope

6 Each sector Directive will need to identify clearly the product range concerned and the hazards which were being addressed. In some circumstances a narrow product range might be covered in relation to a wide range of hazards whilst in others it might be more appropriate to cover a wider product sector but for a narrower range of dangers.



In addition each sector Directive would need to recognise that additional precautions might be required by the competent national authorities to be provided at the workplace in order to provide adequate protection of workers using or exposed to the products covered by the Directive. Such additional precautions - eg extra guarding - would have to be in respect of matters not already covered by the Directive or the standards which it called up (for example the special requirements of a particularly harsh working environment). Although these extra aspects would not impinge upon any right to free circulation conferred by the sector Directive vis a vis matters covered therein, the existence of the Sector Directive would not prevent competent national authorities within Member States from taking steps to prevent the articles use in unimproved form.

General Safety Objectives

7 The pattern of Article 2 of the Low Voltage Directive provides a suitable model. In the light of paragraph 3 above, however, it is considered that the phrase "good engineering practice in safety matters in force in the Community" would need modification or rather definition so as to make clear that what was meant was practice which produced levels of safety sufficient to satisfy the requirements of all Member States. Practice acceptable to one Member State which produced levels of safety considered inadequate by other Member States would not come within the definition.

Essential Safety Requirements

8 It would be permissible but not obligatory within a sector Directive to specify essential safety requirements either in the Directive itself or in a technical annex. Such requirements would require unanimous agreement for their adoption or modification. The extent to which such requirements should be identified would need to be decided on an ad hoc basis.



Harmonised Standards

9 Clearly the general safety objectives and essential safety requirements need to be complemented by harmonised standards. Such standards may on some areas already exist but where they do not it will be necessary for the appropriate Directive working group to give guidance (in the form of a mandate) to the European Standards Bodies on the safety characteristics relating to the products concerned, to be covered. Member States would then decide whether or not each such harmonised standard or its subsequent revision should be listed under the Directive as meeting the safety objectives and embodying the essential safety requirements. Reference to such standards would therefore be to dated editions in all cases. Given national governments direct responsibility to their citizens for levels of health and safety their position in this respect must be safeguarded. It is not suggested however that this requires the procedure for harmonising standards mandated under a sector Directive to be based on unanimity. An adoption procedure based on qualified majority voting should be sufficient provided that there was an effective safeguard procedure (see later section on the safeguard clause). The qualified majority voting procedure would reduce the chances that one Member State might prevent harmonisation in order to protect its narrow trading interests.

10 Where harmonised standards are not available from the outset for the whole of a selected sector the first priority will be to commission these. Probably however it will be desirable to adopt Directives in advance of the availability of comprehensive coverage by harmonised standards. In these cases the sector Directive would need to provide that where standards have not been harmonised the general safety requirement would be interpreted by reference to safety levels in force in the Member States, subject always to the constraints of Article 36. However each sector Directive would also confirm the right to free circulation of products providing an equivalent level of safety by another technical means including where the importing Member State had existing mandatory technical requirements.



Demonstration of Conformity

11 A model Directive would list various possible methods of demonstrating product conformity. Each sector Directive would, by unanimous agreement, define which of these were applicable in the particular case and the legal significance to be attached to them. Any bodies designated for the purpose of demonstrating conformity with the safety objectives should comply with appropriate published international guides such as ISO Guide 40 (Conditions for the acceptance of Certification Bodies).

Safeguard Clause

12 Each sector Directive would contain a safeguard procedure allowing a Member State to challenge a harmonised standard which had been or might be adopted. The basis for challenge would be either that the standard did not conform to the general safety objectives and essential safety requirements or that it did not afford an equivalent level of safety to that currently existing in the Member States own territory. Disagreement on either issue would be referred to a committee comprising representatives of the competent authorities of Member States.

13 The safeguard procedure would be available at any time. Thus a Member State could challenge a harmonised standard that had been established for some time on the basis that it no longer reflected good engineering practice.

14 Each sector Directive would contain further safeguard provisions which would permit Member States to suspend admission to their internal market and the marketing of a product known not to conform with an adopted standard or with the general or specific safety objectives even if, for example, it had been accorded a certificate of conformity, test mark etc as provided. Similarly disagreement on any of these issues would also be referred to the committee of representatives of competent authorities referred to above.

Department of Trade and Industry

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July 1984



UK CONTRIBUTION TO WORKING GROUP ON GENERAL REFERENCE TO STANDARDS
AREAS NOT COVERED BY HARMONISED REQUIREMENTS

1 Each sector Directive would establish that where requirements had not been harmonised the general health and safety objectives would be interpreted by reference to the health and safety levels in force in the importing Member State, subject always to the constraints of Article 36. However the sector Directive would also establish the right of free circulation of products providing an equivalent level of health and safety by other technical means (including where the importing Member State had introduced mandatory technical requirements).

2 Establishing the right of access for products affording equivalent safety would inevitably lead each Member State to an assessment of the standards applied by other Member States. This in turn would open up the possibility of moving towards giving some status to suitable national standards. Any system to put this into effect should not however call for the immediate assessment of all those national standards applicable to a particular sector Directive since this could impose unmanageable resource problems on Member State authorities.

3 The UK therefore suggests a system whereby, for a defined product range and specified hazards within scope of the sector Directive, each Member State might list the standards and other technical requirements which it applied. There would be no immediate requirement for Member States to approve or vote on standards so listed, but the safeguard procedure would be available to Member States at any time. Standards would remain on the list unless or until challenged by a Member State. The basis for challenge, as for harmonised standards, would be either that the particular national standard did not conform to the general safety requirements (if appropriate, as interpreted by means of essential safety requirements specified in the sector Directive) or that it did not afford an equivalent level of health and safety to that

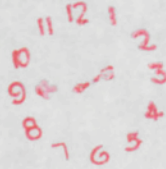


currently existing in the Member State's own territory. A challenge to a standard would be referred to the Committee comprising representatives of the competent authorities of Member States and would trigger a voting procedure whereby the standard would be removed from the list if a "qualified minority" objected to it.

4 Subject to any outstanding challenge made by a Member State under the safeguard procedure any product conforming to a listed standard would be afforded free circulation by the sector Directive. The Directive would specify the period after the listing of a standard within which Member States should take the necessary measures to remove any legal or administrative obstacles to the free circulation of such products. If however the enforcement authorities doubted the safety of a product it would be impracticable and unreasonable to require the product to be tested against all the applicable standards which might have been listed. UK suggests the following procedures depending on whether a manufacturer claimed conformity with a listed standard or the product was marketed without any claim to conformity. In the first case the authorities should test the product to the standard it purported to conform with and if it were found not to conform the authorities might require its removal from the market or take other steps to safeguard the health and safety of their citizens for example to require modifications to the product. If it were found to conform but the authorities still believed, by reference to their national levels of health and safety in force, that it failed to meet the health and safety objectives in the Directive, it would be open to them to take urgent safeguard action and they would then have to challenge the listed standard within a specified time. If there was no claim of conformity with a listed standard the authorities need only show that the product fell below their national levels of health and safety in force before they acted against the product.

Department of Trade and Industry
July 1984

- 2 AUG 1984





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cc/pt

From the Minister for Trade

NBPM

CDP

29/8

John Selwyn Gummer MP
Minister of State
Department of Employment
Caxton House
Tothill Street
London SW1H 9NF

28 August 1983

Dear John,

EUROPEAN COMMUNITY: STANDARDS

Thank you for your letter of 17 August. I am pleased to learn that you support the main thrust of the proposed initiative.

I agree that we must not compromise our essential standards of health and safety at work and can appreciate the concerns that you express. I understand that my officials have discussed with officials of the Health and Safety Executive the most effective way of meeting these concerns. The meeting of officials on 30/31 August will not be a formal negotiating session, but it will be a useful opportunity for the UK to stress its twin objectives of opening up the internal market and preserving essential health and safety standards. The best way of achieving this, while meeting your concern about tactics and not tabling the Annex B paper, would be for the UK delegation to use it instead as a speaking note, feeding UK ideas into the discussion as appropriate. The Health and Safety Executive are, I understand, to be represented on this delegation.

I would hope that this course of action would meet both your concerns. The negotiations brief for the Working Group will simply comprise Annexes A and B to my letter, which have of course already been made available to Ministerial colleagues and cleared by officials.

Copies of this letter go to recipients of yours.

Yours, Paul

PAUL CHANNON

Evo - Pst : Budget A27



cc PC

Foreign and Commonwealth Office

London SW1A 2AH

22 August 1984

Dear David,

~~pse~~

JR 24/8-

European Community: Standards

Thank you for sending me a copy of your letter of 20 August to Steve Nicklen.

Like the Prime Minister, the Foreign Secretary is conscious of the need to secure progress at the 9 October Internal Market Council. Though I have not been able to consult him, I believe he too would want officials to proceed on the basis of Mr Channon's initiative in advance of that meeting. I therefore agree we should proceed along the lines proposed by Steve Nicklen.

I shall arrange for Sir Geoffrey to minute the Prime Minister on the state of play after his return from leave on 3 September.

Copies of this letter go to Richard Hatfield (Cabinet Office) and Steve Nicklen.

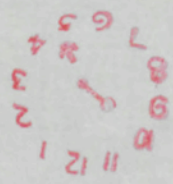
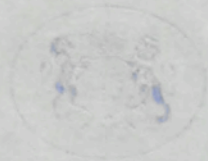
Yours Sincerely,
Colin Budd

(C R Budd)
Private Secretary

David Barclay Esq
10 Downing Street

EC Budget.

Foreign and Commonwealth Office
London SW1A 2AH



22 AUG 1984



10 DOWNING STREET

From the Private Secretary

20 August 1984

European Community: Standards

Thank you for sending me a copy of your letter of 20 August to Peter Ricketts.

The procedure suggested in Charles Powell's letter of 2 August seemed convenient at the time. But I do not think that the Prime Minister would wish the opportunity to be lost to make progress on this matter in Europe, because of the difficulty in consulting her at the present time.

Accordingly, if the Foreign Secretary is content with the proposal in the last paragraph of your letter, and if there are no objections from other members of OD(E), I believe that the Prime Minister would be content for officials to proceed with their preparations.

I should be grateful if Peter Ricketts could arrange for the Foreign Secretary to report the state of play to the Prime Minister on her return.

(David Barclay)

Steve Nicklen, Esq.,
Department of Trade and Industry.

JK

Europe Budget

2/12



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From the Minister for Trade

P Ricketts Esq
Private Secretary to the
Foreign and Commonwealth Secretary
Foreign and Commonwealth Office
Downing Street
London
SW1A 2AL

20 August 1984

Dear Peter

EUROPEAN COMMUNITY: STANDARDS

Charles Powell's minute of 2 August to Colin Budd effectively asks for a stay of action until the Prime Minister can have further advice from the Foreign Secretary on the Minister for Trade's proposals, since they touch on an area in which she has expressed keen personal interest. In particular he suggests that besides awaiting the views of OD(E) and an explanation of the significance of the proposals, she would wish to consider them in the knowledge of whether additional United Kingdom initiatives will be forthcoming.

Mr Channon's letter was intended to ensure that there were no policy obstacles to United Kingdom experts advocating Community procedures for recognising national standards in a way which would improve trading opportunities while at the same time safeguarding legitimate health and safety aspects of standards requirements. Once in place such procedures would clear the way for us to present shopping lists of specific product areas in which the Community could quickly agree that national product standards can co-exist without creating barriers to trade. This clearance is necessary to enable United Kingdom experts to participate to best effect, and in ways which promote United Kingdom interests, in official meetings in Brussels later this month to prepare the standards dossier for the Internal Market Council on 9 October, the only such Council before the Dublin European Council at the beginning of December.

The Prime Minister's known wish to press ahead in the matter of standards was, of course, the occasion for bringing this correspondence to Number 10's attention. It is in the expectation that, if such procedures can be agreed, the initiatives sought by the Prime Minister can be more readily pursued.



Mr Channon hopes in the circumstances not only of substance but even more particularly of timing, the Foreign Secretary can agree that, unless views of members of OD(E) are to the contrary, our experts should go ahead, on the basis proposed by him, in the official preparatory group later this month.

Copies of this letter go to Charles Powell and to Richard Hatfield.

Yours sincerely
Stephen Nicklen

STEPHEN NICKLEN
Private Secretary to the
Minister for Trade (Mr Channon)



Minister of State

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The Rt Hon Paul Channon MP
 Minister of State for Trade
 Department of Trade and Industry
 1 Victoria Street
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*Await further letter
 from DTI.*

17 August 1984

EUROPEAN COMMUNITY: STANDARDS

I am most grateful for the opportunity to comment on the proposed UK line on the CEC Standards Initiative, which was described in your letter of 2 August to Geoffrey Howe.

I fully support the main thrust of the proposed UK response, which I believe strikes just the right balance between the need to open up the internal market and the need to avoid compromising our existing standards of health and safety at work.

I have two concerns relating to questions of handling. The first relates to the transmission to Brussels of the material relating to the UK position on areas which are not covered by harmonised standards. The carefully balanced arrangements described in Annex B of your letter, rightly seek to avoid major and unjustified resource costs to the enforcement authorities. They represent the final outcome which officials should seek to achieve. Anything less would run an unacceptable risk of compromising existing British Standards of health and safety at work. I therefore suggest that it would be tactically unwise to reveal the details of our position at the outset of the negotiations, since this would run the risk of officials having to compromise further in order to reach a consensus. I hope you will agree therefore that the material in Annex B should not be transmitted to Brussels.

Secondly, given the importance of this Initiative and the fact that the next meeting of the Working Group on 30/31 August will be discussing position papers submitted by other Member

States and by the Commission itself, I think it is important for the UK negotiating brief to be prepared and agreed before then through the normal channels.

I am copying this letter to the recipients of yours, ie the Prime Minister, Members of OD(E), Peter Walker and Sir Robert Armstrong.

U/
John Selwyn Gummer
John

JOHN SELWYN GUMMER