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Foreign and Commonwealth Office

London SW1A 2AH

21 September 1984

ms
Prime Minister
CDP
21/9

Dear Charles,

1983 Refunds: Possible Legal Action

I said in my letter of 6 September that we would be taking the advice of the Law Officers about the prospects of legal proceedings in the European Court over our 1983 refunds. The Solicitor General and the Lord Advocate have now considered the matter and I attach a copy of Michael Saunders' letter of 18 September to Henry Darwin which sets out their views. The Law Officers conclude that the action of the European Parliament in rejecting the transfer was not unlawful and that the chances of success of action in the European Court against either the Parliament or the Commission are very poor.

The Secretary of State has sent a minute to the Prime Minister on the state of the negotiations on the outstanding budget issues.

I am copying this letter to David Peretz at the Treasury and to Richard Hatfield in Sir Robert Armstrong's office.

Yours ever,

Colin Budd

(C R Budd)
Private Secretary

C D Powell Esq
10 Downing Street

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01-405 7641 Ext. 3229

Communications on this subject should
be addressed to

THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our Ref: 400/79/289

H G Darwin Esq. CMG.
Second Legal adviser
Foreign and Commonwealth Office
London SW1A 2AH

18 September 1984

For entry of

Mr Fairweather ELD (1)

*Mr Renwick
Mr Eaton Leg Adv.*

*The two law officers obviously
take the same view as we do*

HGD

19:12

John Henry,

1983 REFUNDS: POSSIBLE LEGAL ACTION

The Solicitor General and the Lord Advocate ("the Law Officers") have considered your letters to Henry Steel of 7 September and to Norman Adamson of 11 September and their annexes.

The Law Officers advise that it would be extremely difficult to persuade the European Court that the action of the Parliament was unlawful on procedural grounds. In coming to this view, they were much impressed by the material set out in Kevin Chamberlain's letter to Martin Eaton of 17 August.

Secondly, the Law Officers consider that the European Court is not likely to uphold an argument that the Parliament misused its powers. Even if it did, this would not result in the UK obtaining the refunds; the Parliament would be required to look at the matter anew.

Thirdly, the Law Officers advise that whilst the European Court might be prepared to construe Regulations 1888 to 1890/84 as imposing an obligation in Community law that payment should be made to the UK in 1984, it would be likely to hold that that obligation was subject to the condition that appropriation was made in the Budget. The Court is most unlikely to approve a doctrine that Parliament is constrained by the action of the Council in the one area in which it has any real powers. It could be dangerous to have this issue litigated in the European Court as the Law Officers advised in connection with the 1982 risk sharing refunds (see my letter to Alan Preston of 30 November 1983).

Fourthly, the Law Officers advise that the procedural difficulties in an action against either the Parliament or the Commission are serious, for the reasons given in paragraphs 23 to 38 of the Memorandum. As they have previously advised, the Law

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Officers consider that the attitude of the Court to questions of procedure would probably be determined to some extent by its view on the merits of the case. The merits in this case are certainly not in the UK's favour.

The Law Officers therefore conclude that the action of the European Parliament in rejecting the transfer was not unlawful and that the chances of success of an action in the European Court against either the Parliament or the Commission are very poor.

I am copying this letter to Bill Godwin, Douglas Duncan, Sophia Lambert and Kevin Chamberlain.

Yours sincerely,
Michael Saunders

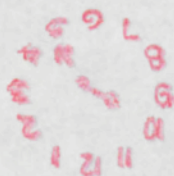
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21 SEP 1984

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cc: PC

10 DOWNING STREET

From the Private Secretary

24 September, 1984

Dear Sir,

1983 REFUNDS: POSSIBLE LEGAL ACTION

Thank you for your letter of 21 September conveying the Law Officers' advice about the prospects of legal proceedings in the European Court over our 1983 refunds.

The Prime Minister notes their view that the prospects of success in an action in the European Court against either the Commission or the Assembly are very poor.

I am sending a copy of this letter to David Peretz (HM Treasury) and to Richard Hatfield (Cabinet Office).

yes sir,

(C.D. Powell) —

C. Budd, Esq.,
Foreign and Commonwealth Office.

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10 DOWNING STREET

From the Private Secretary

11 September, 1984.

1983 Refunds: Possible Legal Action

Thank you for your letter of 6 September about the legal merits of action to challenge the decision of the European Assembly to block our 1983 refunds. The Prime Minister has noted this.

Charles Powell

C.R. Budd, Esq.,
Foreign and Commonwealth Office.

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Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister

6 September 1984

CDP
6/9

Dear Charles,

mf

1983 Refunds: Possible Legal Action

In my letter of 27 July, I described the background to possible action in the European Court of Justice over the refusal of the Parliament to transfer our 1983 refunds.

Further study has not changed our Legal Advisers' view that the legal merits of any action to challenge the decision of the Parliament are not strong. To take the matter to the European Court would be likely to result in a long delay with no uncertainty of success, and would not be compatible with the pursuit of negotiations. Our interests would probably be better served by pursuing the efforts now under way to resolve all the budget issues together. If we were unable to do so we should of course have to consider what action to take at the end of the year.

If we were to begin an action under Article 173 under the Treaty of Rome, we would have to do so by 27 September (action under that Article must be instituted within two months of the decision in question). The Foreign Secretary has, therefore, thought it right to seek the view of the Attorney General on the prospects of legal proceedings. Further advice will be submitted in the light of his conclusions.

Yours ever,

Colin Budd

(C R Budd)
Private SecretaryC D Powell Esq
10 Downing Street

Euro for Budget Pt 27

UNITED STATES GOVERNMENT

OFFICE OF THE COMPTROLLER OF THE CURRENCY

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SEP 12 1981



Treasury Chambers, Parliament Street, SW1P 3AG
 01-233 3000

26 September 1984

C Budd Esq
 Private Secretary
 Foreign and Commonwealth Office
 London SW1A 2AH

Dear Colin,

1983 REFUNDS: POSSIBLE LEGAL ACTION

You sent this office a copy of your letter of 24 September to Charles Powell. We have also seen the latter's letter of 24 September.

The Chancellor entirely accepts the Law Officers' advice that the chances of success in an action before the European Court in relation to the 1983 refunds are very poor; and he considers that we should not pursue this option further at this stage.

I should, however, record that we regret not having been consulted on the terms of your approach to the Law Officers. Your letter of 6 September was only copied to us after the event, and then only at official level. Our prime interest in this subject is obvious; and had we been properly consulted on the instructions to the Law Officers, we would have been able to suggest a number of factual corrections and amendments. Perhaps in future you could bear this in mind.

I am copying this letter to Charles Powell (No 10) and to Michael Saunders (Law Officers' Department).

Yours ever,

And. K.

MISS J C SIMPSON
 Private Secretary

*NSPM
 CDD
 28/9*

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Budget

28 SEP 1984

