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PRIME MINISTER

DECISION-TAKING IN THE COMMUNITY: DOOGE COMMITTEE

Mr. Rifkind is to circulate a paper on decision-taking in the Community at the next meeting of the Dooge Committee. The purpose is to wean the other Member States away from unrealistic proposals to make majority voting the norm and to undermine the Luxembourg Compromise.

A 2. The paper is attached. Paragraphs 1-8 are rhetorical flourish. The important bits are paragraphs 9-13. The main points are:

Para. 9 - There should be more use of majority voting where it is already provided for in the Treaty.

Para. 10 - A search should be made for areas where we could all agree not to invoke unanimity. An example is your suggestion at Dublin that we dispense with unanimity on Community Standards.

Para. 11 - The indispensable need to retain the Luxembourg Compromise.

Para. 12 - The suggestion that people should explain more fully why they are invoking the Luxembourg Compromise.

Para. 13. - A proposal for the European Council to set priorities.

Annex - an explanation why it would be misconceived to give the European Parliament a greater role in decision-taking, together with a suggestion for an improved conciliation procedure.

The paper seems to me well within the guidelines which you set. David Williamson agrees (please see his minute at B B).

Agree that Mr. Rifkind may circulate his paper?

C D P.

Please see specific comments. I think we are in danger of going too far.

11 January 1985

FVE SH2ACC

10 DOWNING STREET

14 January, 1985

From the Private Secretary

Decision-taking in the Community

With his letter of 11 January, Peter Ricketts enclosed the draft of a paper on decision-taking which Mr. Rifkind wishes to circulate in the Dooge Committee.

The Prime Minister wishes the paper to be amended in certain respects.

The passages which cause the Prime Minister most difficulty are those which deal with the European Assembly (paragraph 6(c) of the paper and the Annex). She wishes para. 6(c) to be strengthened, to bring out the point that members of the Council are each answerable to their own national parliaments. She has commented that the Annex is much too weak, and should be re-written to bring out more pointedly rather than just interrogatively the objections to extending the powers of the Assembly. You will want to let me have redrafts of the passages in question as soon as possible.

The Prime Minister has also raised objections to paragraph 10 of the paper, in relation both to the possibility of abstaining and to a self-denying ordinance not to insist on the unanimity requirement in all areas. She has commented that the self- denying ordinance would mean going beyond the present Treaty; and that her suggestion at the Dublin Council that this should be done in the area of standards was a mistake not to be repeated. This is clearly a point of substance. You may wish to put forward fuller arguments setting out precisely the limits and safeguards on what is here proposed.

The Prime Minister has commented that the proposal for the European Council to adopt a brief annual statement setting out priorities would be meaningless.

I am copying this letter to David Williamson (Cabinet Office).

C. D. POWELL

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

Foreign and Commonwealth Office

London SW1A 2AH

11 January, 1985

Dear Charles,

Decision-Taking in the Community

At the last meeting of the Dooge Committee on 13 December, Mr Rifkind was able to ask, to good effect, a number of questions about the likely attitude of Member Governments to some of the proposals on decision-taking which had been put forward in the Dooge Committee's interim report to the European Council. The Chairman of the Committee, Senator Dooge, himself drew attention to the fact that no Head of Government had been able to accept the Prime Minister's suggestion that they agree to the Committee's recommendation to reduce the number of Commissioners. Mr Rifkind referred to the Prime Minister's proposal that Member States might also agree to consider not insisting on unanimity for the development of EC standards for new products and the high technology sectors.

Following this discussion, Mr Rifkind was invited to put forward a paper setting out our ideas on decision-taking for the next meeting of the Dooge Committeee on 16/17 January. I enclose a copy of the paper which has been discussed interdepartmentally.

The paper reflects the fact that all Members of the Committee, and other Member Governments, wish to see improvements in Community decision-taking and consider this indispensible if a Community of Twelve is to function effectively. Concern at abuse of the unanimity principle has been increased by Papandreou's behaviour over Integrated Mediterranean Programmes and Greek behaviour generally. At the same time, the paper fully safeguards the UK's position in relation to the Luxembourg compromise by insisting that it must be up to an individual Member State to judge where its very important national interests are at stake and that, in those circumstances, discussion must continue until unanimous agreement is reached. The Member State concerned would be required to explain morefully and more formally why it considers very important interests to be at stake.

This formulation on the Luxembourg Compromise has been the subject of prior discussion with the French. They are no less concerned than we are to preserve the unanimity principle whenever very important interests are at stake, but are concerned about decision-making in the enlarged Community. Although the French probably would agree to see

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majority voting extended to some other areas of the Treaties, subject always to maintenance of the Luxembourg Compromise, M. Dumas said in a recent speech in Bonn that it was essential that it remain open to a Member State to be able to invoke a vital national interest provided that the Member State concerned objectively justified so doing in the Council (the relevant extract from his speech is enclosed). The Germans, Italians and Benelux will of course wish to go further on majority voting than we or the French will allow. For this reason, Mr Rifkind has judged it necessary to address in the paper and to answer the arguments others have advanced (paragraph 6 reflects proposals the Belgians have now put forward). As necessary in the discussions we shall of course enquire whether members of the Committee believe that Germany would agree to be voted down on the sugaring of wine, Italy on reform of the olive oil regime, Ireland on milk quota. France and Luxembourg on the seat of the institutions etc.

The paper also covers the role of the European Parliament. The Italian representative on the Committee is to produce a report on the powers of the Parliament. This no doubt will follow much of the thinking behind the Parliament's own draft . We need to set out our views on the powers of the Parliament as a counter-weight to the kind of proposal the Italians will be making. Our paper raises a number of pertinent questions about some of the ideas which are in the Committee's interim report, and which the Committee so far has avoided addressing, eg about the ill-considered suggestion, which we firmly oppose, that the Parliament should be given some powers in relation to revenue.

Our aim is to steer the Committee away from commitments which are unrealistic and unacceptable, by (a) making some positive and practical suggestions of our own; (b) questioning precisely what others have in mind in some of the ideas so far put forward. It is noteworthy, for example, that the German representative so far has gone along with suggestions for development of the ECU which the Bundesbank are likely to find unacceptable. The Prime Minister has endorsed our line on this as set out in the Chancellor's minute of 17 December and the Foreign Secretary's reply of 28 December.

The Foreign Secretary saw and approved a slightly earlier version of this paper. I shall be showing him a copy of the final version with this letter over the weekend. It needs to be circulated by the next meeting of the Committee on 16-17 January.

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I am copying this letter and enclosure to the David Peretz (HM Treasury) and Richard Hatfield (Cabinet Office).

Yours ever,

Peter Ricketts

C D Powell Esq
10 Downing Street

(P F Ricketts)
Private Secretary

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SOSADL

DECISION TAKING IN THE COMMUNITY

1. It is misleading to suggest that Community decision-making is paralysed The past year has been one of considerable achievement in the Community. Following the Stuttgart European Council the Community has shown itself able to take important decisions on difficult issues such as own resources, budgetary imbalances, agricultural expenditure and Lomé. With a view to enlargement and the functioning of a Community of Twelve, however, we need to look for practical ways of improving the Community's decision-taking performance. Our Interim Report has put forward some major recommendations on this.

2. A fundamental problem is that issues of detail are regularly referred for decision at too high a level Issues which should be settled in COREPER are referred to the Council, and the Council in turn refers problems to the European Council. A very important practical improvement we can recommend would be for governments, as a normal rule, to give their representatives in COREPER the discretion necessary to settle there the detailed issues which currently are referred from COREPER to the Council of Ministers. It is no less important that the Council of Ministers should take the decisions which properly lie within its responsibility and that these should not constantly be referred, as too often they are at present, to the European Council.

3. There is a general understanding in the Community that it is not possible and would be fundamentally damaging to Community cohesion to override the very important interests of Member States. But we need to do more to promote early decision-taking and the formulation of satisfactory compromises.

Questions arising from the Committee's Interim Report

4. Section III(a) of our interim report begins with the statement that easier decision making in the Council "means primarily changes in practice and certain adjustments to existing rules".

This is the right approach. The report goes on to make much more far-reaching proposals: the adoption of new general voting principles under which only decisions concerning new areas of action or new accessions would be taken by unanimity Other decisions would be taken by qualified or simple majority.

5 The Committee has not yet discussed the practical implications of these proposals. These include the following:

(a) Although the Treaty provides for majority voting on agriculture would it have been wise to try to settle the difficult negotiations on the wine regime by majority voting? Would it not cause difficulty if majority voting were to be applied to issues such as the seat of the Community institutions, vehicle emissions, imports of Mediterranean products, emission standards for the Rhine or migrant workers? Is it proposed that Member States should be voted down on issues such as these?

(b) What exactly is meant by "new areas of action"?

(c) How would such proposals bear on the question of new own resources?

(d) Is it proposed to aim for generalised treaty amendment requiring the agreement of all Member States and ratification by all national parliaments?

6. Our interim report states that a member state should be able to plead a vital interest provided it could objectively justify it to the Council. The report states that account must also be taken of the interests of the Community as a whole. It is certainly desirable that a Member State should have to explain its invocation of a very important interest as fully and objectively as possible and we need to establish a procedure for this which can also help to reconcile the views of the Member State and that of other members of the Council. Mechanisms have been suggested involving:

a) The Commission. The Commission could not be expected to be the final judge of a country's very important interests. as the author of proposals for legislation, it would naturally be likely to endorse its own proposals. Would the member state directly affected be able to accept the Commissions's judgment as being objective?

b) The European Court. To ask the Court to intervene would be to involve it in issues that are political rather than legal. This would be inappropriate for the Court and prejudicial to its ability to act impartially on the same issue in its judicial capacity.

c) The European Parliament. Given that the European Parliament often takes a differing view of Community interests from the Council would the Council as a whole or any of its members be able to accept the European Parliament's definition of what constituted their vital interests?

d) A majority on the Council. It would not be realistic to expect a Member State which has invoked a very important national interest in opposition to the majority view to accept that the same majority should then decide the objective standard by which its action was to be justified.

7. What is required is not a procedure which entrenches disagreement, but one which creates a framework in which the interests of the member state concerned and that of the remaining members of the Council can be reconciled.

8. Our mandate from heads of government is to seek the widest possible area of agreement. We should concentrate on seeking solutions which are capable of being adopted and which would have positive practical effects.

Better Decision Making

i) Majority Voting

9. Over 40 Treaty provisions call for majority voting. Consensus is a desirable objective, but the search for it on all issues can bring the Council machinery to a halt. In the Community of 12 this problem will become more acute. When very important interests are not at stake, there should be more majority voting in accordance with the existing Treaties. The Presidency of the day will be primarily responsible for deciding when a majority vote is appropriate The search for consensus should not be abandoned. The majority voting procedures should be used in such a way as to build Member States' confidence in the system.

10 We should also try to identify cases where not insisting on the unanimity requirement under the Treaties would be advantageous and acceptable to all Member States The Solemn Declaration on European Union (Section 2.2.2) suggested that in order to facilitate decision making where unanimity is required Member States should make use of the possibility of abstaining. Our report should endorse this general injunction. But we can be more precise. Agreement by all Member States on a self-denying ordinance in some specific areas could improve decision-making without the need for Treaty amendment. We should examine areas where this might be done. At the Dublin European Council, as an amendment to a proposal made by Mr Lubbers, Mrs Thatcher suggested that Member States should consider agreeing that the unanimity rule need not be invoked for the development of Community standards for new products or technologies, ie that there could be a self-denying ordinance in this area. We should endorse this suggestion.

11. In the interests of the cohesion and proper functioning of the Community and the reconciliation of the sometimes conflicting interests of Member States the Community needs to retain the possibility of a Member State explaining that its very important

interests are at stake and that a vote should be postponed. This reflects the important principle that, whatever the voting rules might say, Member States will not ask one of their number to accept what is politically impossible, and will not override an important national interest by outvoting the Member State concerned. Overriding such interests would be more dangerous for the cohesion of the Community than some delay in decision taking.

12. While recognising the need to proceed on this basis when very important interests genuinely are at stake, we should look for ways of preventing abuse. We believe that, if a Member State feels obliged to insist that a vote should be postponed, then the Minister concerned should be required to explain fully and more formally, either in writing to his colleagues or in a special restricted session of the Council, the reasons why his Government considers that a very important national interest is at stake. This would provide an opportunity for the Council, with the help of the Commission, to seek a way of reconciling the interest of the Member State with that of the Community as a whole.

ii) Other improvements

13. Our report suggests that the European Council should play a strategic role and give direction and political impetus to the Community. One way of achieving this would be for the European Council to adopt a brief annual statement setting out the Community's priorities. To help the Community achieve its priority objectives the Commission should weed out annually hopelessly blocked items of legislation. The Commission should also bring to the notice of the Council of Ministers unnecessary cases of obstruction.

14 A note is attached on the role of the Parliament in relation to decision-taking.

ANNEX

Role of the European Parliament

1. Relations between the Council, Commission and European Parliament are not operating satisfactorily in some regards. They need to be re-examined. Joint decision-making has been suggested as a possible improvement. But it is not clear how this would work. The procedure suggested in Article 38 of the Spinelli Draft Treaty would be likely to cause much greater delay in reaching decisions. It could increase rather than diminish conflicts between the institutions. Moreover, as Community law has to coexist in Member States with national law, would it be wise to give the Parliament the last word on legislation? Should this not rest with Member States acting in the Council, who are conscious of the full implications for their national law and of the reactions of their own Parliaments?

2. In particular:

a) the Parliament is already able to participate in fixing the VAT rate through the budgetary procedure (up to the ceiling laid down in the Own Resources Decision). Would the Parliament be able to increase revenue beyond the VAT ceiling, which has Treaty force?

b) would Article 201 governing Own Resources be amended? (This was rejected at Fontainebleau and is unlikely to be acceptable to national Parliaments).

c) what would be the implications for budgetary control? How would any proposal of this kind make the Parliament more responsible in relation to the control of public expenditure?

d) would such powers be compatible with each Member

State's constitutional arrangements? Do any national Parliaments have the power to unilaterally to increase taxes?

3. An immediate issue is whether the Parliament should have the power to alter the Commission's revenue forecasts. The Council itself did this last summer. Would it not be better for the Council and the Parliament to agree not to challenge the Commission's forecast? This would avoid some of the difficulties which the Community has faced this year.

4. The Treaty amendment of 1975 was intended to improve relations between the Parliament and the other institutions. It has not had that effect. The Parliament has adopted a series of budgets which go beyond its constitutional powers. We should not compound these difficulties, but seek alternatives which will genuinely improve relations between the Parliament and the Council.

5. The Parliament considers that it has little or no effective voice in legislation because the Commission proposes and the Council takes an often immutable position before the Parliament's views have made any impact. The right of initiative under the Treaties rests with the Commission. But nothing in them prevents the Parliament from working with the Commission in this field. This could be done by the Parliament holding hearings on draft legislation at an early stage with interested parties. The Parliament's own ideas could then be put forward as an annex to its resolution for consideration by the Council.

6. The introduction of a genuine and effective conciliation procedure would be a major improvement. The revised conciliation procedure - to which 9 Member States could agree at the Foreign Affairs Council in June 1983 - would extend formal conciliation to important acts of general application which do not however have appreciable financial implications.

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MR POWELL

DOOGE COMMITTEE

The Minister of State, Foreign and Commonwealth Office (Mr Rifkind) will be submitting to the Prime Minister very shortly a paper on decision-taking in the Community which he wishes to distribute in the Dooge Committee. Underlying this paper there is a real issue of substance, namely the Luxembourg Compromise. It seems to me that, in order to avoid getting on to a slippery slope, it is important to distinguish between our attitude to majority voting and our attitude to the Luxembourg Compromise. Some flexibility on majority voting could be in the United Kingdom's interest but any change in the Luxembourg Compromise would be politically and economically unacceptable.

2. My reasoning is as follows:-

(i) majority voting is at present used in the Community widely in the budget and agricultural sectors where the United Kingdom has the most to lose. It is either not used or not at present available in other sectors more closely related to the internal market, where other member states (eg Germany on insurance) take full advantage of unanimity requirements or of the hesitancy of Council Chairmen to vote even when a qualified majority is permitted. In the enlarged Community decision-taking will be difficult and the creation of a Mediterranean bloc more likely. It is quite probable that more majority voting on minor subjects, provided that we have the essential trump card of the Luxembourg Compromise, would be to our advantage;

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(ii) on the Luxembourg Compromise we have already indicated that we are against its frivolous use and that any member state invoking it should justify this formally. It is implicit in this position - and of vital importance - that the decision whether to invoke the Compromise rests with a member state itself and not with any other body. This is the critical point on which there should be no equivocation in any of our statements or documents. It is not important whether the justification is described as formal or objective. It is important that the last word on the decision whether to invoke the Luxembourg Comrpomise rests with a member state. I understand that some members of the Dooge Committee are suggesting that it should not be a member state but the European Parliament which decides whether the Luxembourg Compromise could be invoked in a particular case. This seems to me to be bordering on the farcical. It is for this reason that it is important, as proposed in the latest text, that Mr Rifkind's paper (paragraph 6) should demolish arguments for any alternative arbiter of the national interests of a member state.

I am sending a copy to Sir Robert Armstrong.

D F Williamson

D F WILLIAMSON

10 January 1985