Foreign and Commonwealth Office

London SW1A 2AH

15 January 1985

Dear Charles,

Decision-taking in the European Community

Thank you for your letter of 14 January containing the Prime Minister's comments on our paper on decision-taking.

We have changed paragraphs 6(c) and 10 of the paper and the annex on the role of the European Parliament. A copy of the amended paper is enclosed.

On voting practices, we have never had it in mind to go beyond the provisions of the present Treaty. Our aim is to suggest using the provisions of the present Treaty in a way that could further our own interests and at the same time steer other Member Governments away from more radical ideas of Treaty amendment. Most other Member States will be prepared to consider amending some of the unanimity provisions of the Treaty. Even the French are prepared to do so, provided that the ability of a Member State to invoke a very important national interest is maintained. We need a counter-proposal of our own if we are to steer discussion away from Treaty amendment.

Our proposal is firmly rooted in Article 148 of the Treaty of Rome, which provides for abstention on acts which require unanimity but where a Member State does not consider its very important national interests to be at stake. This article, like many other articles of the Treaty, has not been applied very frequently. At Dublin, the Prime Minister identified a specific area where it could be made to work. The Prime Minister suggested that we should volunteer to make every effort to avoid blocking decisions covered by the unanimity provisions in the Treaty in the field of new technologies (eg, standards in information technology, telecommunications and advanced manufacturing techniques where proposals currently under discussion within the Community reflect UK suggestions). Our position would be fully protected because:

a) any agreement to try to avoid blocking proposals in this area would be entirely voluntary. No Treaty amendment would be involved. We could continue to invoke the unanimity rule if we needed to;

/ b) ...

b) any such understanding would in any event be subject to an overall requirement that a Member State must be free to insist on discussion continuing until unanimity is reached when it judges that its very important interests are at stake.

Having used this suggestion to good effect in the European Council, and given that it is subject to these safeguards, Sir Michael Butler thinks, and the Foreign Secretary agrees, that it would be a pity to withdraw it now. Furthermore, the Prime Minister's initiative has already been the subject of favourable discussion in the Dooge Committee and elsewhere.

On the final point raised in your letter, the suggestion in our paper that the European Council should adopt a brief annual statement setting out priorities reflected the proposal which we made in 'Europe - the Future'. We have amended the text of our paper to reflect the text of 'Europe - the Future' more fully and accurately.

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

Yours ever,

Len Appleyard

(L V Appleyard)
Private Secretary

C D Powell Esq
10 Downing Street

10 DOWNING STREET

From the Private Secretary

15 January, 1985

DECISION TAKING IN THE EUROPEAN COMMUNITY

Len Appleyard wrote to me on 15 January enclosing a revised paper on decision taking in the European Community, to take account of the Prime Minister's comments on an earlier version.

The Prime Minister is content for Mr. Rifkind to circulate the new version in the Dooge Committee tomorrow.

I am sending a copy of this letter to David Williamson (Cabinet Office).

(C.D. Powell)

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

CONFIDENTIAL

DECISION-TAKING IN THE COMMUNITY

1. It is misleading to suggest that Community decision-taking 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.

<u>Questions arising from the Committee's Interim Report</u>

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 can 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 Commission 's judgement 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.

[New]

c) The European Parliament. The European Parliament often takes a differing view of Community interests from the Council. Members of the Council are answerable to their national Parliaments and could not 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-Taking

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 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. At the Dublin European Council, as an amendment to a proposal made by Mr Lubbers, Mrs Thatcher suggested that Member States should consider agreeing in certain areas that the unanimity rule need not be invoked for the development of Community standards for new technologies. 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 with specific timings and targets. This would form the basis of the Community's activities for the following 12 months. 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. 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 would increase rather than diminish conflicts between the institutions. The last word on legislation has to rest with Member States acting in the Council, who are conscious of the implications for their national law and of the reactions of their own Parliaments.

2. As regards the suggestion for revenue powers:

a) the Parliament already is able to participate in fixing the VAT rate through the budgetary procedure (up to the ceiling laid down in the Own Resources Decision).

b) the idea of amending Article 201 governing the Own Resources was rejected at Fontainebleau and is unlikely to be acceptable to national Parliaments.

c) there would be serious implications for budgetary control

d) such powers would not seem compatible with some Member State's constitutional arrangements. (Do any national parliaments have the power to decide unilaterally to increase taxes?)

3. An immediate question at issue is whether the Parliament should have the power to alter the Commission's revenue forecasts. The Council itself did this last summer. The

Council and the Parliament should 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 no voice in legislation because the Commission proposes and the Council takes a 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, eg by holding hearings with interested parties. The Parliament's views could then be expressed to the Council.

6. The introduction of a genuine and effective conciliation procedure would be a major improvement. The revised conciliation procedure - to which nine 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. We should endorse this proposal. But we should also consider recommending a complementary procedure under which, after each institution has made a preliminary study of Commission proposals, members of the European Parliament and Ministers (or on occasion their representatives) could meet. This would enable the Council to take account of the views expressed before reaching a formal common position.

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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

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

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16 January 1985

P F Ricketts Esq
Private Secretary to the
Secretary of State for Foreign and Commonwealth Affairs

Dear Peter,

DECISION-TAKING IN THE COMMUNITY

Thank you for copying to me your letter of 11 January to Charles Powell covering a draft paper on this subject.

The Chancellor is broadly content with the draft paper, but there are two points he would like to make:

(i) the paper adopts an interrogative line on a number of proposals raised in the Dooge Report - such as increasing the powers of the European Parliament (eg. over revenue) and extending considerably the use of majority voting. We understand and accept the tactical reasons for this approach. However, if this fails to convince the majority on the Dooge Committee to take a more realistic line, we will need to say rather more bluntly that much of what they propose is unacceptable to us;

(ii) paragraph 10 of the paper argues that we should try to identify areas where not insisting on the unanimity requirement would be advantageous and acceptable to all member states. A case-by-case study is advocated. The Chancellor endorses this, subject to two points.

First, we need to be clear that what is being proposed involves, effectively, a self-denying ordinance rather than Treaty amendment.

Second, we need to identify accurately those areas where concessions might be possible. One difficulty concerns Article 100 directives. The Prime Minister has proposed that member states should agree to not insisting on unanimity for Article 100 directives relating to the development of EC standards for new products and the high technology sector. The Chancellor supports this. However, we would not want to give up the unanimity rule in relation to proposals to harmonise direct taxes. These too are introduced under Article 100. Thus the use of majority voting on all Article 100 directives would not be acceptable to us.

Copies of this letter go to Charles Powell (FCO) and Richard Hatfield (Cabinet Office).

Yours
Rachael

MRS R LOMAX
Principal Private Secretary

Euro PST: Budget Pt 28.