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SECRETARY OF STATE FOR EMPLOYMENT

European Social Fund: Part-Time Work Subsidies

1. Thank you for your letter of 18 March.
2. I had understood that, while the Attorney General was satisfied that there was a good case for bringing the action, he wished you to be satisfied that the consequences of a successful Article 173 challenge would, in fact, be the payment of the monies in question to the United Kingdom.
3. If, on the advice you have received, you are satisfied, not only that we have a good chance of winning the case, but that the result of that is likely to be that the Commission is obliged to pay us our £13 million (which will be subject to the Fontainebleau mechanism as it will come under allocated expenditure) then I agree that we should take the issue to the European Court. While it is relatively rare for Member States to take the Commission to the Court, when such actions have been successfully prosecuted, the effect on the Commission has been salutary. I agree that legal action would not adversely affect our relations with the Commission or our broader Community interests and could contribute to the Social Fund being administered more strictly in accordance with its rules.
4. If we do take the matter to the Court I think we should bear in mind the possibility, once our case has been deposited with the European Court, of taking the case up once again

.../with

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with Commissioner Sutherland, with a view to resolving it satisfactorily without having to go through the whole legal procedure.

5. I am copying this minute to the Prime Minister, members of OD(E) and to Sir Robert Armstrong.

A handwritten signature in black ink, appearing to be 'G. Howe', written in a cursive style.

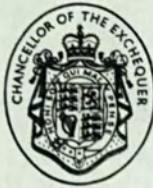
GEOFFREY HOWE

Foreign and Commonwealth Office
22 March 1985

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Budget : FURCO POL. 1+29.





cc Mr Burgner
Mr Mortimer
Mr Hopkinson
Mr MacAuslan
Mr Fitchew
Mr Shaw

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

The Rt Hon Tom King MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1H 9NA

9 April 1985

A handwritten signature in cursive, appearing to read 'Tom King'.

EUROPEAN SOCIAL FUND: PART-TIME WORK SUBSIDIES

Thank you for your letter of 18 March. I agree with your recommendation that this issue should be taken up with the European Court. But I also agree with Geoffrey Howe's suggestion, in his minute of 22 March, that once our case has been deposited with the European Court, we should bear in mind the possibility of taking it up again with Commissioner Sutherland, with a view to resolving it satisfactorily without having to go through the whole legal procedure.

I am copying this letter to the Prime Minister, the other members of OD(E) and Sir Robert Armstrong.

NIGEL LAWSON

A handwritten signature in cursive, appearing to read 'Nigel Lawson'.

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01-405 7641 Extn

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

NOAM

CDP 25/3

Secretary of State for Employment,
Department of Employment,
Caxton House,
Tothill Street,
LONDON, SW1H 9NF.

22 March 1985

Dear Tom.

EUROPEAN SOCIAL FUND - PART-TIME WORK SUBSIDIES

Thank you for the copy of your letter of 18th March 1985 to the Secretary of State for Foreign and Commonwealth Affairs.

As you say, I have been consulted about proceedings being brought under Article 173 EEC. The Lord Advocate was also consulted and our view was that, in principle, there was no objection to proceedings being commenced. We also considered that the United Kingdom had strong arguments in support of its application to have the provisions relating to part-time work declared void but we requested that the question of whether this would result in repayment to the United Kingdom of the monies concerned be looked at by Counsel. This has now been done and I understand that in his view there is a reasonable prospect of success in establishing an entitlement to the money withheld. Thus whilst I agree that our case does have good prospects of success, it cannot be assumed that the repayment of the monies will follow automatically. Clearly, Counsel will seek to put the case in such a way that repayment will automatically follow from a successful judgment but that outcome depends upon the judgment eventually given by the European Court and the way in which the Commission interpret it.

In short, I am satisfied that it is quite proper to bring proceedings in this case but I cannot guarantee the repayment of the monies even if the United Kingdom is successful.

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Copies of this letter go to the Prime Minister, to members of OD(E), to the Lord Advocate and to Sir Robert Armstrong.

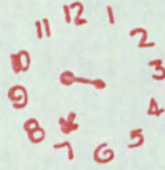
Yours v.s.,
Michael

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ENRO . Ad: Budget

Pr 29

25 MAR 1985



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Caxton House Tothill Street London SW1H 9NF
 Telephone Direct Line 01-213 6400
 Switchboard 01-213 3000

Rt Hon Sir Geoffrey Howe, QC, MP
 Secretary of State for Foreign and
 Commonwealth affairs
 Downing St
 London SW1A 2AL

18th March 1985

Dear Geoffrey,

EUROPEAN SOCIAL FUND - PART TIME WORK SUBSIDIES

Last year, the European Commission decided to reduce the amounts allocated by the European Social Fund to job creation schemes where part-time work is involved. Previously the Fund had matched the contribution of public authorities in Member States within an overall ceiling, expressed as an amount per person per week. Last year, the Commission decided that the ceiling should depend on the number of hours worked by people on the schemes concerned. This decision was taken late in the Fund's annual cycle, just before the Commission's decisions on 1984 applications were due to be announced, and without consultation.

We believe that the decision was unlawful and leaves the Commission open to challenge in the European Court. However, despite the efforts of officials and myself, the Commission confirmed its attitude just before Christmas when it made its final Decision on all 1984 applications for Social Fund assistance. The Attorney General and Counsel have been consulted, and their view is that a case would have good prospects of success, and that a successful case would lead to our getting our money back.

The amount at stake is about £13 million, all but £50,000 of which represents a direct loss to the Exchequer as it was money which would have been allocated to the Manpower Services Commission's Community Programme. The £50,000 is money which has been docked from the support given to three small employment schemes run by local authorities.

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If the budgetary mechanism agreed at Fontainebleau were to operate, the net benefit to the UK of a successful action in the European Court would be about £3-4½ million; if not it would be between £9 million and £13 million.

Although the amount at stake is relatively small compared to the UK's total allocation from the Fund of £353 million last year, I am firmly of the view that we should take action against the Commission in the European Court, both in order to recover the money and to demonstrate to the Commission that they cannot get away with administering the Social Fund unlawfully.

The decision to make reductions for part-time work was imposed on the Social Fund Directorate in DGV by DGXX (financial control). A decision by the UK to take legal action will not come as a shock to the Commission, and I do not believe that taking legal action will adversely affect our normally good relationships with DGV. Taking action would also be consistent with the firm line I take with the Commission on social affairs issues. I do not consider that a decision to take legal action against the Commission would affect our broader Community interests, as I find it hard to imagine that President Delors and his colleagues would see the issue as being of great political significance. As the Commission has few inhibitions about taking legal action against Member States, we should not be too reluctant to reverse the process. I mentioned the matter to Commissioner Sutherland last week, and he expressed some sympathy for our position, making the point that he himself wants to see the Fund managed more effectively.

Other Member States, which with one or two exceptions are jealous of the UK's large share of the Fund in recent years, cannot be expected to give us open support. However, all Member States are concerned about the way in which the Commission administers the Fund and would be likely to be pleased to see the Commission lose a case in the European Court.

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Under Article 173 of the Treaty, the proceedings need to be instituted by the end of the month. Counsel must prepare our case before then, so I would be grateful for a very early reply.

I am copying this letter to the Prime Minister, to members of OD(E) and to Sir Robert Armstrong.

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[Signature]
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