

FCS/85/129LORD PRIVY SEALNBPT  
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9/5

Parliamentary Handling of the Own Resources Decision and the  
Inter-Governmental Agreement

1. I have seen a copy of the Economic Secretary's letter to you of 30 April, and the Prime Minister's comments set out in Charles Powell's letter of 7 May.

2. I agree that:

- (a) in view of the advice of the Law Officers, we should not use the Section 1(3) procedure for the Own Resources Decision but should introduce a Bill instead;
- (b) there are strong arguments in favour of dealing with the inter-governmental agreement in the same Bill.

3. We need to decide, however, on the timing of the legislation and of the Supplementary Estimate. We have succeeded in putting in place a mechanism which should enable us to receive our 1000 mecu abatement in 1985, as agreed at Fontainebleau. For this to happen, the Own Resources Decision needs to be ratified by all Member States by the end of the year. We could not risk delaying receipt of our abatement by having failed to complete our own Parliamentary procedures in time. Nor, however, will we introduce the Bill until we know what position the European Parliament has taken on the 1985 budget incorporating our 1000 mecu correction on the revenue side. Second reading of the budget will be in the week beginning 10 June. Thereafter, and on the assumption that our abatement goes through as part of the budget,



I believe we should try to complete the Commons stages of the Bill before the Summer recess. If we delay introduction of the Bill until the new session this would put at risk our ability to complete all the procedures in time to secure our abatement this year.

4. I note the problems about presentation of a Summer Supplementary estimate before the Bill itself is approved. To wait, however, for the Winter Supplementary Estimates could mean that we could not make our contribution to the inter-governmental agreement until mid-December or later. This could lead other member states to delay ratification of the Own Resources Decision until the end of the year, while the Commission would cease to make any effort to enable us to receive our 1000 mecu before 31 December. Given the attitude of the German Finance Ministry, there is some risk in any event that we might not receive the 1000 mecu until the first few days of January. It would be very inadvisable, however, ourselves so to proceed as to render it virtually impossible for us to receive our abatement when it should be due, ie by the end of December.

5. The timing of the Bill and the supplementary estimate (and the alternative of designating the IGA as a Community treaty in the Bill) need to be decided in the light of these considerations. I propose we should have a discussion in OD(E) on 14 May. The Cabinet Office are making the necessary arrangements.



6. I am copying this minute to the Prime Minister, the Lord President of the Council, the Minister of Agriculture, the Attorney-General, the Solicitor-General, the Chancellor of the Duchy of Lancaster, the Chief Whip, the Lord Advocate, the Economic Secretary, Lord Denham, Sir George Engle and Sir Robert Armstrong.

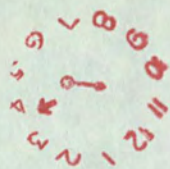
A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

9 May, 1985

ENR for Budget  
Pr 29



59 MAY 1985



10 DOWNING STREET

*From the Private Secretary*

7 May 1985

*Dear Adrian,*

The Prime Minister has seen a copy of the Financial Secretary's letter of 30 April to the Lord Privy Seal about the action necessary to obtain Parliament's agreement to ratification of the Own Resources Decision and to the implementation of our payments under the second Inter-Governmental Agreement.

Subject to the views of colleagues, the Prime Minister thinks that if the legislation is very controversial it would be better for it to be introduced nearer the beginning of July so that it would be possible to complete the second reading and Committee stage before Parliament rises for the summer recess.

I am copying this letter to the Private Secretaries to the Lord President, the Foreign and Commonwealth Secretary, the Minister of Agriculture, Fisheries and Food, the Chancellor of the Duchy of Lancaster, the Chief Whip, the Attorney General, the Solicitor General, the Lord Advocate, Captain of the Gentlemen at Arms, First Parliamentary Counsel and Sir Robert Armstrong.

*Yours sincerely,*

(CHARLES POWELL)

Adrian Ellis, Esq.  
HM Treasury.

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WBPM  
CDP  
P/S

Ian Stewart Esq. MP.  
Economic Secretary  
HM Treasury  
Treasury Chambers  
Parliament Street  
London SW1

8 May 1985

*Dear Ian,*

IMPLEMENTATION OF THE OWN RESOURCES DECISION (ORD)  
AND INTERGOVERNMENTAL AGREEMENT (IGA)

I have seen a copy of your letter of ~~30~~ April to John Biffen. The choice between the various options set out in your letter for implementing the IGA depends far more on political and Parliamentary considerations than legal factors. It may, however, be useful if I comment on the legal issues which you raise in your letter.

You rule out option (a) (an Order under Section 1(3) of the 1972 Act) in view of the degree of controversy it provoked last year and the risk of a further Court case. Although it is quite possible that Mr Smedley or one of his supporters might try again to challenge the vires of such an Order, we have very strong Judgments from the High Court and the Court of Appeal in our favour. I would not expect any Court to entertain such an action sympathetically, except in the unlikely event that the plaintiff could establish that the 1985 IGA was in law fundamentally different from the 1984 IGA and that the earlier Judgments were not valid precedents for the circumstances of the 1985 IGA.

You also mention that proceeding by way of a Bill (rather than Section 1(3) Order) would avoid the need to take up extra Parliamentary time with a Special Supplementary Estimate and Consolidated Fund Bill as we eventually did last time. You will recall that we resorted to that procedure last time due to the rather

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special end-of-year problems which arose on the 1984 IGA. I would hope that if we decided to follow the Section 1(3) route - and I can well understand the Parliamentary reasons for not doing so - these problems which occurred on the 1984 IGA could be avoided for 1985 by laying the Order well before the end of the year.

As for the choice between the Section 1(2) method and the Supplementary Estimate, I believe that the former would be far more consistent with the course of action we took last year and defended in the Smedley litigation. If we decided to proceed by way of Supplementary Estimate, I can well see Mr Smedley proclaiming that the Government's action vindicated his assertion that the IGA could not be a "Community Treaty" and maintaining yet again that he should be entitled to his costs. Moreover, I think it would be extremely difficult ever again to use Section 1(3) for an IGA or indeed for any other ancillary Treaty (other than one dealing with the Communities Own Resources) where the principal obligation was financial, if we were in the Bill to stand back from adding the 1985 IGA to the list of Community Treaties, whilst at the same time adding the ORD to that list.

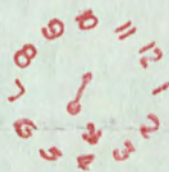
I am sending copies of this letter to the Prime Minister, Willie Whitelaw, Geoffrey Howe, John Biffen, Michael Jopling, Grey Gowrie, John Wakeham, Kenneth Cameron, Bertie Denham, Sir George Engle and Sir Robert Armstrong.

Yours as.

Michael.

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EMMO for Budget  
Pt 29



-9 MAY 1985