



CGR

3 PPs

FCS/85/243

CDD 16/9.

SECRETARY OF STATE FOR THE HOME DEPARTMENTEuropean Community Migration Policy

1. Thank you for your letter of 13 September^{12?} proposing that we should challenge the Commission Decision on migration policy before the European Court, provided that at least one other member state does so.
2. I agree with the views set out in your minute and that, subject to the opinion of the Law Officers, we should take the Commission to the Court. The Commission is at present attempting to put together some form of compromise statement which would restrict the effective application of the Decision. This, however, would not alter the fact that, if the Decision is not successfully challenged before the Court, it will stand as a legally binding instrument which could have adverse implications for our own immigration policy and set a very unwelcome precedent for the Community in other fields.
3. It looks as if Denmark, Germany and the Netherlands will be taking the Commission to court. If so, we should cooperate with them so that we act in parallel.
3. I understand that Commissioner Sutherland has issued an

/invitation

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invitation to a ministerial meeting to consider action under the new Directive. In view of our position and the prospective Court action, I think we should decline the invitation. We understand other member states who share our view will also decline.

4. I am copying this minute to the Prime Minister, members of OD(E) and H 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

16 September 1985

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cc Sir P. C



QUEEN ANNE'S GATE LONDON SW1H 9AT

12th September 1985

Dear Geoffrey,

Await reaction
of colleagues.
cm.

EUROPEAN COMMUNITY MIGRATION POLICY

As you will know, on 8 July the European Commission adopted a Decision setting up a mandatory prior communication and consultation procedure on migration policies in relation to non-Member countries. The Decision would require Member States to give prior notification to the Commission and to other Member States of draft measures concerning third country workers and their families in the immigration field. Issues such as integration and voluntary repatriation would also be covered. On notification it would be open to the Commission to institute a consultative process among Member States, and other Member States could themselves seek such a process.

The Decision has serious implications for the formulation and implementation of immigration policy, which would become subject to prior Community scrutiny. The recent changes in the marriage rules and the earlier change imposing a visa requirement on Sri Lankan citizens would have been subject to this procedure. Even where the Commission did not seek to express views on the substance of changes in our immigration policy, compliance with the procedure would considerably limit our freedom of action as regards timing and presentation. The scope of the Decision is not entirely clear, but it could cover some measures in the employment, education and social security fields as well as immigration policy.

The basis of the Commission's Decision in community law is, I understand, very doubtful. It refers to Article 118 of the Treaty of Rome, but, while that Article gives the Commission the task of promoting close co-operation between Member States in the social field, by means of among other things consultations, it

does not provide any power to make a binding decision. Accordingly, it appears that the Decision is ultra vires. Quite apart from the subject matter of the Decision, it could set a very unwelcome precedent for Commission activity in other fields, if it goes unchallenged.

I believe that it would be right to challenge the Decision in the European Court and I invite colleagues' agreement to this course of action, subject to the views of the Law Officers who, because time is so short, we are consulting separately.

I understand that most other Member States take a similar view of the Decision. It has been proposed that the Council itself should contest it by seeking an opinion from the European Court. An approach to the Court by the Council would be the best way of challenging the Decision, but as a few Member States are opposed to this procedure and as only a few days remain for the Council to prepare and agree a case, it seems unlikely that it will be possible to proceed in this way. Any challenge is likely to have to come from individual Member States. The Germans, the Dutch and the Danes seem prepared to put a case to the Court and I propose that, if at least one other Member State is prepared to do so, we should act in parallel. If other countries dropped out, we would need to consider whether we wish to go to the Court on our own and I would consult colleagues again about this.

I should be grateful for colleagues' views as soon as possible. If we are to challenge the Decision, we need to consult the Council, prepare the case and deposit by the end of next week. In the absence of comments by close of play on Monday, 16 September, I shall assume that, subject to the views of the Law Officers, colleagues are content with the course proposed.

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

Yours,
Douglas



bc PC

10 DOWNING STREET

From the Private Secretary

MR WILLIAMSON
Cabinet Office

EUROPEAN COMMUNITY MIGRATION POLICY

Thank you for your minute of 13 September.
I am sure that the Prime Minister would agree
with the intention to challenge the Commission's
decision in the European Court.

CHARLES POWELL

13 September 1985

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cell
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Mr Powell (10 Downing Street)

EUROPEAN COMMUNITY MIGRATION POLICY

The Prime Minister has had a copy of a letter of 12 September from the Home Secretary to the Foreign and Commonwealth Secretary asking for colleagues' views.

We believe that the Commission's Decision is ultra vires, would be a significant extension of Community competence and should be challenged by the United Kingdom in the European Court. It is very probable that the Federal Republic of Germany, the Netherlands and Denmark will also do so.

The challenge will certainly make the Commission think twice in similar cases in the future and has a good chance of success.

I am sending a copy to Sir Robert Armstrong.

D F Williamson

D F WILLIAMSON

13 September 1985

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Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

The Rt Hon Douglas Hurd MP
Secretary of State for the Home Department
Queen Anne's Gate
LONDON SW1

17 September 1985

Dear Douglas,

*NBPM
abuse*

EUROPEAN COMMUNITY MIGRATION POLICY

Thank you for copying David Young your letter of 12 September to Geoffrey Howe.

As you know, we have an EC interest ~~in~~ in social affairs matters and a domestic interest in the work permit system. We therefore share your concern about the Commission Decision and support your intention of challenging it.

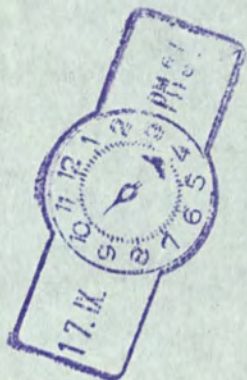
I am copying this letter to recipients of yours.

J. ew,
L.

KENNETH CLARKE

END PA PT30

Budget





HOUSE OF LORDS,
SW1A 0PW

13 September 1985

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My dear Geoffrey:

European Community Migration Policy

I have seen your letter of 12 September 1985 to the Home Secretary, and I agree that, subject to the views of the Law Officers, the United Kingdom should challenge the decision of the European Commission by bringing proceedings under Article 173 EEC Treaty. It seems to me that we have nothing to lose, and perhaps much to gain, by bringing such proceedings.

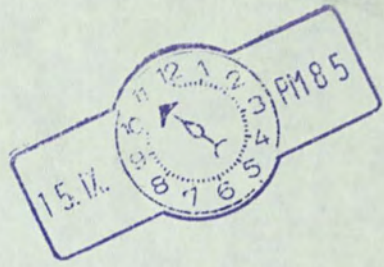
I am copying this letter to the Prime Minister, members of OD(E) and H, and to Sir Robert Armstrong.

yrs:

The Right Honourable
Sir Geoffrey Howe QC MP
Secretary of State
for Foreign & Commonwealth Affairs
Foreign & Commonwealth Office
London SW1

Euro Pd Pt 30

BUDGET





Chancellor of the Duchy of Lancaster

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Tel No: 233 3299
7471

13 September 1985

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23/9

The Rt Hon Douglas Hurd MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
London
SW1H 9AT

D Douglas.

EUROPEAN COMMUNITY MIGRATION POLICY

Thank you for copying to me your letter of 12 September to Geoffrey Howe.

I agree with your view that, subject to the views of the Law Officers,
the European Commission's Decision should be challenged in the European Court.
I also agree that we should seek to act in parallel with other member states.

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

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