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Prime Minister  
All a bit complicated,  
and I am pretty sure  
the Germans will join in

cc [unclear] 1

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

shooting down the  
Commission proposal.

Agree Chancellor should  
take to live in para-13 and  
14?

Yes not CDP  
15/11

PRIME MINISTER

ANGLO-FRENCH SUMMIT: INTER-GOVERNMENTAL CONFERENCE (IGC):  
AMENDMENT TO ARTICLE 107 (EXCHANGE RATE PROVISIONS)  
OF THE TREATY

I thought it would be useful to let you know the latest developments on Delors' proposed amendment to the monetary provisions of the Treaty, on which briefing for Parliamentary Questions by Treasury officials was sent to you on 29 October. The subject is on the agenda of next Monday's ECOFIN, which I will be attending; and Gerhard Stoltenberg, the German Finance Minister, is coming here privately tomorrow, at his request, to discuss it with me. I set out below the line I propose to take in these discussions. I also suggest at the end of this minute what reply you might make if President Mitterrand raises the topic with you under the IGC heading at the Anglo-French Summit on the same day; (the present version of the brief on the IGC - JMV(85)3a - omits this topic).

2. The Delors' amendment to Article 107 (copy at Annex A below) is an extensive one. This was discussed last weekend in the Monetary Committee. There was a good deal of criticism of the Delors text from the German and Dutch representatives as well as ourselves, on the grounds that it would bring both the operations of the EMS and exchange rate policy more generally firmly within the ambit of the Treaty (and thus of Community legislation under Article 235); and would extend the competence of the Commission. They also opposed the proposal - which our representatives made clear was unacceptable - that in future only members of the Exchange Rate Mechanism would have votes in the management of the European Monetary Co-operation Fund.



3. The text was, however, supported by France, Italy, Belgium, Luxembourg and Greece. In the latter stages of the discussion there were signs that the Germans and Dutch might be preparing to accommodate the French and their supporters by accepting a less extensive amendment of Article 107. It is quite likely therefore that compromise proposals will begin to emerge at Monday's ECOFIN. And it is possible that President Mitterrand may also refer to the idea in general terms at the Summit. The reports we have from Paris confirm that he regards a monetary element, in particular a reference to EMS, as a politically essential component of the IGC package.

4. Two possible forms of compromise were mentioned in the Monetary Committee:-

- a reference in the Treaty to Economic and Monetary Union (EMU) as an objective. This was particularly favoured by Belgium and Luxembourg. The Germans were ready to consider this on the conditions that any moves towards EMU would require new Treaty changes or unanimous approval by national Parliaments and that the Treaty reference must involve no juridical change in present Community practice or in the independence of Central Banks;
- a reference in Article 107 to the EMS as the framework or context within which Member States co-operate on exchange rates. This is particularly favoured by the French. The Dutch would want a balancing amendment to make it clear that Member States' exchange rate policies were independent.



Legal Consequences

(a) A Reference to EMU

5. My officials have had the advice of the Treasury Solicitor's Department and FCO Legal Advisers on the juridical consequences of these two compromise proposals.

6. As regards a possible reference to EMU, their advice is that it should be possible to devise a Treaty amendment which would meet the German conditions. The amendment would be on the following lines:-

- Member States will work towards the ultimate objective of EMU;
- any legislative proposals towards this end put forward by the Commission could only be adopted with the unanimous agreement of the Council and after adoption by all 12 national Parliaments in accordance with their respective constitutional requirements (ie the Article 201 "own resources" formula).

7. Notwithstanding these safeguards, the inclusion of EMU as a Treaty objective would be a political commitment going well beyond previous references to EMU, which have been in non-binding European Council resolutions or solemn declarations. It would be perceived in political terms as a major change.

(b) A Reference to the EMS

8. The legal advice is, unsurprisingly, that any Treaty reference to the EMS must formally have some juridical consequences. Specifically, once there is a reference in the Treaty either to



the EMS or to the objective of "a zone of monetary stability", there can then be no doubt that the Commission will be entitled to propose legislation under Article 235. It would appear, for example, that they would be able to do so for the purpose of setting up the definitive European Monetary Fund and for giving the ecu the status of a reserve asset in accordance with the terms of the 1978 European Council Resolution on the second stage of the EMS. Such a reference would also strengthen the Commission's claim to competence on exchange rate matters both within the Community and outside.

9. The practical consequence of a reference to the EMS is conjectural. Any proposal to amend the EMS under Article 235 would still require unanimous Council agreement. It is arguable that, given their knowledge of the German position, the Commission are unlikely in practice to try anything going beyond what they have done so far. That said, in the last resort it would be for the European Court to determine what the texts permitted. It cannot be excluded that the Commission would at some point press their claims, for example to at least shared competence in external relations on currency questions. And the amendments would undoubtedly represent a step-change in the legal status of the EMS.

#### Comment

10. Our objective in my view should be to avoid any amendments to Article 107. None of them are necessary or desirable. The real financial priority in the Community is the removal of exchange controls, particularly by France and Italy. The Delors proposal is clearly unacceptable both politically and in substance. So also is any reference to EMU. It will be incomprehensible to our supporters - not to mention the wider public - and objectionable to many of them. I do not believe they would regard the Article 201 formula set out in paragraph 6 above as an adequate safeguard,



since it would highlight the fact that the Government might be able to enter into EMU simply by the legislative designation of a Community Treaty.

11. A reference to the EMS is the least objectionable of the three formulae. But it would need to be very carefully drafted, in particular to ensure that there was no legal obligation on us to join the ERM, to emphasise the independence of Member States' exchange rate policy and to minimise any extension of Community competence.

12. Geoffrey Howe and yourself will want to consider the tactics of all this in relation to the December European Council. There is undoubtedly a risk that if we oppose all amendments to Article 107, we will be isolated in Brussels and the French would exploit this in the run up to 2 December. I know that Geoffrey Howe has been concerned that we should avoid coming to any breaking point with the French and Germans before the European Council.

13. I would accordingly propose to argue as follows at ECOFIN and in bilateral contacts with the French and Germans:-

- amendment of the monetary provisions of the Treaty (in Article 107 or elsewhere) is neither necessary nor desirable. The immediate priorities are for the French to remove exchange controls and for the Germans to recognise the ECU;
- the Delors amendment is politically unacceptable;
- so is any reference to EMU;
- (with a view to getting support from Stoltenberg) any reference to the EMS, however minimal, would have formal legal consequences. It would enable EMS to be amended



solely by Community legislation under Article 235; and could open up the questions of Community competence and central banks' independence.

14. In the last resort, however, if isolated, I would not rule out further consideration of a minimal reference to the EMS, subject to the following conditions:-

- the Delors text would be withdrawn and not presented to the European Council;
- there would need to be a strengthened commitment (preferably in the Treaty) to remove the exchange controls currently in operation under Articles 108 and 109;
- any reference to the EMS must be balanced by a reference to the independent responsibility of national authorities;
- no text would imply any obligation to join the ERM.

15. I suggest that in talking to President Mitterrand you should follow broadly the line in paragraph 13 above, but, subject to any further advice I may be able to let you have following my talks with Stoltenberg tomorrow, you should as a fall-back be ready to say that in the last resort you were prepared to consider a minimal reference to the EMS.

16. A copy of this minute goes to Geoffrey Howe and Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'N.L.' with a flourish.

N.L.

14 November 1985

### MONETARY PROVISION

Article 107 is completed as follows :

1. Member State shall treat its policy with regard to rates of exchange as a matter of common concern and shall cooperate in the framework of the EMS.

The EMS aims to contribute to a better stability within and outside of the Community.

The EMS includes a mechanism of exchange rates and interventions for Community currencies in which participate those Member States which be able to assume the obligations flowing therefrom. The European currency unit (ECU) is the foundation of the system: it is used in particular for the settlements between the monetary authorities of the Member States.

2. If a Member State makes an alteration in its rate of exchange which is inconsistent with the objectives set out in Article 104 and which seriously distorts conditions of competition, the Commission may, after consulting the Monetary Committee, authorise other Member States to take for a strictly limited period the necessary measures, the conditions and details of which it shall determine, in order to counter the consequences of such alteration.
3. The European Fund for Monetary Cooperation enjoys the autonomy necessary for the performance of its tasks. Its board of directors is composed of the Members of the Committee of Governors of Central Banks of the Member States and of a representative of the Commission. Decisions are taken unanimously by the representatives of Member States participating in the mechanism of exchange rates and interventions of the EMS.
4. The European Fund for Monetary Cooperation will be replaced, at the appropriate moment, by a European Monetary Fund which will enjoy institutional autonomy.

To this end, on a proposal from the Commission and after consulting the European Parliament, the Council may, acting unanimously, lay down the appropriate provisions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

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etc

10 DOWNING STREET

*From the Private Secretary*

17 November 1985

**ANGLO-FRENCH SUMMIT: INTER-GOVERNMENTAL  
CONFERENCE: AMENDMENT TO ARTICLE 107**

The Prime Minister has considered the Chancellor's minute of 14 November, about the latest developments on Delors' proposed amendments to monetary provisions of the Treaty.

She would be content for the Chancellor to take the line proposed in paragraphs 13-14 of his minute at ECOFIN and in bilateral contacts with the French and Germans.

I am copying this letter to Colin Budd (FCO) and Michael Stark (Cabinet Office).

(Charles Powell)

Mrs. Rachel Lomax,  
HM Treasury.

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Me

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cc PC

10 DOWNING STREET

From the Private Secretary

17 November 1985

Dear Rachel,

**ANGLO-FRENCH SUMMIT: INTERGOVERNMENTAL CONFERENCE  
AMENDMENT TO ARTICLE 107**

I wrote to you earlier today to say that the Prime Minister had approved the line in paragraphs 13 and 14 of the Chancellor's minute about the latest developments on Delors' proposed amendments to monetary provisions of the Treaty.

The Chancellor subsequently saw the Prime Minister this evening and said that he wished to change his advice following a conversation with Stoltenberg. It was clear to him that the Germans had now decided against any amendment of the monetary provisions of the Treaty. He therefore advised that the Prime Minister should make clear to President Mitterrand that we were firmly opposed to any amendment.

I am copying this letter to Colin Budd (Foreign and Commonwealth Office) and Michael Stark (Cabinet Office).

Yours sincerely,

(Charles Powell)

Mrs. Rachel Lomax,  
H.M. Treasury.

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