

PO-CH/NL/0281

Part A

Part A

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Begins: 9/1/89.
Ends: 2/7/89.


PO -CH /NL/0281

PART A

Chancellor's (Lawson) Papers:

EUROPEAN COMMUNITY
PROPOSALS ON PUBLIC
PROCUREMENT: THE
UPSTREAM OIL AND GAS
SECTOR

Disposal Directions: 25 Years

[Handwritten Signature]

PA.
18/10/95.

PO -CH /NL/0281
PART A

JAN 1989 4

DEPARTMENT OF ENERGY
THAMES HOUSE SOUTH
MILLBANK
LONDON, SW1P 4QJ

Direct Line 01-211
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THE MINISTER OF STATE

The Rt Hon Lord Young of Graffham
Secretary of State
Department of Trade & Industry
1 Victoria Street
LONDON
SW1H 0ET

PAYMASTER GENERAL	
REC.	12 JAN 1989
ACTION	Mr F K Jones
	PPS, PS/CS
	PS/ST
	Sir P Middleton
	Mr Anson

9 January 1989

Mr Lancaster
Mr Phillips
Mr Willacy
Mr RIA Allen
Mr Beast

See below

I was very grateful to you for phoning me back to discuss the Commission's proposals on public purchasing. You listened very patiently to my views on this issue which is one to which, as you know, I attach a great deal of importance and, following Neil Thornton's letter to Steve Whiting, I thought that it might help if I just set out for the record the present position as I see it.

The remit from OD(E) was for the UK to welcome the Directive on Procurement in the excluded sectors but to resist its application to the private sector where competition was already seen to exist and specifically to seek exclusion of upstream oil and gas.

At the first meeting in Brussels on 5/6 December to discuss the draft Directive, Belgium, Germany, the Netherlands and Spain all commented on the difficulties of covering private firms. That seems to me to represent a very useful beginning and I believe that we should not neglect this element in the bilaterals which are already taking place with these and other countries. If a blocking minority to the inclusion of the private sector where competition could be shown to exist could emerge we would be well on the way to achieving OD(E)'s remit.

Turning to the oil and gas sector, I entirely agree that we face substantial difficulties in attempting to get this sector excluded. But I feel that we still have a measurable chance of achieving a blocking minority in respect of the upstream oil and gas sector alone. The Netherlands have already voiced their opposition in Brussels and we, and the Treasury negotiating team, will be having discussions with other Member States. In the meantime, UKOOA is active, with their counterparts in Europe, pressing them to lobby their Governments for the exclusion of the oil and gas sector. We should not neglect the importance of this factor.

As I say, I do not underestimate the difficulty, but given the substantial contribution which the gross capital investment in exploration and production makes to the total UK industrial investment and the very substantial effect (perhaps as much as 1% in a full year) that a significant drop in our share of the UKCS mark would have on the balance of payments, we are all agreed that we must make every effort to achieve the exclusion of this important sector



In the meantime, we are of course, together with the industry, amassing information to support our case. But if our negotiating team fail to achieve OD(E)'s remit, I believe that we shall have to look for fundamental changes in the Directive because we are not at all convinced that, in its present form, it will ensure fair competition in the oil and gas sector. For instance, the Directive imposes bureaucratic procedures on an oil industry which already utilises extensive tendering procedures to ensure value for money but it does not address at all the question of fair competition. Supplier companies in the UK are all privately owned and the Directive would not ensure fair competition with publicly owned, vertically integrated foreign entities - notably from Italy where ENI embraces suppliers and customers alike in a comprehensive (and highly competent) industrial conglomerate.

OSO's role is to ensure full and fair opportunity for UK suppliers on the UKCS and, given the substantial benefits which oil and gas exploration brings to the economy it is essential that this role continue. Moreover the UK offshore supplies industry together with OSO and DTI are beginning to chalk up signal export successes. This too makes a contribution to the balance of payments and its continuation is crucially dependent on our industry retaining a major share of the UKCS market. Some fine tuning may ultimately have to be made to OSO's modus operandi but this is a long way off and will depend on how successful we are in achieving our initial objectives and what form the Directive takes if we are unsuccessful. My main preoccupation at the moment is that we should not lose sight of the sizeable and real industrial benefits which our present North Sea regime brings us, in the contemplation of the so far unquantified benefits that might accrue elsewhere.

I am copying this to Peter Brooke.

PETER MORRISON

cc PPS

PS/Chief Secretary
 PS/Financial Secretary
 PS/Economic Secretary
 Sir Peter Middleton



Mr Anson
 Mr Lankester
 Mr Monck
 Mr Phillips
 Mr Willacy
 Mr R I G Allen
 Mr F K Jones

Mr Beastall
 Mr Moore
 Mr M L Williams

Treasury Chambers, Parliament Street, SW1P 3AG

The Hon Peter Morrison MP
 Minister of State
 Department of Energy
 Thames House South
 Millbank
 LONDON SW1P 4QJ

18 January 1989

Dear Sir,

COMMISSION PROPOSALS ON PROCUREMENT IN THE EXCLUDED SECTORS

Thank you for copying to me your letter of 9 January to David Young.

2. OD(E) did, of course, agree last July that we should seek to insist on the exclusion of upstream oil and gas. Our officials have made our position plain to the Commission and, along with industry, have sought to lobby other Governments. Although it would be a mistake to underestimate the support the Commission may get on this issue from other Member States, there is no need for us to consider changing our stance, at least at this stage.

3. I think, nevertheless, that, in pursuing our objective on the upstream sector, it would be wrong to neglect the possibility that a directive may be adopted which includes the sector. Drawing on the momentum behind 1992, the Commission might manage to lessen the opposition that exists to particular aspects of its proposals to such an extent that we would be unable to get a blocking minority. I think that we would in any case be unlikely ourselves to want to be part of one. Since the Council votes on proposals as a whole, the choice that faced us would be of that kind.

4. If, looking ahead several months, we see ourselves in this position, we shall need to decide where our interests lie. Like other Member States, we should try because of our Single Market objectives to avoid this choice if we possibly can. I therefore suggest that our negotiating tactics, when the Council working group begins its detailed discussions on 26 January, should be as follows.

5. First, our officials should continue to press the case for not imposing rules when entities need to buy competitively because the markets for their products are competitive. Unfortunately, as the Commission says, it is difficult to measure competition

objectively, and it is not necessarily a safeguard against government influence to buy national. Other arguments can be added, including in the upstream case the problem of enforcing rules on multinationals which could choose to handle their procurement outside the Community.

6. In deploying competition arguments, I believe that in dealing with areas such as the upstream sector, ports and electricity we need not give the Commission any inkling of how we shall vote if we do not get the proposals amended. If, at this early stage, before we know how the rules on contract procedures will evolve, we take a hard-line position, we risk being seen to be taking out so much of our own procurement that other Member States - to whom our suppliers want access - may be encouraged to seek exemptions for significant parts of the excluded sectors in their own countries.

7. That is why, secondly, we should not push those Member States which have commented on the difficulties of applying rules to private sector firms to the point of objecting in principle to covering them. Doing this now could lose us the benefits that we want, since in many Member States "private firms" are publicly owned and subject to national government influence. The Commission has been right not to base its proposals on ownership, and the conclusion of OD(E) that we should accept rules on coverage that had exceptions for competition does not rest on it.

8. Thirdly, in line again with OD(E), our officials need to do all they can to get changes agreed to make the proposals less bureaucratic. The Commission has already indicated that it is prepared to be flexible, and our interest lies in getting discussion on to these areas as quickly as possible, after registering our concerns on coverage. We can then more easily take stock of what the directives are likely to involve for purchasers.

9. Lastly, to help this process our officials must continue to draw on the help of purchasers who stand to be affected, including those in the sectors we wish to exclude. If we claim, for example, that the Commission's proposals will lead to costs and delays, we need to substantiate what we say (and to be sure that we fully understand the proposals). I suggest that it is important, at this stage, to provide for the contingency that the rules may bear on upstream oil and gas by ensuring that our position takes account of their minimum needs. This includes considering the scope that possible amendments to the proposals will give for OSO to operate without putting companies in breach of EC law. Detailed comments put to the Commission by the industry of how the proposals depart from good commercial practice will help, and need not prejudice our basic objection to coverage.

10. When we take stock in a month or two's time, we shall need to consider how far the objectives agreed by OD(E) have been achieved. We shall need to look at the balance overall as well as by sector, and I suggest that to help us our officials should begin now to review previous estimates of benefits. I agree that we should consider the need for ensuring fair competition, and how far we can accept the Commission's view that the subject needs to be handled outside the procurement directives.

11. For the moment, and until we are in a position to make this assessment, I think it is important not to foreclose options. These could include, despite our best efforts, having to face up to a directive with a coverage that is wider than we would wish. In this context, I note that you accept that some fine-tuning may ultimately be necessary in how OSO pursues its role. It is unfortunately the case that some other Member States regard OSO's activities as harmful to their interests, and we must be careful not to antagonise them by how we act at this stage.

12. I am sending copies of this letter to David Young and to Lynda Chalker, Michael Howard, Michael Portillo and Sir Robin Butler.

Louis even

PC

PETER BROOKE

PMG 12



the department for Enterprise

✓ PB 29/

I shall have to apologise to Mr Morrison for not addressing him as

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Hon Peter Morrison MP
Minister of State
Department of Energy
Thames House South
Millbank
London SW1P 4QJ

PAYMASTER GENERAL	
REC.	27 JAN 1989
ACTION	MR F K JONES
	PS/CST PS/FST
	PS/EST
	SIR P. MIDDLETON
	MR ANSON

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Trade and Industry
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Direct line 215 5422
Our ref PB3AKF
Your ref
Date 25 January 1989

- MR LANKESTER
- MR MONCK
- MR. PHILLIPS
- MR. WILLACY
- MR. R.I.G. ALLEN.
- MR. BEASTALL
- MR MOORE.
- MR. M.L. WILLIAMS.

Neo Peter

Thank you for your letter of 9 January. I have also seen Peter Brooke's letter to you of 18 January.

I sympathise with the problems to which you refer. As was agreed at OD(E) we should of course try to get oil and gas exploration and extraction excluded, and as my Private Secretary said in his letter to yours of 21 December, officials of all Departments are pressing this line as firmly as possible. I also sympathise with your comments about the difficulty genuinely private companies have in competing with State-owned entities. This is, however, a point of concern which goes far beyond public procurement and our aim must be to ensure that State funding and State sponsorship of such entities is circumscribed so that the disciplines of the market-place are brought to bear as far as possible. These are aims we can pursue elsewhere: I do not think we can use this issue as a base from which to argue that all private sector companies should be excluded from coverage. As Peter Brooke comments, OD(E) accepted that the existence of adequate competition and the lack of potential for Government influence rather than ownership should be the basis on which exclusions should be sought.

I would like to make two further points. First, I welcome your comment about the possible need to look at OSO's modus operandi since, given the views of other Member States as described by Peter Brooke, it may well be necessary at some point to choose between the reform of OSO and the achievement of our aim of excluding oil and gas exploration and extraction.





the department for Enterprise

Second, in view of the commitment by EC heads of government to the opening up of public purchasing - a commitment to which I attach great importance - I share Peter's view that we are most unlikely to want to block the directive as a whole. I therefore strongly endorse his comment about the need for purchasers to consider the details of what is proposed to help ensure that the provisions of the directive would not be unduly onerous, against the possibility that our negotiators might not be successful in achieving the exclusions we seek.

I am copying this letter to Peter Brooke, Lynda Chalker, Michael Howard, Michael Portillo and Sir Robin Butler.

Law

David



FROM: J M G TAYLOR

DATE: 10 February 1989

PS/PAYMASTER GENERAL

cc PS/Economic Secretary
Sir P Middleton
Mr Anson
Mr Wicks
Mr Lankester
Mr R I G Allen
Mr Beastall
Mr F K Jones

EC PUBLIC PROCUREMENT

The Chancellor understands that, in the Council discussions on proposals on procurement in the "excluded sectors", we are seeking to exclude the upstream oil and gas sector from the scope of the rules.

2. The Chancellor does not think there is any justification for this, and that it completely undermines our overall position. He would be grateful for a note - perhaps Mr F K Jones could provide this.

A handwritten signature, likely of J M G Taylor, consisting of stylized initials.

J M G TAYLOR

PMG 24 FEB 1989 4



THE MINISTER OF STATE

DEPARTMENT OF ENERGY
THAMES HOUSE SOUTH
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The Rt Hon Lord Young of Graffham
Secretary of State for Trade
and Industry
Department of Trade and Industry
LONDON SW1

21 FEB 1989 → HMT

PS 23/11

20 February 1989

PAYMASTER GENERAL	
REG.	24 FEB 1989
ACTION	MR F K JONES PS/CHANCELLOR MR ANSON MR LANKESSEE MR MORCK MR PHILLIPS MR BEASTALL MR M WILLIAMS

See David,

PROCUREMENT IN THE EXCLUDED SECTORS

Thank you for your reply of 25 January to my letter of 9 January. I am also grateful to Peter Brooke for his letter of 18 January.

I accept that we are unlikely to wish to block a directive which ostensibly forms part of the move to 1992, although, of course, we shall need to minimise the exposure of our industries to bureaucratic burdens such as those represented by the Commission's proposals. While it is quite possible that we shall not achieve all the objectives set by OD(E) last July, we should not yet begin accepting this; we shall probably need to take stock in 2 or 3 months time.

In anticipation of that, I agree with Peter that we should give the Commission no inkling of how we would vote if we fail to get the coverage of the proposals amended to our liking: to do so would undermine our ability to negotiate on other aspects. It is similarly important that we should not reject out of hand concerns felt by other Member States on coverage; we may yet need to accept less than the ideal in order to construct an alliance with those whose interests are closest to our own. I very much support Peter's suggestion that to enable Ministers to take stock, officials should begin now to review previous estimates of the benefits of covering particular sectors and private industry as a whole and hope your officials will take the lead in identifying and quantifying these benefits.

As regards OSO, I have in mind some minor modifications for presentation's sake if that proves useful to enable the Commission (and some other Member States) to accept exclusion of upstream oil and gas. However we should not accept the Commission's unfounded allegations that the Department forces oil companies to act uncommercially.

What it does is to ensure that UK suppliers are given a full and fair opportunity. My worry is that under the directive as it is presently



proposed, it will no longer be able to do so. We do accordingly need to press for rules covering fair competition, and, initially, to seek their inclusion in the same directive. The point has been put to me strongly by the industry and I believe that once we have sold the pass we will wait in vain for effective action by the Commission "elsewhere" to deal with State subsidised concerns like the Italian ENI group.

I am sending copies of this letter to Peter Brooke, Lynda Chalker, Michael Howard, Michael Portillo and Sir Robin Butler.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a smaller 'M' and a dot. Below the signature is a long, horizontal, slightly wavy line.

PETER MORRISON

pmg.vd

cc PS/Chief Secretary

Mr Anson
Mr Lankester
Mr Monck
Mr Phillips
Mr R I G Allen
Mr F K Jones
Mr Beastall
Mr Dyer

B/F 10/4



Treasury Chambers. Parliament Street. SW1P 3AG

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1A 2AT

20 March 1989

Dear John,

PARLIAMENTARY SCRUTINY OF EUROPEAN COMMUNITY DOCUMENTS

The Select Committee on European Legislation has recommended for debate the Commission's proposals on procurement in the water, energy, transport and telecommunications sectors and an accompanying communication. It is convenient to deal with these documents together, though David Young has the lead on the telecommunications proposal.

While discussions have begun in a Council working group, the European Parliament is not expected to deliver its opinions on the proposals until its plenary on 22-26 May. I believe that we should try to hold the scrutiny debate in the first part of that month. Given the amount of interest that there is in the proposals, both among undertakings which may be affected as purchasers and among suppliers and contractors, I believe that the debate should be on the Floor of the House.

I suggest that the motion for debate should be as follows:

Procurement Procedures (Water, Energy, Transport and Telecommunications)

That this House takes note of European Community Documents Nos 8803/88, 8804/88 and 8805/88 on procurement procedures in the water, energy, transport and telecommunications sectors and the Supplementary Explanatory Memoranda submitted by Her Majesty's Treasury on [] April 1989 and the Department of Trade and Industry on [] April 1989; and endorses the Government's view that the broad approach of the Commission should be supported but that changes are desirable in the proposed directives to prevent the imposition of unnecessary burdens and constraints.

The forthcoming Supplementary Explanatory Memoranda are those sought by the Committee on the outcome of consultations with suppliers and purchasers.

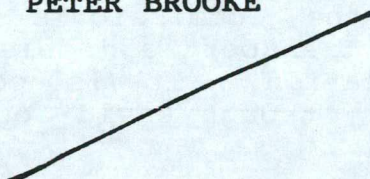
OD(E) agreed last July that the UK should broadly welcome the Commission's approach but seek certain changes in the proposals. I propose to write nearer the time about the line that we should take in the light of subsequent developments and about that to be taken on possible amendments to the Government's motion.

I am sending copies of this letter to members of L Committee, the Chairman and members of OD(E), and the Secretaries of State for Energy, the Environment and Transport and to Sir Robin Butler and the Secretaries of L and OD(E).

Pm

Pm

PETER BROOKE



FMG 21 MAR 1989 - 11

- 1. MR BEASTALL ^{21/3}
- 2. PAYMASTER GENERAL ✓ PB 21/iii
- 3. CHANCELLOR OF THE EXCHEQUER

From: F K JONES
 Date: 21 March 1989

- cc Chief Secretary
 Financial Secretary
 Economic Secretary
 Sir P Middleton
 Mr Anson
 Mr Wicks
 Mr Byatt
 Mr Lankester
 Mr Monck
 Mr Phillips
 Mr Willacy
 Mr R I G Allen
 Mr Burgner
 Mr Moore
 Mrs M E Brown
 Mr Burr
 Mr Meyrick
 Mr M L Williams
 Mr Call
 Mr Tyrie

Handwritten notes:
 OK - content to write
 no paper?
 2. The OSO
 might be addressed
 altogether - it is a
 better place to
 put it
 This is
 on
 the
 ground
 signed
 by
 the
 PM
 to
 be
 possible
 CST
 in
 the
 PM

**EC DRAFT DIRECTIVES ON PUBLIC PROCUREMENT:
 UPSTREAM OIL AND GAS**

This submission covers a draft letter which it is suggested the Chancellor might send to Mr Parkinson to register Treasury interest in liberalising upstream procurement. For reasons explained below, there are advantages in sending the letter - if it is agreed - this week. The letter is addressed to Mr Parkinson because we believe he is likely to be more sympathetic than Mr Morrison, who has led for DEN on the issue up to now.

Background

behind
 2. Mr Taylor's minute of 10 February asked for a note on our bid to exclude upstream oil and gas from the draft directives. The Chancellor had commented that he did not think there was any justification for this, and that it completely undermined our overall position.

behind
 3. Treasury Ministers went along in OD(E) last July with the exclusion of upstream oil and gas from the procurement directives for a number of reasons, some of which were essentially tactical.

They included

- the likely form of the Commission's proposal, which appeared not to give scope for securing changes in it to suit the commercial needs of the sector;
- the issue of Community competence over the North Sea, which acceptance of the proposals would appear to confirm; and
- the advantage of neutralising DEn, given that acceptance by other Ministers of the case for giving broad support to the Commission's approach was by no means certain.

Politically, OD(E) may have had in mind the significance attached to OSO as a support for jobs in Scotland.

4. Since the Commission submitted its proposal in October, it has become clear that the chance of getting agreement to exclude upstream oil and gas is slim, at least as long OSO continues to "monitor" procurement activities in the way that the companies and others regard as intended to boost UK content. This judgement holds despite a surprising decision yesterday by a committee of the European Parliament to accept an amendment for exclusion. The Commission will do its best to overturn the vote at the Parliament's plenary in May, unless it believes it has reasons for not doing so. Among other Member States, only the Netherlands, which operates more overt controls, has supported exclusion. France, which is pivotal because it forms the next Presidency, is dismissive of our case. Awareness of this position - and some encouragement from the Treasury - has been the reason why the UK Offshore Operators Association (UKOOA), and also British Gas, have moved on from flatly rejecting the proposal to providing analysis for the Commission of their difficulties.

Comment

5. From a Treasury standpoint, any justification for OSO's involvement on "infant industry" lines has now gone. Its interventionist origins were linked with the arrival of multinationals who by habit would look to procure in the US. Many

of them now have establishments in the UK. But OSO continues to "monitor" policies, inspecting tender lists and so on, while claiming that ensuring "full and fair opportunity" for domestic firms does not cause companies to lose value for money. Several companies have told us, privately, that it does, adding that information about sourcing intentions is assumed to influence licensing decisions. This points to a need to review the activities of OSO quite independently of the Commission's proposal.

6. We hope, in the course of reviewing the Commission's proposals as a whole, to put flesh on all this, in practice by challenging DEN's assertions. Some gains seem certain from liberalisation, though judgement is needed over whether those gains depend on set procedures for procurement. Market opportunities elsewhere in the Community are limited in this sector, and in the case of subsidised Italian suppliers depend on encouraging the sort of pro-competitive activity on which Sir Leon Brittan is engaged.

7. While the arguments on economic grounds by no means point clearly to exclusion from the directive, we believe that an informed decision on this can best be taken somewhat later. There will not be further discussions in the Council working group until the Commission produces a modified proposal, probably in June. This suggests a substantive discussion in OD(E) in June or July. (We will, of course, be submitting further to the Chancellor on the paper he might circulate.) Meanwhile other developments point to intervening on one aspect very quickly.

8. These developments are

- the drafting by UKOOA of an "alternative proposal" amounting to a declaration by the industry of non-discrimination;
- the prospect of Mr Maude suggesting the Offshore Supplies Office (OSO) as a subject for inclusion in the work programme which is likely to be discussed by E(CP) on 20 April; and
- the vote by a committee of the European Parliament in favour of exclusion.

behind

9. Furthermore, the Paymaster General has now written to the Lord President asking that the scrutiny debate sought by the European Legislation Committee should be arranged for the first half of May.

10. DEn, faced with UKOOA's initiative, may be tempted to reject it as unnecessary, following the vote in the European Parliament committee. It will more likely try to reconcile it with minimal changes in OSO's activities. Doing no more than that would probably in the end make exclusion difficult, and might be a reason for us leaving well alone. However, there seem advantages in maintaining the UK's options on exclusion, not least in view of the Commons' debate in May, when the directive's bureaucracy is likely to be criticised. At the end of the day reform of the OSO could be consistent with either inclusion or exclusion; but in the meantime E(CP) offers a chance to pursue the case for liberalisation.

Recommendation

11. As an interim measure, I recommend that the Chancellor should write to Mr Parkinson, mentioning E(CP) and saying on exclusion little more than that he agrees with Mr Morrison that the Government is unlikely to seek to block the proposal on that account. For maximum benefit the letter should reach DEn before the discussion with UKOOA, which is on 28 March, which implies sending the letter this week. I attach a draft.

K.J.

F K JONES

~~DRAFT~~
CONFIDENTIAL

See type form

LETTER FOR SIGNATURE OF CHANCELLOR OF THE EXCHEQUER TO

The Rt Hon Cecil Parkinson MP
Secretary of State for Energy
Thames House South
Millbank
London
SW1P 4QJ

March 1989

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

As you know, the Commission's single market programme includes rules for procurement by the upstream oil and gas sector. OD(E) agreed last July that we should resist the inclusion of this sector in the procurement directives, and our officials have worked to this end. I note, however, from Peter Morrison's correspondence with David Young that he recognises that changes affecting the Offshore Supplies Office may be a necessary condition of achieving exclusion. I suspect that this is still likely, despite the acceptance of the case for exclusion by a committee of the European Parliament. I should be grateful if my officials could be involved in the preparation of options, which will need to be tested against the likelihood of persuading other Member States and the Commission that coverage by a directive is unnecessary or even undesirable.

I understand that the UK Offshore Operators Association has drafted a "voluntary alternative" which would involve declaring that operators would not take account of nationality in inviting tenders and evaluating them. This is a welcome sign of movement on UKOOA's part, and it is important that it should be kept in play until we have had an opportunity collectively to discuss the position.

I ought to say that I believe it is hard to justify any longer the involvement which the Offshore Supplies Office has in companies' purchasing, and which I know some of the companies say privately is a burden. Timing is important, given likely developments in Brussels and the forthcoming scrutiny debate in the Commons. I therefore believe that we should use the opportunity of a discussion in E(CP) on 20 April to consider the work that has been done, in the light of our general policy on competition as well against the background of the Commission's proposal.

Peter Morrison has commented that he accepts that, should we fail to get the upstream sector excluded from the directives, he would not expect us to come out against the proposals as a whole. I am sure that he is right, though I do not think that we need address the subject of exclusion until we have the Commission's modified proposal, which I understand may be in June. Meanwhile, I am glad that UKOOA, along with other bodies, has provided the Commission with detailed comments on the present proposal.

I am sending copies of this letter to Geoffrey Howe and David Young.

[NL]



FROM: J M G TAYLOR

DATE: 23 March 1989

PS/CHIEF SECRETARY

cc PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr D J L Moore
Mr M L Williams
Mr F K Jones
Mr Call
Mr Tyrie

**EC DRAFT DIRECTIVES ON PUBLIC PROCUREMENT:
UPSTREAM OIL AND GAS**

The Chancellor has written to the Secretary of State for Energy on the lines of the draft enclosed with Mr Jones' minute of 21 March.

2. He has commented that the OSO ought to be abolished altogether. It is a relic of Bennery which has no place today. He would be grateful if the Chief Secretary could pursue this in the public expenditure round, if it has not been agreed before then.

A handwritten signature in dark ink, appearing to be 'JMG'.

J M G TAYLOR

CONFIDENTIAL



cc. Mr Manager

23/3.

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

Rt Hon Cecil Parkinson MP
Secretary of State for Energy
Department of Energy
Thames House South
Millbank
LONDON
SW1

cc: PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Mr Anson
Mr Wicks
Mr Byatt
Mr Lankester
Mr Monck
Mr Phillips
Mr Willacy
Mr R I G Allen
Mr Burgner
Mr Moore
Mrs M E Brown
Mr Beastall
Mr Burr
Mr Jones
Mr Meyrick
Mr M L Williams
Mr Call
Mr Tyrie

Dear Secretary of State

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

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I am sending copies of this letter to Geoffrey Howe and David Young.

Yours sincerely

Jonathan Payne

AP NIGEL LAWSON

*[Approved by the Chancellor
and signed on his behalf]*

dti

the department for Enterprise

cc Mr Mongel

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
The Treasury
Parliament Street
LONDON
SW1P 3AG

Department of
Trade and Industry

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Direct line 215 5422
Our ref PB3AUE
Your ref
Date 29 March 1989

Dear Chancellor of the Exchequer.

Thank you for the copy of your letter of 23 March 1989 to Cecil Parkinson about procurement by the upstream oil and gas sector.

I agree that it would be useful to discuss the policies to which the Offshore Supplies Office works at E(CP) on 20 April. It would be timely to consider this in domestic policy terms before going on to consider our line on the draft directive liberalising procurement in the excluded sectors currently under discussion in the EC. Revised proposals on the draft directive are expected before the summer and we would like to clear our lines on how to respond to them before then.

I hope that we could fully examine the pros and cons, including such issues as EC competition and external trade implications, in order to consider the options and decide the way forward.

I am copying this letter to Geoffrey Howe and Cecil Parkinson.

Yours sincerely,
N.R.T.H.

(Approved by the Secretary of State and signed in his absence)

CH/EXCHEQUER	
REC.	30 MAR 1989
ACTION	MR FK JONES
COPIES TO	PS/CST, PS/FST, PS/PMC, PS/EST
	SIR P MIDDLETON
	MR ARSON, MR WICKS
	MR BYATT, MR LANKESTER
	MR MONCH, MR PHILLIPS
	MR WELBY, MR RIGAUD
MR I WILSON, MR MOORE	
MRS MC BROWN, MR BEASTALL	
MR BURR, MR MEYRICK	
MR M.L WILLIAMS,	
MR TYRRE, MR CALL	

/30/3



THE MINISTER OF STATE

The Rt Hon Peter Brooke MP
Paymaster General
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

PMG - 4 APR 1989 - 7

PAYMASTER GENERAL	
REC.	- 5 APR 1989
ACTION	MR F. K. JONES.
	CX / CST / FST / EST
	SIR P. MIDDLETON
	MR ANSON / MR WICKS
	MR BYATT / MR LANCASTER.
	MR MONCK / MR PHILLIPS
	MR WILLACK / MR RIG. ALLEN
	MR I. WILSON / MR MOORE.
	MRS M. BROWN / MR BEASTALL
	MR BURE / MR MERRICK.
	MR. M. L. WILLIAMS
	MR THRIE / MR CALL.

DEPARTMENT OF ENERGY
THAMES HOUSE SOUTH
MILLBANK
LONDON SW1P 4QJ

Direct Line 01-~~238~~ 238 2159
Switchboard 01-~~238~~ 238 3000

*This is not an issue
on which I have
any detailed
knowledge or views*

PMG

31 March 1989

PB 4/10

New DS

EC DIRECTIVE FOR THE EXCLUDED SECTORS

Recently my Officials had discussions with the Italian Energy Corporation ENI and the Energy Division of the Italian Ministry of Industry. The Italians believe the Commission has taken leave of its senses in trying to impose a procurement regime on the energy industries. They cannot however openly support our efforts to exclude private industry where it is competitive and specifically upstream oil and gas as the Italian industry is very largely State owned and controlled.

Instead they wish to lobby to move the responsibility for achieving the internal market in energy from DGIII to DGXII. There is merit in this suggestion since we believe that energy policies and the interests of the energy industries are being subordinated to a single minded and rather narrow based drive to impose rules borrowed from public purchasing on a complex mix of vital energy concerns, private as well as public. You will be aware of the intense opposition from the UK oil and gas industries and their counterparts throughout Europe.

Whilst it is crucial that we continue to seek the exclusion of upstream oil and gas from coverage of the Directive proposed by DGIII, I would also like in parallel to bring into play this "Italian" option. I believe that in DGXII energy policies and the good of the energy industries would be uppermost; that we would have an increased chance of getting oil and gas excluded because of the danger of disruption to exploration and development of marginal fields; and that



any procurement regime would fit into the existing commercial practices of the other energy industries.

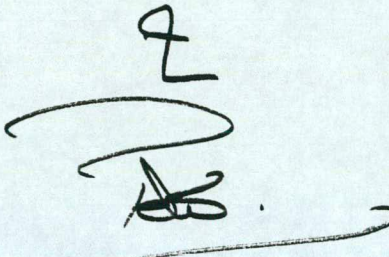
Would you have any objection if we were to pursue this further with the Italians (whilst, as I say, keeping the pressure on DGIII for exclusion of upstream oil and gas and possibly increasing that pressure if they get wind of what we are about). The idea of transferring the responsibility to DGXII was first mooted by the French and the Italians would like us jointly to approach them. We believe other countries like Holland, Ireland, Spain and Denmark would also find the idea attractive. I also believe the energy industries would welcome a move which would see the energy policies and the good of the energy industries as the principal concern.

The Italians plan to raise this subject at the next meeting of the Energy Council (sometime in May) but obviously they will be trying to gauge the amount of support before then.

Between now and then, we should very carefully assess the chances of getting upstream oil and gas excluded taking into account the opinion of the European Parliament and the Social and Economic Committee, and the further meetings of the Council Working Group on the Directive.

I would be grateful to know if you are content for us to proceed in this way.

I am copying this letter to David Young



PETER MORRISON



FCS/89/059

CHANCELLOR OF THE EXCHEQUER

CH/EXCHEQUER	
REC.	7 APR 1989
ACTION	Mr F.K. Jones
COPIES TO	B/EST, P/EST, P/AMG, P/EST, Sir P. MIDDLETON, Mr ANSON, Mr WICKS, Mr BATT, Mr LANKESTER, Mr MANCK, Mr PHILLIPS, Mr WILLIAMS, Mr R.I.G. ALLEN, Mr I. WILSON, Mr MOORE, Mr M.C. BROWN, Mr BEASTALL, Mr BURR, Mr METRICK, Mr M.L. WILLIAMS, Mr TYRRE, Mr CAUL.

7/4 Be U this
 + the letter
 behind to
 Mr Monger
 (Cob of)

Procurement in the Upstream Oil and Gas Sector

6/7. 19/4

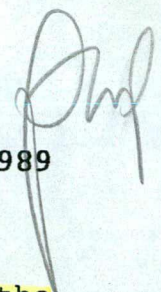
1. Thank you for sending me a copy of your letter of 23 March to Cecil Parkinson. I have also seen David Young's letter of 29 March.
2. I too agree that we should look at the role of the OSO. Given the relevance of the question to the current negotiations in Brussels, I would wish to take part in such a discussion.
3. I also agree that we should look again at the negotiating objectives, agreed in OD(E) last July, when we see the new Commission proposal. I would be happy to chair another OD(E) discussion then.
4. I am copying this minute to the Secretaries of State for Energy and for Trade and Industry.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
7 April 1989

CONFIDENTIAL

FROM: F K JONES
DATE: 11 APRIL 1989



PAYMASTER GENERAL

cc: Chancellor of the
Exchequer
Chief Secretary
Financial Secretary
Economic Secretary
Mr Anson
Mr Wicks
Mr Phillips
Mr Willacy
Mr R I G Allen
Mr Beastall
Mrs M E Brown
Mr M L Williams
Mr Call
Mr Tyrie



EC PROPOSALS ON PUBLIC PROCUREMENT: UPSTREAM OIL AND GAS

I attach a draft reply to Mr Morrison's letter of 31 March. This seeks your agreement for officials to support the Italians in "lobbying to move the responsibility for achieving the internal market in energy" from the Directorate General responsible for the internal market (III) to that responsible for energy (XVII, not XII as in the letter). The draft explains why we suggest you should withhold your agreement.

2. Mr Morrison does not himself mention the Chancellor's letter 23 March calling for OSO not to be involved in Companies' purchasing. But we suggest that you should do so, since making that change would offer the best chance of avoiding coverage of the upstream sector in the Commission's proposals. This, of course, is Mr Morrison's goal, on the basis that it is necessary for the good of the industry. The Chancellor has agreed that

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exclusion can be addressed after we have seen the Commission's modified proposals, but there seems benefit in revealing our hand to the extent of pointing to reports (obtained through the Offshore Operators' Association) that the upstream sector in other Member States has shown itself willing to try to amend the proposals.

3. Following the Chancellor's letter, we understand that Mr Parkinson has arranged to see him on 20 April. E(CP), previously arranged for that date, has been postponed.

M Davis
ff F K JONES

CONFIDENTIAL

DRAFT LETTER FOR SIGNATURE BY PAYMASTER GENERAL

The Hon Peter Morrison MP
Minister of State of Energy
Department of Energy
Thames House South
Millbank
LONDON SW1P 4QJ

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

Thank you for your letter of 31 March suggesting that we should join the Italians in seeking to have responsibility for completing the single market in energy transferred from DGIII to DGXVII (not DGXII, I think). Nigel Lawson wrote, as you know, on related issues to Cecil Parkinson on 23 March and I have seen the responses of Geoffrey Howe and David Young to his letter.

2. I am afraid that I cannot agree that we should join the Italians, at least at this stage. In the last analysis, the allocation of the Commission's responsibilities is, of course, for the Commission itself. DGXVII has, we know, already told the industry that it regards itself as more concerned with the energy market, whereas the proposals now before us specifically exclude purchases of energy. While France has pressed for the latter to be covered, we expect the Commission to respond through other proposals. Italy may expect that a transfer of responsibilities with regard to procurement in the energy sector would lead to significant changes in the present proposals with regard to energy, but this ignores the current position of telecommunications, where there is already a separate proposal but the Commission has kept the procedural rules closely aligned to that for the other sectors.

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3. Other countries, notably Germany and Spain, have already called for procurement in the energy sector to be dealt with in a separate directive. But our negotiators have, I think rightly, taken the view that the main result of proceeding in this way would be to cause a loss of momentum, although they have not suggested that we should go out of our way to nail our colours to the Commission's mast. They have *believed* there to be a *risk* that a separate directive for energy could highlight the present position of OSO.

4. When we agreed last July to accept the principle of applying rules to nationalised industries and the private sector, we took the line that they should not *apply* where adequate conditions of competition could be shown to exist. Since the industry is competitive internationally, the Italians could subscribe to this argument, despite their industry being largely state-controlled. However, it is clear that the Commission is unwilling to accept the argument and regards it as entirely possible for undertakings to be in competition with each other and still be subject to influence on their procurement.

5. We have agreed that we should consider our position on the proposals again after we have seen them in their revised form. Although the Economic and Monetary Affairs Committee of the European Parliament has voted for the exclusion of upstream oil and gas, it is not at all clear that the Parliament itself will agree, and do not know how the Commission would respond if the Parliament did vote for exclusion. We should bear in mind that, before the Committee's vote, the upstream industries in other countries were reported to be coming round to believe that they might do best by trying to amend the Commission's proposals. But if we

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find ourselves wanting still to resist coverage, we shall undoubtedly be helped by removing the "monitoring" by OSO's of companies' purchasing.

6. Until this has been discussed, our negotiators need to argue for exclusion on the basis of present policies. I am not sure how you believe the pressure on PGIII might be increased, but it is clearly important that our officials should continue to work closely with each other to ensure that their actions are properly coordinated.

7. I am sending copies of this letter to Geoffrey Howe and David Young.

[PB]

CONFIDENTIAL



cc PS/Chancellor
 PS/Chief Secretary
 PS/Financial Secretary
 PS/Economic Secretary
 Mr Anson
 Mr Wicks
 Mr Phillips
 Mr Willacy

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Peter Morrison MP
 Minister of State
 Department of Energy
 Thames House South
 Millbank
 LONDON SW1P 4QJ

Mr R I G Allen Mr M L Williams
 Mr F K Jones Mr Tyrie
 Mr Beastall Mr Call
 Mrs M E Brown

14 April 1989

Dear Sir,

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

Thank you for your letter of 31 March suggesting that we should join the Italians in seeking to have responsibility for completing the single market in energy transferred from DGIII to DGXVII (not DGXII, I think). Nigel Lawson wrote, as you know, on related issues to Cecil Parkinson on 23 March and I have seen the responses of Geoffrey Howe and David Young to his letter.

2. I am afraid that I cannot agree that we should join the Italians, at least at this stage. In the last analysis, the allocation of the Commission's responsibilities is, of course, for the Commission itself. DGXVII has, we know, already told the industry that it regards itself as more concerned with the energy market, whereas the proposals now before us specifically exclude purchases of energy. While France has pressed for the latter to be covered, we expect the Commission to respond through other proposals. Italy may expect that a transfer of responsibilities with regard to procurement in the energy sector would lead to significant changes in the present proposals with regard to energy, but this ignores the current position of telecommunications, where there is already a separate proposal but the Commission has kept the procedural rules closely aligned to those for the other sectors.

3. Other countries, notably Germany and Spain, have already called for procurement in the energy sector to be dealt with in a separate directive. But our negotiators have, I think rightly, taken the view that the main result of proceeding in this way would be to cause a loss of momentum, although they have not suggested that we should go out of our way to nail our colours to the Commission's mast. They have believed there to be a risk that a separate directive for energy could highlight the present position of OSO.

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4. When we agreed last July to accept the principle of applying rules to nationalised industries and the private sector, we took the line that they should not apply where adequate conditions of competition could be shown to exist. Since the industry is competitive internationally, the Italians could subscribe to this argument, despite their industry being largely state-controlled. However, it is clear that the Commission is unwilling to accept the argument and regards it as entirely possible for undertakings to be in competition with each other and still be subject to influence on their procurement.

5. We have agreed that we should consider our position on the proposals again after we have seen them in their revised form. Although the Economic and Monetary Affairs Committee of the European Parliament has voted for the exclusion of upstream oil and gas, it is not at all clear that the Parliament itself will agree, and we do not know how the Commission would respond if the Parliament did vote for exclusion. We should bear in mind that, before the Committee's vote, the upstream industries in other countries were reported to be coming round to believe that they might do best by trying to amend the Commission's proposals. But, if we find ourselves wanting still to resist coverage, we shall undoubtedly be helped by removing the "monitoring" by OSO of companies' purchasing.

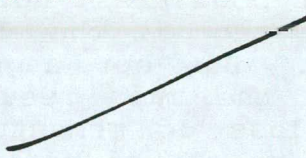
6. Until this has been discussed, our negotiators need to argue for exclusion on the basis of present policies. I am not sure how you believe the pressure on DGIII might be increased, but it is clearly important that our officials should continue to work closely with each other to ensure that their actions are properly co-ordinated.

7. I am sending copies of this letter to Geoffrey Howe and David Young.

L. von

P. Brooke

PETER BROOKE



For mtg. Fielder
Parkinson
Bilateral

CONFIDENTIAL

PAYMASTER GENERAL

From: F K JONES - PSP
Date: 18 April 1989
x 5542

cc Chancellor of the Exchequer
Chief Secretary
Financial Secretary
Economic Secretary
Sir P Middleton
Mr Anson
Mr Wicks
Mr Byatt
Mr Lankester
Mr Monck
Mr Phillips
Mr Willacy
Mr R I G Allen
Mr Moore
Mr I P Wilson
Mrs M E Brown
Mr Burr
Mr Meyrick
Mr M L Williams
Mr Call
Mr Tyrie

PROCUREMENT IN THE UPSTREAM OIL AND GAS SECTOR

I have submitted separately a brief for the Chancellor's meeting with Mr Parkinson on Thursday. Part of the background to the meeting is the development by UKOOA* of a "voluntary proposal" as an alternative to that by the Commission. While the Economic and Monetary Affairs Committee at the European Parliament has voted for the exclusion of upstream oil and gas, there is still considerable pressure from UKOOA's constituent companies for it to take some action. We are due to meet UKOOA with the Department of Energy next Tuesday. The present submission explains more fully the line that we in the Treasury think we might take with UKOOA, and includes a draft letter which you might send to Mr Morrison following the Chancellor's meeting. We are submitting it now since it would be desirable to write before the weekend; if you

* UK Offshore Operators Association

are otherwise content, we will suggest after the Chancellor's meeting any amendments which may be necessary.

2. ^{Why?} The suggestion is that UKOOA should be encouraged to develop a proposal involving companies being prepared to have their purchasing procedures audited to a "quality" standard. (Shell was letting DEN know as far back as last December that it would prefer this to interference by OSO.) Audit would be in place of the alternative proposal which UKOOA has now drafted, which involves the companies giving the Commission direct access to their books and which UKOOA now describes as showing the furthest the companies would be prepared to go. Colleagues agreed with you last July that audit should be considered as a method of enforcing the Supplies and Works Directives. The CBI is already advocating audit as a means of achieving liberalisation without subjecting undertakings to the detailed rules in the Commission's proposal. Lord Brabazon said in the Lords debate on compliance last month that audit should be considered, particularly in the context of the excluded sectors. We are currently working on a short paper on the subject which we propose to discuss at working level with the CBI, the Nationalised Industries' Chairmans' Group and the Institute of Purchasing and Supply before suggesting that you put it to colleagues as a note the UK might submit to the Commission.

3. The main features of ^{Why?} the proposal, which we believe would be appropriate also for UKOOA, are that

- a standard for how purchasing is conducted should be developed as a European standard on the lines of that for quality assurance for industrial processes;
- companies would obtain third party certification of compliance with the standard; and
- if they "failed", companies would be at risk of having rules extended to apply to them (in the case of upstream oil and gas) or lose the right to derogate from detailed procedural rules (in other cases).

4. Being behind a new proposal put by UKOOA need not prejudice the Government's eventual position on the inclusion of oil and gas in a directive that included derogations for undertakings submitting themselves to audit. Concern by the UK to get procurement in the limited upstream sector in other countries liberalised could make us favour inclusion. But success in developing a directive with derogations would make it in many ways less important whether or not upstream oil and gas was "in" or "out" of the directive.

5. Because of DEn's strong aversion to audit of upstream oil and gas (other than by OSO) we have not so far put this proposal to that Department. For the same reason, we believe that it would be better put at Ministerial level after it has been broached by the Chancellor. DEn should, we hope, accept that its claim that OSO does not make companies purchase in the UK makes it difficult to resist third party audit, and that the alternative to "letting" UKOOA propose it would be to risk coverage by the detailed rules proposed by the Commission, with the ill-effects in terms of costs and delays that OSO claims they would bring.

K.J.

F K JONES

CONFIDENTIAL

DRAFT LETTER FOR SIGNATURE OF THE PAYMASTER GENERAL
(to be sent after Chancellor's meeting with Mr Parkinson on
20 April)

The Hon Peter Morrison MP
Minister of State for Energy
Department of Energy
Thames House South
Millbank
London
SW1P 4QJ

April 1989

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

The Chancellor discussed this subject yesterday with Cecil Parkinson and mentioned the possibility of UKOOA putting forward ideas involving third party certification of purchasing practices. The purpose of this letter is to explain how this might fit in to a general strategy, and why I believe that officials should suggest when they meet UKOOA next Tuesday that it develops the proposal.

In essence, it is proposed that companies might declare themselves willing to submit themselves to audit by third parties. This presupposes the development of a satisfactory standard, which might be on the lines of that for quality assurance, EN29,000. In the general case, undertakings that had a satisfactory audit might not need to follow the detailed procedural rules in the directive. I hope to write to colleagues shortly on how we might put this idea to the Commission. With oil and gas, the Government would have an understanding with the Commission that such companies would be at risk of having the rules extended so as to apply to them. We can expect the Commission to want to have similar understandings with the other Member States involved.

I believe that both of us would regard this as preferable to the "voluntary proposal" which UKOOA has itself developed. It is clear that UKOOA is under pressure from constituent companies to take some action, and similar bodies in other countries have apparently been willing to put their main effort into amending the Commission's proposal. I understand that there is reason to believe that the approach I have outlined would be acceptable to firms in the UK sector.

In offering to support a proposal on these lines developed by UKOOA, we could continue to hold that OSO does not, and cannot, make companies purchase in the UK. We could also continue to hold that on the basis of the Commission's present proposals it would not be right to cover the sector. Should we be successful in getting certification accepted more generally, with derogations from the detailed rules available to companies which obtain it, we might need to consider our position on exclusion for the sake of getting the sector liberalised in other Member States.

Provided that UKOOA agrees, we should need to consider very carefully how we should handle the development of the new proposal in the forthcoming debate. We may by then be able to take forward the more general application foreshadowed in Ivon Brabazon's speech in the House of Lords on 13 March.

I am copying this letter to Geoffrey Howe and David Young, and to Nicholas Ridley and Paul Channon in view of their concern with other sectors affected by the Commission's proposals, and also to Sir Robin Butler.

[PB]

For mtg folders
Parkinson
12/1/89

CONFIDENTIAL

CHANCELLOR OF THE EXCHEQUER

From: F K JONES - PSP
Date: 18 April 1989
x 5542

- cc Chief Secretary
- Financial Secretary
- Paymaster General
- Economic Secretary
- Sir P Middleton
- Mr Anson
- Mr Wicks
- Mr Byatt
- Mr Lankester
- Mr Monck
- Mr Phillips
- Mr Willacy
- Mr R I G Allen
- Mr Moore
- Mr I P Wilson
- Mrs M E Brown
- Mr Burr
- Mr Meyrick
- Mr M L Williams
- Mr Call
- Mr Tyrie

Ch
 See Mr Jones' separate
 note of 18/4, behind.

*Do
 Mr Smith to
 Mr Byatt & Mr Lankester
 Plan note. Post explain 18/4
 in plan English on
 side of a point of
 paper v.*

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR AND THE FUTURE OF THE OFFSHORE SUPPLIES OFFICE (OSO)

You wrote to Mr Parkinson on 23 March about the Commission's proposal to apply rules on procurement to this sector. You suggested a discussion in E(CP) of OSO's involvement in companies' purchasing in the light of general policy on competition. Lord Young and Sir Geoffrey Howe supported the suggestion. E(CP) has been postponed until 8 May. Mr Parkinson has nonetheless asked to discuss the issue with you on Thursday 20 April. This submission anticipates what he will say and suggests how you might press him to act constructively. It focuses on the EC proposals because it is necessary to take a position quickly with regard to possible alternatives in relation to the upstream sector. But the suggested line to take has implications for OSO.

Background

2. My submission of 21 March described progress so far on the proposals, which also cover procurement by the water, transport and telecommunications sectors. It mentioned the development by UKOOA* of an "alternative proposal" amounting to a declaration by the industry of non-discrimination. He^{it} suggested that it was important to keep this idea in play despite the vote by a committee of the European Parliament to exclude the sector from the Commission's proposals; and recommended that reform of OSO could be presented as not only desirable in itself but also as a means of helping to maintain exclusion.

3. The case for exclusion, which OD(E) accepted last July, can best be reviewed when we know how the Commission is going to modify its proposal in the light of the European Parliament's amendments, expected next month. The tests will be objectives set by OD(E): less bureaucracy, disapplying rules where there is competition, and avoidance of mandatory standards regardless of sectoral considerations. (Annex A gives examples of difficulties for us in the present proposals.) Ministers will also wish to consider the extent to which the proposal might prejudice our traditional position over the extent of Community competence in the North Sea, though we believe that technically the legal base of the proposal would not break new ground.

4. Our present thinking, based on consideration of the (very limited) amendments that MEPs have so far agreed on the proposal, and on discussions with the CBI, NICG and others, is that the Government should come out in support of ideas allowing undertakings in the excluded sectors generally to opt for a form of audit. We are planning to put a submission shortly to the Paymaster General on this wider question, with a view to submitting a paper to the Commission while it is considering suitable methods of enforcement.

5. Meanwhile, we believe that, UKOOA should be held back from making its present proposal, which has not so far been put to the Commission. Although we suggested earlier that it should be kept

* UK Offshore Operators Association

in play, this was to prevent DEN from attempting to scuttle the idea of an alternative approach. But UKOOA's own proposal would give the Commission direct access to companies' books in following up contract awards. Instead, we think it would be useful to divert UKOOA into thinking in terms of suggesting that companies might submit themselves to audit by third parties of how procurement is conducted. This could be done at a meeting arranged with UKOOA for Tuesday 25 April (to fit in with UKOOA's own timetable). Initially, we would be thinking in terms of a voluntary proposal, taking in the upstream sectors in other Member States. But it is possible to see it becoming part of a cross-sector directive if this begins to take off.

6. If Mr Parkinson accepts this line, we suggest that the Paymaster General might write to Mr Morrison to explain it further. There is a possible draft letter in a separate submission to the Paymaster General.

7. We also believe that a discussion in E(CP) would still be useful. Since it is your committee, it is reasonable for you to invite Mr Parkinson to bring proposals to it which would look at OSO from all angles, not just on EC perspectives. Any justification for OSO's involvement in companies' purchasing on "infant industry" lines has clearly gone, and we know that companies regard some, at least, of OSO's activities as a burden. Support can be expected in E(CP) from Lord Young (on 1992 grounds) and Sir Geoffrey Howe, who has asked to attend.

8. A note on the OSO is annexed at *Annex B*.

Mr Parkinson's response

9. Energy officials have not told us what Mr Parkinson intends to say. But it is likely that he will claim that recent developments show that it should be possible to exclude the upstream sector from the proposals without making concessions. Although DEN has not so far involved the Treasury in the preparation of options, as requested in your letter, Mr Parkinson may accept that some presentational changes could be made in OSO's

activities But he may argue that discussion in E(CP) would be an unhelpful diversion from concentrating on the Commission's proposal.

10. Mr Parkinson is understood to think privately that OSO's involvement in companies' purchasing is unacceptable. You may recall that at the NICG dinner last year he described the OSO as "the nearest thing to a Mafia that we have". While he has left Mr Morrison to take the lead on DEN's response to the Commission's proposals, he is thought to have regarded some of the reactions to them as extreme. He may, nevertheless, think that the time is unripe to take a position which would affect OSO, especially given the political sensitivity in Scotland (with hostility also to the rundown of the fast reactor).

I think
this is
the key
point
Mr P will
have in mind.

Line to take

10. (i) Government wants to see procurement opened up in Europe. This is in our interests and will show we are positive about the Single Market. Commission's present proposals are too regulatory and we have agreed to oppose their application to the upstream sector. Can consider our position again when modified proposals are available in June.

(ii) One immediate problem is how to deal with UKOOA's voluntary proposal. Not satisfactory as it stands because of the role it gives to the Commission. Understand, however, that companies are anxious to make a move, and UKOOA will expect guidance from officials next Tuesday.

(iii) Cannot assume that European Parliament will confirm the vote to exclude the upstream sectors from the proposals. Commission is likely to lobby hard - it is talking already of a contrary position taken by the Energy Committee - and even if it loses in the Parliament it could still include the sector in the modified proposal it submits to the Council of Ministers, however the European Parliament votes.

(iv) An initiative by UKOOA would therefore be timely. We should get it to develop the idea of audit of purchasing practices, not by the Commission but by third parties. This could influence the Commission's thinking if it shows itself prepared to make significant changes in its proposals. But it would not prejudice our position on excluding the upstream sector from a directive.

(v) Strength of feeling about OSO in Brussels and among other Member States makes this step necessary. OSO insists it cannot make companies purchase in the UK, so it would be on weak ground in resisting. Purely cosmetic changes in OSO's modus operandi would not ensure a satisfactory outcome.

(vi) Government needs also to consider OSO's activities in the light of competition policy:

- companies tell us privately that interference by OSO adds to costs;
- OSO cannot seriously now claim justification on "infant industry" lines;
- we cannot tell ourselves that costs arising from the Commission's proposals will discourage production and at the same time let intervention by OSO continue; and
- the protective policies of other countries are not a good argument for denying ourselves the benefits of cheaper purchasing.

(vii) Paymaster General will be able to describe more fully what audit would entail, and how it might be developed to cover other sectors. Look to Mr Parkinson to bring forward options to E(CP) on possible changes affecting OSO, reminding him of request in letter of 23 March to consult the Treasury on them.

(viii) [If raised by Mr Parkinson] There is no scope for waiting until the EC forces our hand on OSO, thereby turning political criticism on EC. Reforms in OSO will be a precondition for acceptable outcome on procurement proposal.

11. This brief has been written with the help of PE1 Division.

K.J.

F K JONES

CONFIDENTIAL

Annex A

EXCLUDED SECTORS PROPOSAL: DIFFICULTIES FOR UPSTREAM OIL AND GAS**Bureaucracy**

The industry has developed selection and tendering procedures that provide the flexibility to react quickly to changing circumstances. The proposal goes some way to meet these needs. However, it could involve delays which would be costly if, for example, a weather window was missed. Requirements for publicity, records and statistics would add costs making marginal fields less attractive and leading to investment elsewhere.

2. The proposal is not well suited to multinational companies with international activities. Procurement for the North Sea could be diverted to bases outside the Community. Extra-territoriality issues could arise on the regulation of procurement for activities in other Member States or in third countries.

Coverage

3. Oil companies are highly competitive. The proposal does not make any provision for disapplying the rules where normal market forces can be shown to apply. The thresholds currently proposed are £130,000 for supplies contracts and £3.2 million for works contracts. A proposal on service contracts is expected.

Technical Standards

4. The industry adheres to internationally recognised standards and has responsibility for safety. It would not wish to be committed to using European standards which have yet to be adopted.

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Fear of litigation

5. The industry is concerned that coverage by the directive could lead to litigation by suppliers or contractors believing they had been disadvantaged by a breach of the rules.

Reciprocity

6. A difficulty in common with other sectors is a proposed mandatory preference for equivalent offers of goods or services predominantly of Community origin, which would also include a 3 per cent price preference.

OFFSHORE SUPPLIES OFFICE

The OSO is a part of the Department of Energy, with offices in Glasgow, Aberdeen and London. Its objective is to promote the UK Offshore Supplies industries to gas and oil operators throughout the world. It is divided into three branches. The OSO's budget is currently nearly £9 million, of which more than half is spent on export promotion and R&D. Running costs account for £3.4 million of the OSO's costs.

Industry

2. This branch maintains close contact with companies "to monitor procurement intentions"; liaises with the oil companies on new field development; advises companies on Britain's industrial capability; identifies areas of market opportunity; endeavours to strengthen UK capability in the supplies industry; "monitors performance of major contractors; "analyses orders placed by oil companies for goods and services" for exploration, development and production of oil and gas on the UKCS and provides both technical and financial advice. In its promotional literature OSO says that it "suggests the most appropriate source of goods and service available".

3. The Code of practice agreed between DEN and UKOOA is designed to ensure that UK organisations are given a "full and fair" opportunity on every contract. It stipulates in detail the practice to be followed. For example, it says that specifications for tenders should be available in English and they should be drawn up in accordance with British standards. As a result of these policies, the UK share of orders placed for developments on the UKCS has steadily risen, as the following table shows. This increase is a measure of the extent to which the OSO has achieved its objectives; by the same token, given the high UK share, any

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further increase in the ratio is likely to impose increased costs on the oil companies.

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
<u>Value of order fbn</u>	2.6	3.6	3.4	2.2	1.9
<u>UK Share %</u>	72	74	80	82	87

Source: DEN Brown Book

4. This is the branch of OSO whose activities run against Government policy on procurement. It is much disliked by the industry and BP has told us privately that the activities in this respect adds some 5% to their North Sea costs. This branch of the OSO derives its leverage over the industry from the fact that the department also administers the North Sea licences and there is close co-operation between OSO and that part of the Department responsible for licensing.

Exports and administration

5. This branch promotes the UK Offshore Supplies Industry overseas, liaising with DTI, FCO and BOTB and is responsible for the Scottish dimension, including ministerial and other representational activities.

Research and development

6. This works with industry and research institutions to improve and expand indigenous offshore technology. It appraises and sponsors R&D proposals from the industry operating via the Offshore Technogy Board chaired by the Minister of State.

PMG 519 APR 1989 -14

dti

the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon Peter Brooke MP
Paymaster General
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

PAYMASTER GENERAL	
REC.	19 APR 1989
TO	MR F. K. JONES
	EX/CST/FST/EST
	SIR P. MIDDLETON
	MR ANSON / MR WICKS
	MR BUATE / MR LANKESTER
	MR MONCK / MR PHILLIPS
	MR WILKINSON / MR R. G. AWEN
	MR I. WILSON / MR MOORE
	MRS M. BROWN / MRS BEASTALL

Department of
Trade and Industry

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MR BURR / MR MEYRICK
MR M. L. WILLIAMS / MR TYRIE
MR CALL.

Direct line 215 5422
Our ref MM2dALQ
Your ref
Date 19 April 1989

EC DIRECTIVE FOR THE EXCLUDED SECTORS

Peter Morrison copied to me his letter to you of 31 March on this subject.

In considering his suggestion for changing our tactics on the treatment of the energy sector, there are wider considerations which must be taken into account.

The liberalisation of public purchasing is one of the top priorities in the Single Market Programme. It remains my view that the best way to maintain the thrust towards liberalisation in this area is to treat the excluded sectors consistently - albeit that we have a separate proposal for telecommunications for presentational reasons. This approach could well be prejudiced if energy were split off to be handled by another Directorate-General and the momentum of the exercise would be lost.

Also, to highlight the position of energy in this way might well have the opposite effect of what is intended. We are agreed that we should negotiate to exclude upstream oil and gas, but with separate treatment of energy attention could well be focused even more closely on our oil and gas interests, including increased criticism of the role of the Offshore Supplies Office.

I am copying this letter to Peter Morrison.

Y. L. Morrison

fkj.jrc.eo

MR COLLING

From: F K JONES - PSP
Date: 19 April 1989
x 5542

cc **Principal Private Secretary**
PS/Paymaster General
Mr Anson
Mr Phillips
Mr Beastall
Mr M L Williams

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

I have tried in the attached version of the draft letter sent yesterday to the Paymaster General to put more clearly the relation between a proposal by UKOOA and that which the Government may make for the excluded sectors as a whole. In doing so, I have tried to take account of several suggestions put to me.

K.J.

F K JONES

REVISED VERSION 19.4.89

CONFIDENTIAL

DRAFT LETTER FOR SIGNATURE OF THE PAYMASTER GENERAL
(to be sent after Chancellor's meeting with Mr Parkinson on
20 April)

The Hon Peter Morrison MP
Minister of State for Energy
Department of Energy
Thames House South
Millbank
London
SW1P 4QJ

April 1989

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

The Chancellor discussed this subject yesterday with Cecil Parkinson and mentioned the possibility of UKOOA putting forward ideas involving third party certification of purchasing practices. The purpose of this letter is to explain how this might fit in to a general strategy, and why I believe that officials should suggest when they meet UKOOA next Tuesday that it develops the proposal.

I think that we need to consider before very long whether we should now bid strongly for audit to be given a major role in the excluded sectors. I hope soon to write to colleagues about that possibility. It could involve, as you suggested last summer, a relaxation of the normal rules for undertakings which satisfy audit provisions. These might be based on a standard to be developed on the basis of that for quality assurance, EN29000.

However, in the case of oil and gas, I do not believe we should wait to see how this progresses but instead help UKOOA to consider for itself the nature of possible arrangements for independent audit. If these can be developed, the Government might aim to reach an understanding with the Commission that the sector should not be covered by the directive, unless audit showed systematic discrimination. We could expect the Commission to want to have similar understandings with the other Member States involved.

I believe that both of us would regard this as preferable to the "voluntary proposal" which UKOOA has itself developed. It is clear that UKOOA is under pressure from constituent companies to take some action, and similar bodies in other countries have apparently been willing to put their main effort into amending the Commission's proposal. I understand that there is reason to believe that the approach I have outlined would be acceptable to firms in the UK sector.

In offering to support a proposal on these lines developed by UKOOA, we could continue to hold that OSO does not, and cannot, make companies purchase in the UK. We could also continue to hold that on the basis of the Commission's present proposals it would not be right to cover the sector. Should we be successful in getting certification accepted more generally, with derogations from the detailed rules available to companies which obtain it, we might then need to consider our position on exclusion for the sake of ensuring that the sector is properly opened up in other Member States.

Provided that UKOOA agrees, we should need to consider very carefully how we should handle the development of the proposal in the forthcoming debate. We may by then be able to take forward the more general application foreshadowed in Ivon Brabazon's speech in the House of Lords on 13 March.

I am copying this letter to Geoffrey Howe and David Young, and to Nicholas Ridley and Paul Channon in view of their concern with other sectors affected by the Commission's proposals, and also to Sir Robin Butler.

[PB]



FROM: J M G TAYLOR
DATE: 20 April 1989

CHANCELLOR

As I understand it, Mr Jones' note to the PMG means the following:

- (i) The Commission's single market programme includes rules for procurement by the upstream oil and gas sector. UKOOA's constituent companies have pressed it to come up with an alternative proposal. UKOOA has therefore drafted such a proposal - but not yet presented it to the Commission. This proposal would allow the Commission direct access to oil companies' books, in order to satisfy itself that the companies had conducted their purchasing procedures fairly.
- (ii) The European Parliament looks like it might actually vote to exclude upstream oil and gas from the procurement rules.* But UKOOA still wants to do something, and we (Treasury) see some virtue in encouraging them. But we don't like their proposal (because it involves the Commission). So we want to suggest an alternative, which we could put to them on 25 April. We would intend that UKOOA, not us, would float this alternative with the Commission.
- (iii) The alternative proposal would be that companies should be prepared to have their purchasing procedures audited to check whether they reach a European quality standard. The auditing would be carried out by a third party. The sanction would be that, if the companies failed the audit, the procurement rules could be extended to cover them.

3. Mr Jones suggests you float this with Mr Parkinson this afternoon, and that PMG follows it up with a letter. (A revised draft of that letter is attached.)

...

J M G TAYLOR

* It's Economic + Monetary Affairs Committee has already supported this.

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

20 April 1989

Stephen Haddrill Esq
PS/Secretary of State for Energy
Department of Energy
Thames House South
Millbank
LONDON
SW1

cc PS/Paymaster General
Mr Anson
Mr Monck
Mr F K Jones
Mr M L Williams

Dear Stephen,

OFFSHORE SUPPLIES OFFICE

Your Secretary of State discussed with the Chancellor this afternoon the future of the Offshore Supplies Office (OSO).

Your Secretary of State said that he shared the Chancellor's view that the OSO played an essentially protectionist role. There were, however, both political and presentational problems in being seen to propose that it should be abolished. The Chancellor noted that the granting of discretionary licences had some influence on companies' purchasing behaviour. That would, in practice, mitigate the apparent effect of abolishing the OSO. More generally, the UK stood to gain significantly from the opening up of public procurement. Your Secretary of State noted that the influence of discretionary licensing in this context was not readily useable, presentationally.

After further discussion, it was agreed that, if there were pressure from the Community to abolish the OSO, that should not be resisted. Although we might not wish to volunteer abolishing the OSO, agreeing to its abolition might be appropriate in the right context (eg as part of an overall public procurement package which met our wider objectives). The subject would, in the first instance, be discussed at E(CP).

Yours sincerely,

Duncan Sparkes

p.p. J M G TAYLOR
Private Secretary



FROM: J M G TAYLOR
DATE: 21 April 1989

PS/PAYMASTER GENERAL

cc Mr Anson
Mr F K Jones
Mr M L Williams

PM

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

Mr F K Jones' minutes of 18 and 19 April enclosed drafts of a letter which the Paymaster General might send to the Minister of State for Energy. It was suggested that the Chancellor might trail this with Mr Parkinson at their bilateral meeting on 20 April.

2. In the event, the Chancellor chose not to mention this to Mr Parkinson. This was partly because it did not fit very well with the flow of the discussion; but more because the Chancellor was not altogether persuaded that we should press the alternative proposal.

3. The Chancellor is content for the Paymaster General to write along the lines proposed, if he is himself convinced that we should press the case. But the draft will need to be amended appropriately.

D. M. Parkes
p.p. J M G TAYLOR

FROM: J R COLLING
DATE: 21 April 1989

PS/PAYMASTER GENERAL

cc Principal Private Secretary
Mr Anson
Mr Phillips
Mr Beastall
Mr M L Williams

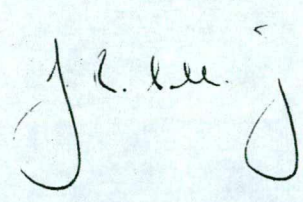
PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

I enclose a revised draft of the letter the Paymaster General might wish to send to Mr Peter Morrison on Monday in preparation for our meeting with UKOOA on Tuesday, together with officials from the Department of Energy's International Unit and the Offshore Supplies Office.

2. Contact with the International Unit suggests support from there, and possibly from OSO, for the line that UKOOA should not go forward with its voluntary proposal but should consider how it might be re-built around a form of audit or third party certification of procurement practice.

3. Contacts in Brussels today have shown considerable interest by the French in proposals they have seen from the CBI and CEGB for third party certification as a means of monitoring compliance and possibly as a basis for derogation from the procedural rules in the proposed directive.

4. On balance we recommend that the letter be sent.



J R COLLING
PSP
Ext 5367

REVISED VERSION 21.4.89

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DRAFT LETTER FOR SIGNATURE OF THE PAYMASTER GENERAL

The Hon Peter Morrison MP
Minister of State for Energy
Department of Energy
Thames House South
Millbank
London
SW1P 4QJ

[24] April 1989

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

The purpose of this letter is to explain how the possibility of UKOOA putting forward ideas involving third party certification of purchasing practice might fit in to a general strategy, and why I believe that officials should suggest when they meet UKOOA tomorrow that it develops the proposal.

I think that we need to consider before very long whether we should now bid strongly for audit to be given a major role in the excluded sectors. I hope soon to write to colleagues about that possibility. It could involve, as you suggested last summer, a relaxation of the normal rules for undertakings which satisfy audit provisions. These might be based on a standard to be developed on the basis of that for quality assurance, EN29000.

However, in the case of oil and gas, I do not believe we should wait to see how this progresses but instead help UKOOA to consider for itself the nature of possible arrangements for independent audit. If these can be developed, the Government might aim to reach an understanding with the Commission that the sector should not be covered by the directive, unless audit showed systematic discrimination. We could expect the Commission to want to have similar understandings with the other Member States involved.

I believe that both of us would regard this as preferable to the "voluntary proposal" which UKOOA has itself developed. It is clear that UKOOA is under pressure from constituent companies to take some action, and similar bodies in other countries have apparently been willing to put their main effort into amending the Commission's proposal. I understand that there is reason to believe that the approach I have outlined would be acceptable to firms in the UK sector.

In offering to support a proposal on these lines developed by UKOOA, we could continue to hold that OSO does not, and cannot, make companies purchase in the UK. We could also continue to hold that on the basis of the Commission's present proposals it would not be right to cover the sector. Should we be successful in getting certification accepted more generally, with derogations from the detailed rules available to companies which obtain it, we might then need to consider our position on exclusion for the sake of ensuring that the sector is properly opened up in other Member States.

Provided that UKOOA agrees, we should need to consider very carefully how we should handle the development of the proposal in the forthcoming debate. We may by then be able to take forward the more general application foreshadowed in Ivon Brabazon's speech in the House of Lords on 13 March.

I am copying this letter to Geoffrey Howe and David Young, and to Nicholas Ridley and Paul Channon in view of their concern with other sectors affected by the Commission's proposals, and also to Sir Robin Butler.

[PB]

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cc PPS

- Mr Anson
- Mr Phillips
- Mr Beastall
- Mr M L Williams
- Mr J R Colling



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Peter Morrison MP
 Minister of State
 Department of Energy
 Thames House South
 Millbank
 LONDON SW1P 4QJ

Oh, I passed on your reservations (my minutes of 21/4, behind) but PMG decided to write nonetheless!

24 April 1989

Dear Sir,

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

The purpose of this letter is to explain how the possibility of UKOOA putting forward ideas involving third party certification of purchasing practice might fit into a general strategy, and why I believe that officials should suggest when they meet UKOOA tomorrow that it develops the proposal.

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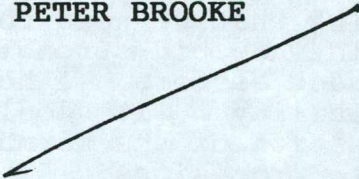
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I am copying this letter to Geoffrey Howe and David Young, and to Nicholas Ridley and Paul Channon in view of their concern with other sectors affected by the Commission's proposals, and also to Sir Robin Butler.

*J
Lus evn*

PC

PETER BROOKE



CONFIDENTIAL

PM 9 20 APR 1989 S



THE MINISTER OF STATE

The Rt Hon Peter Brooke MP
Paymaster General
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

DEPARTMENT OF ENERGY
THAMES HOUSE SOUTH
MILLBANK
LONDON SW1P 4QJ

Direct Line 01-241 238 2159
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PAYMASTER GENERAL	
REC.	26 APR 1989
NAME	MR F K JONES
	PS/CX PS/CST
	PS/FST PS/EST
	MR ANSON
	MR NICKS
	MR PHILLIPS
	MR WILLACY

Mr RIG Auen
Mr Beastall
Mrs M BROWN 26 April 1989
Mr MC Williams
Mr Tyrie
Mr Call

PROCUREMENT BY THE UPSTREAM OIL AND GAS INDUSTRY

Thank you for your letter of 14 April. I am also grateful to David Young for his of 19 April.

The French have very recently told our Embassy in Paris that in their Presidency they wish to separate the energy industries from the rest of the excluded sectors proposal so as to make rapid progress on the latter. Moreover they would be ready to acquiesce in omitting upstream oil and gas from coverage in return for our firm support in separating out the energy sector.

We shall have further opportunity next month to test the French position when Sir Peter Gregson holds bilateral energy talks with his French opposite number. Meanwhile I hope you will agree that we may be in sight of a deal which could advance the objectives approved last July both of making good progress on the excluded sectors directive and of exempting from it upstream oil and gas.

I am sending a copy of this letter to David Young.

PETER MORRISON

CONFIDENTIAL

PAYMASTER GENERAL

From: F K JONES - PSP
Date: 28 April 1989

cc **Principal Private Secretary**
PS/Chief Secretary
PS/Financial Secretary
PS/Economic Secretary
Mr Anson
Mr Wicks
Mr Phillips
Mr Willacy
Mr R I G Allen
Mr Beastall
Mrs M E Brown
Mr M L Williams
Mr Tyrie
Mr Call

PROCUREMENT BY THE UPSTREAM OIL AND GAS SECTOR

You asked for comments on Mr Morrison's report, in his letter of 26 April, that the French had offered to acquiesce in excluding upstream oil and gas in return for support in separating out the energy sector.

2. This is not a total surprise: the French have for some time argued for separation, ostensibly because of differences between sectors in purchasing arrangements, but probably also because they have thought they could more easily get purchases of energy included in an energy directive. The reason for wanting this is to sell surplus nuclear electricity to Germany.

3. However, our latest (confidential) information from the Commission is that it is by no means as confident as it was that it can get a directive covering oil and gas through the Council. This is probably at least partly because the coolness of the "support" for its proposals from countries such as Germany and Spain makes the UK a useful ally. But we understand that the Commission has also found that more countries than it expected have told it privately of difficulties in covering extractive industries.

4. This means, of course, that in terms of excluding oil and gas, the case for a deal may be less than Mr Morrison supposes. French support would not in any case be decisive - neither they nor us would try to block the directive for the sake of the oil and gas sector - and Germany, for example, has made clear the importance it attaches to getting this of all sectors liberalised. From our point of view, and also DTI's, the case for supposing that "separation" would mean faster progress is certainly not proven, and in fact we suspect it would slow things down.

5. It may be helpful to make some of these points to Mr Morrison and to caution against letting the French count on our support. I attach a draft (which can be unclassified).

KJ.

F K JONES

UNCLASSIFIED

DRAFT LETTER FOR SIGNATURE OF PAYMASTER GENERAL TO

The Hon Peter Morrison MP
Minister of State
Department of Energy
Thames House South
Millbank
London
SW1P 4QJ

PROCUREMENT BY THE UPSTREAM OIL AND GAS INDUSTRY

Thank you for your letter of 26 April.

I am grateful to you for telling me of the possible French approach. While it may seem as if it opens up some interesting possibilities, it would of course be inappropriate for Sir Peter Gregson to do any more at this stage than listen to what the French have to say. Indeed, if the Commission did decide to exclude upstream oil and gas after a clear vote to do so by the European Parliament, the French ^{would} will not have anything to offer us, since we could not be certain that having separate directives would speed things up. Clearly we should not indicate any support for the French idea until we see how the Commission has modified its proposals.

Perhaps the best way forward might be for our officials to take stock of the position before Sir Peter Gregson holds bilateral talks with his French opposite number.

I sending a copy of this letter to David Young.

cc PPS



PS/Chief Secretary
PS/Financial Secretary
PS/Economic Secretary
Mr Anson
Mr Wicks
Mr Phillips
Mr Willacy
Mr F K Jones
Mr R I G Allen
Mr Beastall

Mrs M E Brown
Mr M L Williams
Mr Tyrie
Mr Call

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Peter Morrison MP
Minister of State
Department of Energy
Thames House South
Millbank
LONDON SW1P 4QJ

8 May 1989

Dear Peter,

PROCUREMENT BY THE UPSTREAM OIL AND GAS INDUSTRY

Thank you for your letter of 26 April.

I am grateful to you for telling me of the possible French approach. While it may seem as if it opens up some interesting possibilities, it would of course be inappropriate for Sir Peter Gregson to do any more at this stage than listen to what the French have to say. Indeed, if the Commission did decide to exclude upstream oil and gas after a clear vote to do so by the European Parliament, the French would not have anything to offer us, since we could not be certain that having separate directives would speed things up. Clearly we should not indicate any support for the French idea until we see how the Commission has modified its proposals.

Perhaps the best way forward might be for our officials to take stock of the position before Sir Peter Gregson holds bilateral talks with his French opposite number.

I am sending a copy of this letter to David Young.

Pc

PETER BROOKE

CONFIDENTIAL

FROM: F K JONES - PSP

DATE: 17 July 1989

x 5543

CHANCELLOR OF THE EXCHEQUER cc

- Chief Secretary
- Financial Secretary
- Paymaster General
- Economic Secretary
- Sir Peter Middleton
- Mr Anson
- Mr Wicks
- Mr Lankester
- Mr Monck
- Mr Odling-Smee
- Mr Phillips
- Mr Willacy
- Mr R I G Allen
- Mr Beastall
- Mr D J L Moore
- Mrs M E Brown
- Mr I P Wilson
- Mr Meyrick
- Mr M L Williams
- Mrs Chaplin
- Mr Tyrie

Ch.
Content to write
as proposed?
OK
17/7

EC PUBLIC PURCHASING: UPSTREAM OIL AND GAS

This submission recommends that you write to Mr Parkinson tomorrow asking for agreement that officials should follow up ideas put informally by the Commission. These concern exclusion from directives now being discussed in return for, in particular, the ending of the involvement of the Offshore Supplies Office (OSO) in companies' procurement. Following a meeting of EQS on 14 July, Cabinet Office is ready to refer to a letter from yourself in the agenda for OD(E) on Thursday 20 July.

You are due to go to this, anyway.

Background

2. OD(E) agreed last July on trying to exclude the upstream sector from the proposed directives. This was one of a set of objectives which also included lightening the bureaucracy in the proposals. In February you questioned how the objective of exclusion was compatible with liberalisation. In April you

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discussed the future of OSO with Mr Parkinson and obtained agreement that abolition might be appropriate in the right context, for example as part of an overall public procurement package which met our wider objectives (Mr Taylor's letter of 20 April). E(CP) was mentioned as the appropriate forum but we understand that the Department of Energy will advise Mr Parkinson to accept OD(E).

Argument

3. We have the possibility now of obtaining exclusion from the proposals on condition that the information flow to Government is ended, subject to special arrangements regarding safety. Commission officials suggest that assurances on the award of licences will also be needed. The package looks attractive, because it should ensure liberalised procurement and non-discriminatory licensing in other Member States without (as the package has been put to us) involving coverage by a directive.

4. Officials in EQS have seen the latter as important on the basis of the Commission's present proposals for directives because their regulatory nature fits particularly badly with North Sea operations and could discourage development; because of the involvement in the North Sea that coverage would give the EC; and because the breaking of procedural rules by operators, many of them multinationals, could lead the Commission to take action against the Government in the European Court of Justice.

5. We have sought, with Ministerial agreement, to deal with the regulatory nature of the proposal by suggesting derogations for companies whose procurement systems satisfy independent tests. This would apply in all the sectors affected - water, transport and telecommunications as well as energy. There are encouraging signs that the Commission is interested in developing the idea. But we will not know until much later, probably October, whether the idea will run, and by then it may be too late to take up - or modify - the thinking now put to us.

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6. The Department of Energy might then argue that OSO's involvement in procurement could still continue. The Cabinet Office Legal Adviser told EQS that the Commission would have a good case for saying that OSO's activities on behalf of UK suppliers infringe the Treaty of Rome. The Commission has nonetheless decided against taking action on this ground in the past, and the proposed directives would probably not themselves curb OSO. The advantage for the Treasury is therefore in taking the present opportunity for doing away with OSO's procurement activities as part of an arrangement by the Commission with Member States with upstream interests.

7. We should recognise that instead of exclusion from a directive we might finish up with an exemption within one that is available to Member States which fulfil certain conditions. Whatever arrangement was concluded, the Commission could propose another directive if its terms were broken. But it may decide that being able to demand compliance without that step being necessary is better and that it will make it easier to sell the package to Member States without significant upstream activities. (The oil companies, acting at European level, have already proposed such an arrangement to the Commission.) Exemption within a directive could suit the UK in that we would have a better guarantee that other Member States would not act unfairly in either licensing or procurement, and a fallback of knowing that if they did the companies in their area would need to follow the directive, but it would mean us accepting EC involvement in this aspect of the North Sea.

Content of draft letter

8. The draft letter asks for agreement to negotiations intended to establish what the Commission might agree to with regard to licensing and the provision of information on safety. The negotiations would be on the basis that if the outcome was satisfactory the Government would be ready to end the OSO's involvement in procurement activities. This anticipates advice that Mr Parkinson may be given to try to stall in Brussels on the "information" point. Doing that would almost certainly prevent

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useful discussions and would not help your objective of abolishing OSO. The draft also anticipates a point that Mr Parkinson may be advised to put on unfair competition from subsidised producers. It does not suggest the ending of OSO's non-procurement activities, on the grounds that the condition set in April of an overall public procurement package has not yet been fulfilled and that abolition can more easily be tackled in the Public Expenditure Survey after EC considerations have led to the ending of its procurement role being accepted.

K.J

F K JONES

CONFIDENTIAL

~~DRAFT LETTER FOR SIGNATURE OF THE CHANCELLOR OF THE EXCHEQUER~~

The Rt Hon Cecil Parkinson MP
Secretary of State for Energy

Pld type final

EC SINGLE MARKET: EFFECT OF PUBLIC PURCHASING PROPOSALS ON UPSTREAM OIL AND GAS

When OD(E) discussed the Commission's procurement proposals last July, it agreed that we should try to exclude the upstream sector from their scope. We now have suggestions from Commission officials which may enable us to achieve this objective. Following discussion in EQS on the basis of a note by our officials and David Young's, I propose that we proceed as described below.

We start with the priority which we attach to opening up procurement in the sectors concerned by the Commission's proposals - water, transport and telecommunications as well as energy. This means that we cannot treat the exclusion of the upstream sector as overriding, nor should we risk losing the chance of liberalisation in other Member States by pressing for the exclusion of all companies which are in the private sector or which operate in competitive markets. Our difficulties with the upstream sector have derived to a large degree from the bureaucratic nature of the proposals. UK officials have put forward plans in Brussels for reducing this by allowing companies in all sectors to submit their procurement systems to independent tests instead of following detailed rules. If these plans succeed - and the latest indication from the Commission is that it is at least considering them seriously - coverage of the upstream sector will be easier to accept. We will probably not know the outcome until October at the earliest however, and exclusion may still be desirable in order to avoid EC involvement in

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North Sea procurement and the risk of our having to defend cases in the European Court of Justice concerning non-compliance with procurement rules by multinational companies.

We should therefore, I believe, ask officials to pursue the latest suggestions coming from Brussels. These concern the possibility of exclusion of the upstream sector from the directive in return for accepting conditions regarding the award of licenses and the passing of information about procurement to national authorities. Control of licensing is important to us, and we need to ensure that we can exercise the necessary discretion, but I am hopeful that we can satisfy the Commission there is not discrimination by nationality. (It will be important in negotiations with the Commission not to say that the UK content of a company's procurement is taken into account). The major change required from current policy is over the flow of information under the Memorandum of Understanding with the operators which permits the Offshore Supplies Office (OSO) to involve itself in the award procedure.

Our support for open procurement and deregulation should mean the end of this involvement. The amount of the costs which it imposes on operators can be disputed, but it is difficult to argue that it is not discriminatory. The point is fundamental to the Commission, which if it chose could take us to the European Court of Justice under Article 30 of the Treaty with a good chance of success. We can explain the change domestically as being part of the liberalisation within the EC which will be of overall benefit to UK suppliers and also as a necessary step to prevent Community rules being applied to a sector for which we believe they are inappropriate.

There is an issue worth mentioning over the formal terms of the exemption. The exclusion from the directives which Commission officials have mentioned would mean not covering the upstream sector at all. The suggestion has been made, however, by exploration and production interests at European

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level and also by the Dutch operators' association that the sector should be covered but that the directives should allow an exemption for individual Member States if the relevant conditions are fulfilled. This could be attractive to the Commission because it would let it demand compliance with the rules if one or other Member State defaulted. There ^{might be} ~~is~~ an advantage for us as well, since we would have a better assurance that UK companies will be treated fairly by other Member States in licence applications and in procurements.

I suggest that we should put off deciding our position on the latter point until we know more about the attitude of other Member States to the Commission's ideas and we have had time to assess the importance of avoiding EC involvement in North Sea procurement through a directive. It is necessary now, I believe, for officials to discuss with the Commission the licensing aspects of its ideas and the ways that information on safety can be provided, and to impress upon the Commission the need for it to act against distortions of competition caused by subsidies. The talks should be on the basis that we will be able to accept the ending of the requirement to provide information to OSO and its involvement in award procedures. Unless officials are able to say that abandonment of the Memorandum of Understanding is a realistic possibility, we cannot expect the Commission to be forthcoming on the other issues. We can decide in September whether we can accept the package that results.

The next step should be for your officials and mine, in consultation with David Young's to agree the terms of our requirements on licensing and on safety, and to talk to Commission officials before the summer break. Speed is important in order to encourage the Commission to go forward with its ideas and to influence their development and, not least, to enable the Commission and ourselves to counter any reluctance by other Member States to depart from full coverage in a directive.

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I am sending copies of this letter to the Prime Minister and members of OD(E) and to Sir Robin Butler.

[NL]

CONFIDENTIAL*Pse do internal CC.**As behind,**Including**Mr FK James*

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

The Rt Hon Cecil Parkinson MP
Secretary of State for Energy
Thames House South,
Millbank
London SW1P 4QJ

18 July 1989

Dear Secretary of State

**EC SINGLE MARKET: EFFECT OF PUBLIC PURCHASING PROPOSALS ON
UPSTREAM OIL AND GAS**

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encourage the Commission to go forward with its ideas and to influence their development and, not least, to enable the Commission and ourselves to counter any reluctance by other Member States to depart from full coverage in a directive.

I am sending copies of this letter to the Prime Minister and members of OD(E) and to Sir Robin Butler.

Yours sincerely

Nigel Lawson

PP NIGEL LAWSON

[Approved by the Chancellor
and signed on his behalf.]

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THE MINISTER OF STATE

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

CH/EXCHEQUER	
REC.	19 JUL 1989
ACTION	Mr F.K. JONES
COPIES TO	PS IPMG, Mr PHILLIPS, Mr R.I.G. ALLEN, Mr BEASTALL, Mr M.L. WILLIAMS, Ms SYMES.

DEPARTMENT OF ENERGY
THAMES HOUSE SOUTH
MILLBANK
LONDON SW1P 4QJ

Direct Line 01-211 238 2159
Switchboard 01-211 3000 238 3000

✓
19/7

19 July 1989

Dear Chancellor

EC PUBLIC PURCHASING PURCHASES ON UPSTREAM OIL AND GAS

Thank you for your letter of 18 July to Cecil Parkinson.

Cecil and I agree that we have to follow up the Commission's latest ideas and that officials should urgently explore them. We accept that the Memorandum of Understanding which gives effect to our policy on full and fair opportunity is now in issue. But it goes too far to say that our support for open procurement and deregulation should mean the end of the Offshore Supplies Office's involvement in procurement awards. We can argue that the involvement is not discriminatory and that its purpose is to ensure a level playing field. It is after all the only defence we have against discriminatory purchasing by, say, AGIP from its Italian affiliates or US companies from their local suppliers.

It is, we consider, premature to enter into talks with the Commission on the basis that we will be able to accept the ending of the requirement to provide information on procurement intentions to the OSO and its involvement in award procedures. Rather officials should now be instructed to explore the Commission's suggestions to find out which aspects of our full and fair opportunity policy are seen as objectionable and concentrate on possible amendments to the Memorandum of Understanding. If it proves impossible to negotiate acceptable suggestions, then officials should refer back to Ministers so that they can consider whether on balance it is worthwhile to abandon the Memorandum of Understanding completely in order to obtain exclusion of the upstream oil and gas sector. Sufficient assurance from the Commission that it will act against distortion of competition caused by subsidies of one sort or another will weigh substantially in that balance.



We hope you can accept that that would be a sensible way of carrying things forward. In that case there would be no need for further discussion in OD(E).

I am sending copies of this letter to the Prime Minister, to members of OD(E) and Sir Robin Butler.

Yours Sincerely
Jim Mabel

PETER MORRISON

*(Approved by Mr Mansa
and signed in his absence)*



bp. 19/14

Ch.
Mr Parkinson has asked if he can come + have a private word with you about the OSO. Provisionally fixed for 20/14. OK?

OK
7/14

OK-

* ~~SAK~~ OK

Ying + Fin Sec.



Flagged behind director #3

Ch.

Could you please have a quick look at the pps. on EC procurement? You will see that Mr Morrison has now written. His office says that he is keen that you should agree to take this off the agenda for tomorrow, with a view to settling the issue bilaterally.

2. Mr Morrison was phoning for a word on the phone, but I indicated that you were unavailable. He may, I suppose, seek to have a word in the lobby later. But would you ever

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FROM: F K JONES - PSP
DATE: 19 July 1989

CHANCELLOR OF THE EXCHEQUER

cc PS/Paymaster General
Mr Phillips
Mr R I G Allen
Mr Beastall
Mr M L Williams
Ms SymesEC SINGLE MARKET: EFFECT ON PUBLIC PURCHASING PROPOSALS ON
UPSTREAM OIL AND GAS*Mr Morrison has now written, second*

Following your letter of 18 July, Mr Parkinson has been advised to either respond in writing to your letter or to try to telephone you this evening. If a solution is not reached bilaterally before OD(E) tomorrow, it will be possible to discuss the issue under the Forward Look. I understand that Cabinet Office will be asking your office and Mr Parkinson's whether either of your wish in advance of OD(E) to keep the possibility of a discussion open.

2. The objective set out in your letter was to get agreement that officials should discuss issues to do with licensing and safety with the Commission on the basis that the Government will be able to accept the ending of "Full and Fair Opportunity". The line to take on this, with Mr Parkinson on the telephone or at OD(E), might be that:

- i. Involvement in companies' purchasing is contrary to the Government's philosophy towards business, and the implicit bias towards UK sourcing contradicts our open trading policy.
- ii. Companies tell us that they might save up to 8 per cent without OSO. The evidence may be anecdotal - savings may not always apply across the board - but it cannot be ignored.

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iii. Accepting for the moment that the policy was justified at one time, the UK supply industry is now a mature one - OSO's figures show UK sourcing to have reached as much as 87 per cent in recent years. (Industry's average import prosperity is about 20 per cent; ironically the OSO's UK sourcing figures are probably on the high side).

3. Department of Energy says that it is possible that Mr Parkinson may accept your position. He has been advised, however, that officials should hold talks with the Commission to explore what amendments to the Memorandum of Understanding the Commission might accept. This would be on the basis that the Memorandum is designed to ensure a level playing field and that it is not discriminatory. If the Commission was unwilling to talk on this basis, officials would need to seek further instructions.

4. Points to make in reply are as follows:

i. Some parts of the Code of Practice (annexed to the Memorandum) are fully in line with the principles behind the Commission's proposals (eg transparency on standards and willingness to accept equivalents, giving bidders equality of information, and equal bidding times). But while these parts are not discriminatory, the Commission would not agree that they can probably be supervised by an arm of Government.

ii. Other parts are clearly biased towards UK suppliers (eg in the case of a non-UK award, notice is to be given to OSO before notifying selected suppliers, and requiring decisions to ask potential bidders to estimate the value of UK content). Germany has already put a note detailing Ministers asking that their suppliers be treated on a par with UK suppliers.

iii. How would we react if other Member States wanted to continue to follow similar practices in other sectors?

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iv. Our interest is in getting the Commission to agree satisfactory terms on licensing and safety - FFO casts doubt on our sincerity - we need to ensure that the Commission has time to bring other Member States round accepting exclusion.

5. If you wished, you could accept a fallback position that officials should at least have authority to discuss licensing and safety regardless of the Commission's position on the memorandum.

6. If Mr Parkinson does not accept the position in your letter, or if you or he do not agree the fallback above, it will probably be best to air the issue in OD(E). I understand that Lord Young is being briefed to give full support to the line in your letter. If you agree, I suggest your office should ask Cabinet Office to advise the Chairman that a discussion may be necessary.

KJ.
F K JONES

4. I understand that the Commission official responsible will be available next Thursday. In order to seize this opportunity, I recommend you respond to Mr Morrison on the lines of the attached draft. If contrary to expectations, Mr Morrison demurs you can expect Sir Geoffrey Howe and Lord Young to write in your support.

Sue Waight
for - F K JONES - in Brussels.

DRAFT LETTER FOR SIGNATURE OF THE CHANCELLOR OF THE EXCHEQUER

Rt Hon Peter Morrison MP
Minister of State
Department of Energy
Thames House South
Millbank
London SW1P 4QJ

EC PUBLIC PURCHASING PROPOSALS: EFFECT ON UPSTREAM OIL AND GAS

Thank you for your letter of 19 July.

(The Offshore Supplier Office)

2. I still believe that we shall need to accept that ~~OSO~~ should not be involved in companies' procurement. I am prepared to agree that officials should obtain clarification from the Commission of the features in the Memorandum of Understanding which are objectionable. I believe it is important, however, that regardless of the Commission's position on the Memorandum of Understanding, officials should discuss, without commitment, what arrangements the Commission would be able to accept on licensing and safety.

3. It was clear, from the Internal Market Council on 18 July, that the Commission will have difficulty in persuading other Member States of the case for changing its position on upstream oil and gas. This makes ^{it} all the more important that talks are held quickly, so that we can take a collective view on how to proceed.

4. I am sending copies of this letter to the Prime Minister and members of OD(E) and to Sir Robin Butler.

cc PS/Paymaster General
 Mr Phillips
 Mr R I G Allen
 Mr Beastall
 Mr M L Williams
 Mr Jones



Treasury Chambers, Parliament Street, SW1P 3AG
 01-270 3000

21 July 1989

Rt Hon Peter Morrison MP
 Minister of State
 Department of Energy
 Thames House South
 Millbank
 LONDON
 SW1P 4QJ

Dear Minister

EC PUBLIC PURCHASING PROPOSALS: EFFECT ON UPSTREAM OIL AND GAS

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Yours sincerely

NIGEL LAWSON

pp

[Approved by the Chancellor
 and signed on his behalf]