PO-CH/NL/0843 PARTA

Chex

Lawson

PART A

CONFIDENTIAL

(Circulate under cover and notify REGISTRY of movement)

PO -CH /NI./0843

PART A

CHANCELLOR'S 1986 PAPERS ON THE EUROPEAN COMMUNITY (EC) NOT INCLUDING THOSE FOR COUNCIL MEETINGS

PO -CH /NI/0843 PART A

Begins: 7/1/86 DD: 25 years

Ends: 23/12/86 5/9/95

2797/3

CONFIDENTIAL

Ch/CST may raise, since he cannot come to yours meeting at 3.00 pm! Other papers on separate meeting folder

FROM: P J CROPPER
DATE: 7 May 1986

CHANCELLOR

cc Chief Secretary
Financial Secretary
Economic Secretary
Minister of State
Mr Ross Goobey
Mr Tyrie

COMMUNITY BUDGET STRATEGY

Adam Ferguson and John Houston (Special Advisers at FCO) and Tim Boswell (Special Adviser MAFF) invited me to meet them yesterday to discuss the EEC aspect of the political background in the run up to the General Election. It was mostly about 1.4%, agriculture etc.

2. The proposal was that we should prepare a note for our ministers.

3. I did not demur from the suggestion that we should meet again to discuss a draft, but committed myself to nothing.

4. I have since read Mr Lavelle's report of his discussions with FCO officials, and his draft note for you to send to the PM. — on yours meeting folder for 3.00 pm

5. Roger is clearly right in implying that the key question is whether it would be better (i) to play along the question of a rise to 1.6% until after our General Election, or (ii) to camp quite firmly on 1.4% and take the flak.

6. I will not put my name to anything without reference to you.

P J CROPPER

FROM: CONFIDENTIAL

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

LORD CHANCELLOR

HOUSE OF LORDS,
LONDON SW1A 0PW

10 July 1986

Dear Alan;

Debate on Draft EC Regulations on Imports of Counterfeit Goods

Thank you for sending me a copy of your letter of 3rd July to John Biffen enclosing a draft L Committee memorandum for the forthcoming debate in the Commons Scrutiny Committee on the proposed Regulations on Imports of Counterfeit Goods.

In the draft memorandum you point out in paragraph 7 that the Government has doubts about the proposed use of Article 113 as the legal base of the Instrument. I suggest that they are - or should be - more than doubts. Further, I understand that other Member States, including France, are concerned about the proposed use of Article 113 although there has been very little discussion of this matter in the Council working group in Brussels. I suggest that, in the forthcoming debate, the Government should make it clear that the UK will be arguing against use of Article 113.

My second concern relates to whether the Instrument should be a Regulation or a Directive. I accept that the exigencies of Brussels negotiation may mean that we must accept a Regulation. Nevertheless I suggest that the Government should make it clear to the House that a Regulation would be very much a fall-back position and would not be acceptable were it not for the pressure being put upon the Government by industrial interests to have some form of Instrument to protect their trade marks.

/Finally,

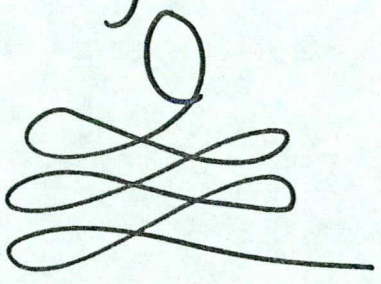
The Honourable Alan Clark MP
MInister for Trade
Department of Trade and Industry
1/19 Victoria Street
London SW1H OET

CONFIDENTIAL

Finally, I should point out that I do not regard the tactic of pressing for the proposal to be extended to intra-community trade - but then to give way - to be a good one. The tactic will be obvious to our partners and we should confine our energies, especially when burdened by the duties of the Presidency, to matters where there is a prospect of success.

I am sending copies of this letter to the recipients of yours.

Yrs.,



Papers please

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5144
GTN 215)
(Switchboard) 01-215 7877

Tony

RP

From the Minister for Trade

CH/EXCHEQUER
REC. 25 JUL 1986
ACTION MST
COPIES TO

28/7

25 July 1986

Hon Peter Brooke MP
Minister of State
HM Treasury
Parliament Street
LONDON, SW1P 3AG

Dear Peter

DRAFT EC REGULATION - IMPORTS OF COUNTERFEIT GOODS

Thank you for your letter of 14 July.

I do, of course, recognise that because the proposal extends further than existing UK legislation, effective enforcement by your customs officers will require additional resources. I do not lend my support lightly to additional public sector spending. But if we are to step up our attack on counterfeiting - and all the evidence suggests we must - then it is important that you should be able to deploy such additional resources as are necessary. I made this very clear to the House in the Standing Committee debate on 17 July.

You also referred to the questions of indemnity, and personal goods. I have no difficulty with your approach, but was not pressed on these matters in the Standing Committee debate on 17 July.

I am copying this to recipients of yours.

Yours ever

Alan

ALAN CLARK

L02AMU

999-3

FROM: G W MONGER
DATE: 4 September 1986

MINISTER OF STATE

cc Chancellor
Chief Secretary
Financial Secretary
Economic Secretary
Sir P Middleton
Mr Burgner
Mr C D Butler
Mr Edwards
Mr Scholar
Mr Turnbull
Miss Sinclair
Mr Romanski

Mr Russell - C&E
Mr Allen

DRAFT EC REGULATION ON COUNTERFEIT GOODS

Mr Allen's submission dated yesterday mentioned that we would put a separate note to you.

2. An additional staff requirement of 65 in 1987-88 would be most unwelcome for PES. As you know that is already a very difficult year for the Survey, with Customs bidding for a 14% increase in running costs.

3. I suggest that it is worth asking two questions about the estimate of 65:

- First, it was agreed earlier that we would try to get the regulation drafted so as to reduce the resource requirements to a minimum. We earlier understood that the range of possible outcomes was 20 to 100 and you gave those figures to Mr Clark at DTI as recently as July. It might be worth asking why 65 is now the best we can get.

- Secondly, the estimate of 65 assumes that 20% of relevant entries are selected for further scrutiny. If we could assume instead 10% or even 15% the reduction would be well worthwhile. Customs are right to say that reducing the proportion of checks will lead to complaints from the trade. But the trade off between running this risk and saving resources is a matter of judgement and I do not think we should take it as axiomatic that 20% is the right proportion.

4. But the major question remains how we should deal with the significant increase in resources that will be required. This task would not have a high priority for us if up to 65 extra staff were available for Customs. It would be much better to use them on VAT, where they could bring in extra revenue many times greater than their cost, or on drugs control, to meet a much bigger political commitment.

5. We probably have to accept that it would now be difficult to stop or emasculate the draft regulation, given the pressures for it both here and in the Community. What I suggest however is that if DTI see such enormous benefit in the regulation they should be prepared to pay for it. This would mean a letter from you or the Chief Secretary to Mr Clark saying that you could not agree to the provision of the extra resources unless DTI made offsetting savings. This seems right in principle and could even lead to reconsideration of the UK attitude to the regulation.

6. One further point. In the debate on the subject in the Commons Standing Committee on European Questions on 17 July, Mr Clark said: Late picking it up.

> "I agree that extra resources will be required. As Minister for Trade I have no responsibility for the resources allocated to Customs and Excise. Sometimes I wish that I did. It would be among the first budgets that I would increase, and I would have a more direct channel for discussion with the Customs and Excise than I enjoy at present. I am amazed at the efficiency, dedication and skill with which that organisation carries out its tasks on resources which by the standards prevalent in many other countries might be thought to be on the borderline of adequacy."

It seems to me unfortunate that Mr Clark should have delivered himself of these opinions on the proper level of resources for one of the Chancellor's Departments. You or the Chief Secretary might consider a note of protest. I would have suggested that this could be at Private Secretary level, but if you decide on the letter suggested in paragraph 5, it might be worked into that.

G W MONGER

CONFIDENTIAL

CHANCELLOR

FROM R J BONNEY
DATE 17 SEPTEMBER 1986

cc Chief Secretary
Minister of State
Mr F E R Butler
Mr Lavelle
Mr Monck
Mr Burgner
Mr Edwards
Mr Gray
Mr Crabbie
Mrs Imber
Mr Deaton
Mr Cropper
Mr Tyrie

Ch

This does not look an attractive meeting. But the CST is tied up in bilaterals, and MST has a meeting which cannot easily be re-arranged. So there is no scope for sending a substitute.

DWK
17/9

OD(E) (86)11: REFORM OF CAP BEEF REGIME

1. Mr Jopling's paper on this subject is due to be discussed at OD(E) tomorrow morning. This brief suggests a line to take.

OBJECTIVES

2. In view of the high cost of the CAP beef regime both to the EC Budget and in PES terms you will wish to avoid any general endorsement of Mr Jopling's conclusions. OD(E) might usefully agree on the following UK objectives:

(i) to achieve a substantial reduction in the costs of the beef regime both in relation to the provision in the EC draft budget for 1987 and the current PES baseline;

(ii) to support the Commission proposals to phase out intervention except as a last resort and to achieve a specific reduction in intervention intake (both in the EC and the UK) either by national quotas or price reductions;

(iii) to ensure that any modifications to the Commission's proposals on premia do not significantly increase their cost; and

(iv) to avoid wasting negotiating capital on trying to retain the UK's Beef Variable Premium Scheme (BVPS) and to prepare UK

NOTE C

BEEF PREMIA : FULL YEAR FEOGA COSTS AND UK RECEIPTS FROM COMMISSION PROPOSALS AND VARIOUS VARIANTS

	FEOGA Funded Rate of Premium: ECU/eligible Animal	Numbers Eligible (1) EC-10	UK	FEOGA Expenditure MECU	UK Receipt MECU	UK Receipt % of FEOGA Expenditure
		m. head				
UK BVPS (2)	29.2	-	3.1 (3)	90.5	90.5	100
Commission Proposals						
Basic premium (50 head limit; cattle on holding with 0 quota) (4)	20	15.5	3.1	310	62	20.0
Suckler cow premium	20	5.5	1.1	110	22	20.0
with headage limit			TOTAL	420	84	20.0 %
Variants on basic premium						
(a) removal of quota limitation	20	25.0	4.8	500	96	19.2
without (b) removal of headage limitation	20	27.0	5.1	540	102	18.9 %
(c) removal of both quota and headage limitation	20	35-40	8.0	700-800	160	22.9-20
(d) payment on male animals only and no quota limitation						
(i) no headage limitation	20	15.0	2.7	300	54	18.0
(ii) 50 head limitation	20	10.0	2.0	200	40	20.0
Slaughter premium on "clean" cattle at 40 ECU/head	40 (5)	7.5	3.1	300	124	41.3
	40 (6)	15.0	3.3	600	132	22.0

Notes: (1) UK data : 1985 from Eurostat or from June 1985 Census Returns
EC-10 data : Commission estimates or Eurostat data for 1985

(2) FEOGA cost of UK BVPS : 40% of maximum of variable premium (16.69p kg dwt.) on slaughter weight of 276.6 kg/head

(3) Eurostat bullocks plus heifer slaughterings for 1985 with no accounting for payments to Ireland, drawback , clawback or rejections

(4) Excluding the effects of the 6 months on farm retention rule

(5) Defining "clean" cattle as bullocks and heifers

(6) Defining "clean" cattle as bullocks, heifers and bulls

C/ The figures circulated to officials you asked for. Mr Barney tells me the figs I have highlighted are the key ones.

CR 18/9

farming interests for its demise.

You should receive some support from FCO Ministers in proposing this line.

POINTS TO MAKE

General

3. Current CAP beef regime imposing intolerable costs: 2.7 becu in 1986 EC Budget; over £410 million a year in UK PES. The main UK objective in current negotiations must be to reduce these costs to more reasonable levels. This will inevitably mean reducing support for beef farmers.

4. Savings below "what would otherwise happen" not good enough. Less than 700 mecu headroom below 1.4% VAT ceiling in Draft 1987 Budget. The Commission are already forecasting potential overspend of around 2 becu on agriculture and due to report to ECOFIN next month on scope for offsetting action. Commission proposals on beef one of few realistic prospects for genuine savings. Reform of the beef regime is one of the UK Presidency's main objectives for the Agriculture Council.

5. In domestic context, savings needed to offset IBAP's current PES bids of £150 million in 1987-88 rising to £500 million in 1989-90 particularly if Mr Jopling wishes (in due course) to propose green pound devaluation. Cannot afford further increases in Government support for agriculture which is already highly protected in relation to other industries.

Intervention

6. Commission proposals to phase out intervention deserve full UK support. UK has always opposed intervention as inefficient way of supporting beef market (because of costs of freezing, storing and subsidising eventual disposals).

7. Agriculture Council should agree specific targets for reducing

intake to be achieved either by national quotas or by reductions in buying in prices.

Premia

8. Commission's proposals on new premia (ie headage payments instead of intervention) have much to commend them, not least their fairly modest cost.

9. MAFF have been unable to demonstrate that 50 head limit discriminates against the UK: figures circulated to officials suggest the opposite. Must not argue for removing headage limit if this entails further relaxations (eg inclusion of farmers with dairy herds) which would increase overall cost. [Optional national payments above the 50 head limit would almost certainly be cheaper].

10. No objection to Mr Jopling seeking some flexibility in operation of new premia, provided that cost reduction objective not put at risk.

Beef Variable Premium Scheme (BVPS)

11. Time has come to give up BVPS and not allow understandable wish to retain current UK system to prejudice main cost cutting objective. (Continuation of BVPS (due to lapse on 31 December 1986) would add about 78 mecu to EC costs and forego net Exchequer savings of around £[80] million a year). A BVPS operated throughout the Community would be prohibitively expensive and administratively inoperable in many Member States.

ESSENTIAL BACKGROUND

12. The Commission's proposals for reform of the CAP beef regime were held over from this year's Price Fixing. The Agriculture Council is committed to reaching decisions on them before 31 December 1986 (ie during the UK Presidency). The main elements are:

(i) phasing out automatic intervention in the beef sector except

"in circumstances of severe market disturbance";

(ii) a new premium of 20 ecu per head/per year for specialist beef producers limited to 50 head per producer and excluding those with milk quotas;

(iii) ending the UK's BVPS and the calf premium operated in Ireland and Italy but retaining the suckler cow premium (from which the UK is a net beneficiary).

The Commission calculate that the package would save some 350 mecu in a full year (not 1987) and MAFF estimate the PES effects at:

	£m	
1987-88	1988-89	1989-90
- 94	- 111	- 135

13. Mr Jopling's conclusions do not look too bad at first sight. But there is the usual conflict of interest in MAFF between the lipservice paid to the cost cutting objective and the reluctance to do anything which might reduce returns to British farmers. In the beef sector this is compounded by Mr Jopling's personal attachment to the BVPS - an expensive deficiency payment scheme operated only in the UK and 60% Exchequer funded - which attracts considerable political support in rural constituencies and a disproportionate negotiating cost each year when the relevant EC Regulation comes up for renewal. There is little enthusiasm in the Agriculture Council for the Commission's proposals; so it is essential that the UK Presidency gives them a fair wind.

14. Mr Jopling is likely to argue that the excessive cost of the beef regime may only be temporary, as MAFF predict that the EC beef market will come into balance on current trends between 1990 and 1992. In fact MAFF's estimates in Table A to OD(E)(86)11 are based on the more optimistic of two possible consumption scenarios; they assume the continuation of UK exports and sales from intervention at record levels from 1986 onwards and make no allowance for further tightening in the EC milk quota regime (which would tend to weaken

the beef market in the short term because of increased cow culling). There are therefore no grounds for complacency that the present budgetary problem will solve itself.

Possible Green Pound devaluation

15. We understand that Sir Geoffrey Howe may have been toying with the idea of a "compromise" green pound devaluation affecting beef only. This would have few attractions, unless genuine savings on the cost of the beef regime had been secured first. In our view the opportunity for proposing a devaluation has now passed until next year's price fixing unless there is another EMS Realignment.

R J BONNEY

CONFIDENTIAL

(Weeded) RP

CH/L
REC. 29 SEP 1986
ACTION MR BOWNEY
COPIES TO CST, MST, EST
SIR P. MIDDLETON
SIR G. WITTLER
MR LAVELLE
MR A. EDWARDS
MR MORTIMER MS. IMRIE

29/9

PM/86/061

PRIME MINISTER

European Community Beef Regime

1. You have asked to be kept informed of the progress of discussions about the reform of the Community beef regime.

2. The Sub-Committee on European Questions of the Defence and Oversea Policy Committee discussed a paper from the Minister of Agriculture, Fisheries and Food at its last meeting. The Community is committed to reaching decisions on reform of the beef regime by the end of December. It is important both to our Presidency objectives and to the need to continue the process of CAP reform that we should make as much progress on beef as we possibly can. Beef is now the third most expensive sector of FEOGA guarantee expenditure: for 1986 the Community budget cost is forecast at 2.7 billion ecu (about 42% on intervention and 50% on export refunds). In August this year there was some 670,000 tonnes of beef in stock.

3. Although it is possible to argue that with the fall in the number of dairy cattle in the Community and the normal course of the beef cycle there will be a reduction both in intervention and in cost by the early 1990s, we remain convinced that some changes in the operation of the beef regime are essential. There is an urgent need to reduce expenditure on the beef regime and the level of stocks more quickly, to make the regime more market orientated and to bring production and consumption more

/into

into balance. We are all agreed that the Commission's proposals - which envisage an end to permanent intervention and the introduction of a new premium for specialist beef producers to offset the reduction in support through intervention - are on the right lines. But the Commission do not say by how much they expect to cut back intervention purchasing: we have agreed that we should urge on the Community the objective of a cut-back in intervention buying of at least 100,000 tonnes per annum. The importance of such an objective can be seen from the scale of purchases which are running at over 275,000 tonnes already in 1986.

4. The premium proposals present some difficulties. Such schemes do have attractions, if properly constructed, as a more sensible form of support than relying only on a rigid system of intervention and public purchasing, but most other member states have not had the same experience of operating premium schemes as we have had and will be somewhat sceptical of their value. There will, therefore, be differences of view in the negotiation. Furthermore, the Commission's proposal in its present form is for a new premium for specialist beef producers limited to 50 head per producer. We do not consider this form of limitation, which is unfavourable to larger herds, to be acceptable. We are agreed that we must resist the 50 headage limit or the limitation of a premium to male animals only. Producers and the meat trade in this country are very much attached to our existing form of variable slaughter premium, the Beef Variable Premium Scheme, and will expect us strongly to defend this type of premium in Community discussions. We shall do so and we are also

/agreed

agreed that we would only move from this if we had made the maximum use of our position to negotiate a fully acceptable alternative. It is not possible to say now whether or when the premium discussions will lead to any agreement within the Community.

5. Michael Jopling believes that he has a clear basis on which to negotiate in the Agriculture Council and intends to pursue the beef proposals vigorously in the remaining three Aqriculture Councils of our Presidency. He will report back to OD(E), probably in November, as the outline of a package may develop and we shall have to judge then whether, while protecting the interests of our farmers, it goes far enough in the way of reform.

6. I am sending copies of this minute to members of OD(E) and Sir Robert Armstrong.

GEOFFREY HOWE

Foreign & Commonwealth Office
29 September 1986

CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon Michael Jopling MP
Department of Agriculture Fisheries
and Food
Whitehall Place
LONDON
SW1

29 September 1986

Dear Michael

REFORM OF COMMUNITY REGIMES

Your memorandum on the Reform of the Community Beef Regime (OD(E)(86)11 and the minutes of the OD(E) meeting on 18 September demonstrate how pressure for the reduction of another Community agricultural surplus mountain is beginning to gather impetus. The paper is one in what is likely to be a growing series of Community reforms. Broadly, I have much sympathy with the general objectives put in your paper.

However as a general point, it would be helpful to us in DOE, and I think to other colleagues, if in future these papers could include estimates of any differences between the main proposals in their implications for the future of healthy rural communities. For example if we have to concede some degree of concentration of help on small beef herds would this be likely to have a differential effect in the more remote and threatened areas? Does the difference between slaughtering premia and per head payments for cattle imply significant differences in grazing densities in future? These are, of course, only throwaway illustrations of the sort of points that may or may not be important. Changes in the level and scope of Community support can, of course, produce changes in rural communities themselves. We need all the help from your people we can get in keeping track of the possible effects on different parts of the countryside.

Copies go to other members of OD(E).

Yours ever

NICHOLAS RIDLEY

b/f 13/11 PS

Foreign and Commonwealth Office

London SW1A 2AH

22 October 1986

From The Minister of State

Dear Colleague

UK PRESIDENCY OF THE EUROPEAN COMMUNITY

I mentioned in my letter of 24 July that I planned to circulate an updated version of the note of achievements under our Presidency in the autumn.

I hope that you will find the attached updated note useful. I have timed its release to coincide with the resumption of business in the Commons after the summer recess. As the note shows, at this stage, just over half way through the Presidency, a number of important decisions have been reached: others are in the pipeline. I have been drawing on this material to illustrate the practical benefits that can be derived from our Presidency and our membership of the Community generally. Copies of the note have been sent to the press.

Yours ever

Lynda

Mrs Lynda Chalker

3440.34

b/f 13/11

FROM: J MORTIMER
DATE: 26 October 1986

PS/MINISTER OF STATE

cc PS/Chancellor
PS/Chief Secretary
Mr Lavelle
Mr Edwards
Mr Crabbie
Miss Simpson

UK PRESIDENCY OF THE EUROPEAN COMMUNITY

Mrs Chalker sent the Minister of State on 22 October an updated version of a note on achievements under the UK Presidency (copy attached, top copy only). The note has been circulated widely in Whitehall. Copies have been sent to the press.

The second paragraph of the section of the note headed "1986 European Community Budget: Swift Agreement Reached" contains figures on our abatements. Some of the figures are wrong. We pointed out the errors (at official level) when we saw the earlier version of the note circulated a month or two back, but no corrections have been made. In the circumstances, it might be sensible for you to send a short letter to Mrs Chalker's Private Secretary pointing out the errors and providing a corrected version of the text. A draft Private Secretary letter is attached.

J MORTIMER

DRAFT LETTER FROM PRIVATE SECRETARY TO THE MINISTER OF STATE TO THE PRIVATE SECRETARY TO MRS CHALKER

UK PRESIDENCY OF THE EUROPEAN COMMUNITY

The Minister of State was grateful to receive an updated version of the Foreign Office note on achievements under the UK Presidency. He agrees that the note contains a most useful summary of what has been achieved so far under the Presidency.

He would, however, like to point out that some of the figures on our abatement contained in the second paragraph of the section headed "1986 European Community Budget: Swift Agreement Reached" are wrong. We did not secure an abatement of £605 million "in 1984" but "in respect of 1984" (most of the money was in fact received in 1986), while the suggestion that we received a budgetary correction of "£900 million in 1985" is simply wrong.

We would like to suggest that the first two sentences of the offending paragraph are recast as follows:

> "Thanks to the budget deal we secured at Fontainbleau in 1984, the UK will benefit in 1986 from a VAT abatement of some £1.25 billion arising from our excessive net contribution in 1985. Our VAT contributions to the Community

are being reduced accordingly by over £100 million a month. This is the largest abatement or refund we have ever received. It compares with an abatement of £605 million contained in the 1985 Community Budget, and negotiated refunds of £434 million (net) in the 1984 budget".

cc PS/Chancellor
PS/CST
Mr Lavelle
Mr Edwards
Mr Scrabbie
Mr Mortimer
Miss Simpson

18

Treasury Chambers, Parliament Street, SW1P 3AG

John Sawers Esq
Private Secretary to
Mrs Lynda Chalker MP
Minister of State
Foreign & Commonwealth Office
Downing Street
LONDON SW1A 2AL

28 October 1986

Dear John,

UK PRESIDENCY OF THE EUROPEAN COMMUNITY

My Minister was grateful to receive an updated version of the Foreign Office note on achievements under the UK Presidency. He agrees that the note contains a most useful summary of what has been achieved so far under the Presidency.

He would, however, like to point out that some of the figures on our abatement contained in the second paragraph of the section headed "1986 European Community Budget: Swift Agreement Reached" are incorrect. We did not secure an abatement of £605 million "in 1984" but "in respect of 1984" (most of the money was in fact received in 1986), while the suggestion that we received a budgetary correction of "£900 million in 1985" is simply wrong.

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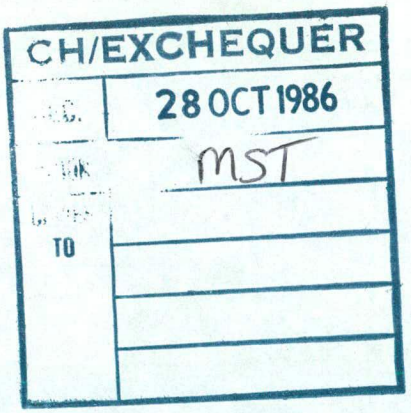
Yours ever,

Mike Norgrove

M W NORGROVE
Private Secretary



18

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

28 October 1986

Dear Geoffrey.

DEPARTMENTAL GUIDANCE ON PARLIAMENTARY SCRUTINY OF EUROPEAN COMMUNITY DOCUMENTS

The Government has accepted in principle the scrutiny recommendations made by the House of Commons Select Committee on European Legislation in its 1st and 2nd Special Reports for the session 1985-86 and by the House of Lords Select Committee on the European Communities 12th Report for the session 1985-86 concerning the Single European Act and its implications for scrutiny.

2. I now enclose the text of the revised Departmental guidance which we intend to issue to Departments incorporating changes in the scrutiny procedure which follow from these reports. The revised text incorporates a new section on the co-operation procedure between the Council and European Parliament as described in the Single European Act, and amendments to other paragraphs of the guidance which will be affected by the Act. The draft also includes amendments to the section describing the procedures for the arrangement of debates: this section was substantively revised in the previous issue of the guidance in July 1985 but experience has shown the need for one or two further small changes.

3. Finally, the text takes into account the undertaking by Janet Young last July that after each meeting of the Foreign Affairs Council the Chairman of the Lords and Commons Scrutiny Committees should receive a paper listing any Commission negotiating mandates for external agreements approved since the previous Foreign Affairs Council. This arrangement was agreed in order to meet the Scrutiny Committees' concern that Parliament should not be informed about such mandates at a later stage than the European Parliament.

4. I understand that the revised guidance has been agreed at official level. It will, I hope, be acceptable to you and to other colleagues. If there are any final comments on the text I should, however, be grateful to have them by Monday 3 November. I shall arrange for the new guidance to be promulgated officially to Departments before the start of the new Parliamentary session. I then propose to write to Nigel Spearing and Pat Llewelyn-Davies to tell them that the Government will be incorporating most of their recommended changes in scrutiny procedures and that new guidance to Departments to give effect to these has been issued. I shall of course make clear that the changes resulting from the SEA will only come into effect once the Act is ratified by all members states, and is in force.

5. I am copying this letter to members of L and OD(E) Committees, to other Ministers in charge of Departments and to Sir Robert Armstrong.

Yours ever
John Biffen

JOHN BIFFEN

Sir Geoffrey Howe QC MP
Secretary of State for Foreign and Commonwealth Affairs

PARLIAMENTARY SCRUTINY OF COMMUNITY DOCUMENTS

GUIDANCE FOR DEPARTMENTS

CONTENTS

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A. Commons Scrutiny Committee - terms of reference
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C. Standard form of explanatory memorandum
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E. House of Commons Resolution of 30 October 1980
F. Criteria to be applied to candidates for second stage scrutiny
G. Flow-chart illustrating the legislative process in the Community
H. Examples of motions for debates on Community documents

I INTRODUCTION

1. It was agreed that, following the accession of the United Kingdom to the European Communities, proposals for Community legislation and for consideration by the European and other Councils would be scrutinised by Parliament to provide an opinion on whether questions of legal or political importance were raised and whether further consideration by Parliament was necessary. The terms of reference of the House of Commons Select Committee charged with this task and the corresponding Lords Committee are at Annexes A and B respectively. The Government has undertaken to assist the work of both Parliamentary Committees. This document sets out the procedures to be observed by Departments in fulfilling that undertaking.

II DEPOSIT OF DOCUMENTS IN PARLIAMENT

DEPOSIT OF DOCUMENTS

2. All Commission proposals for Council legislation and other documents published for submission to the Council of Ministers or the European Council - with the exception of those listed in paragraph 9 below - must be deposited in Parliament for consideration in the House of Commons by the Select Committee on European Legislation, and in the House of Lords by the Select Committee on the European Communities. These are known as the Scrutiny Committees. Proposals for Council legislation (ie regulations, directives, and decisions) are automatically deposited (see paragraph 5) without consultation with Departments, whereas non-legislative documents are only deposited after consultation with Departments. The Department must provide the Committees with an explanatory memorandum on each deposited document.

3. Departments receive direct from the Council Secretariat draft proposals for legislation and other documents which have been submitted to the Council of Ministers; documents for the European Council are sent to Departments through the Office of the United Kingdom Permanent Representative to the European Communities (UKREP).

4. Where Departments identify a document which has not been deposited even though it is apparently eligible for scrutiny, they should let the European Secretariat of the Cabinet Office (233 8380 or 6144) know at once.

DEPOSIT OF LEGISLATIVE DOCUMENTS

5. The Foreign and Commonwealth Office (FCO) (European Community Department (Internal)) in conjunction with the European Secretariat of the Cabinet Office, arranges for English texts of proposals for Community legislation to be deposited in Parliament within 2 working days of their receipt in London. The deposit of budget documents is the responsibility of the Treasury. Departments are sent copies of the FCO list reporting the despatch of legislative proposals for printing and transmission to Parliament. At the same time the European Secretariat of the Cabinet Office writes to the Department responsible for the proposal requesting it to submit an explanatory memorandum to Parliament.

DEPOSIT OF NON-LEGISLATIVE DOCUMENTS

6. In the case of documents other than Commission proposals for Council legislation, the European Secretariat of the Cabinet Office seeks the written views of the lead Department on whether a particular document should be deposited. There can be no hard and fast rules as to which documents of this kind should be deposited. However, the terms of reference of the Commons Scrutiny Committee (see Annex A) require it to consider, in addition to proposals for legislation, "other documents published for submission to the Council of Ministers or to the European Council, whether or not such documents originate from the Commission.". The document is only deposited in Parliament when the lead Department has written to the Cabinet Office indicating that it is suitable for deposit.

7. The Government must not be left open to allegations that it is withholding from Parliament documents which could be held to fall within the terms of reference of the Scrutiny Committees. Since Community practice regarding publication does not follow clear criteria, the definition of "published" must be interpreted widely and could include:

- Commission documents formally transmitted to the European Parliament where directly related to Council deliberations;
- publication in the Official Journal;
- other means of publication, eg Commission press releases.

The ultimate test is whether the Commission itself regards a document as published. In general, the Commission treats documents in its "COM" series as published.

8. The terms of reference of the Lords Scrutiny Committee are wider than those of the Commons Committee and do not formally restrict it to consideration of "published" documents, since they refer to "Community proposals, whether in draft or otherwise" (see Annex B). In practice, however, documents should be deposited in both Houses or in neither.

DOCUMENTS NOT SUITABLE FOR DEPOSIT

9. The presumption is that documents should be deposited unless they fall into one of the following categories:

a. Confidential documents. These are not always easy to recognise: Community security classifications are not a sure guide, though documents bearing the classification "Confidential" must be considered more sensitive than others. Where a confidential document contains proposals for legislation which are not themselves confidential, it may be possible to deposit a suitably edited version. The arrangements applying to certain documents, such as anti-dumping proposals, which are regarded as confidential until adopted are set out in paragraph 13.

b. Working documents prepared by the Council Secretariat, national delegations or the Commission for discussion in the Council or its subordinate committees and working groups. These documents are regarded as coming within the confidentiality of Council proceedings and should not be deposited. The same applies to the internal Commission working documents which are occasionally made available to the Council and are normally issued in the 'SEC' series.

c. Documents sent to the Council concerning the exercise of the Commission's own delegated powers. These should not normally be deposited unless there is a Treaty requirement for Council approval before the Commission legislation can be approved (as there is, for example, under Articles 58 or 95 of the ECSC Treaty). Documents containing proposals for Commission action of an essentially administrative character (eg the granting of financial assistance under Articles 54 to 56 of the ECSC Treaty) need not be deposited even if

Committee should not be deposited unless they are known to have been published or Council approval is required before the proposed measures can proceed.

d. Documents containing draft mandates relating to negotiations with third countries or organisations. These include draft proposals for Council decisions authorising the Community to undertake or participate in bilateral or multilateral negotiations. They normally appear in the Commission's "SEC" series and are not intended for publication. They should not be sent to Parliament since publication could prejudice the Community's negotiating position. However, once negotiations are complete, the resulting agreement or other text will normally be the subject of a draft decision, regulation, or other act to be adopted by the Council relating to conclusion (ratification) of the agreement in question by the Community. The scrutiny position is as follows :

(i) Proposals for a decision of the Council authorising signature subject to a subsequent conclusion on behalf of the Community of the agreement in question are not generally submitted for scrutiny.

(ii) Proposals by the Commission for a decision of the Council for a signature which will constitute definitive acceptance by the Community, or for a conclusion after signature by the Community with definitive effect, should be submitted for scrutiny, since they involve a firm commitment by the Community and, in some cases, can constitute directly applicable rights and obligations in relation to individuals.

(iii) Proposals for decisions relating to provisional application by the Community also involve acceptance of substantial obligations and should be submitted for scrutiny as in paragraph 9(d)(ii) above. (Provisional application is a procedure used, for example in commodity agreements, whereby member states accept provisionally the obligations of an agreement pending definitive ratification.

Where the United Kingdom will be a party in addition to the Community, the agreement may need to be specified under Section 1(3) of the European Communities Act 1972. This procedure relates to United Kingdom participation in the agreement and is separate from and additional to the requirement of scrutiny for proposals relating to Community conclusion. Guidance on the specification of Community Treaties is given in EQO(Guidance)(84) 6. Where Opinions are given by the Commission in connection with forthcoming Treaty negotiations eg as on Spanish or Portuguese Accession, and where they are designed to lead to action by the Council, it may be useful to submit them for scrutiny; but each case should be considered individually in consultation with the European Secretariat (233 6180 or 8380) in the light of the circumstances of the Opinion.

e. Ministers have agreed that the Scrutiny Committees should be informed at the same stage as the European Parliament about prospective EC external agreements (i.e. after the negotiating mandates described in paragraph 9d. have been adopted in Council). After each meeting of the Foreign Affairs Council, the Foreign and Commonwealth Office should send to the Chairmen of the Scrutiny Committees a paper listing negotiating mandates approved since the previous Foreign Affairs Council. The paper should cover mandates for negotiations with third countries and international organisations (eg OECD) and also within international organisations. A copy of this paper should be placed at the same time in the Libraries of both Houses. The list should indicate the parties to the negotiation, the subject matter and any special factors, eg relating to timing, such as the date of expiry of a previous agreement, without breaching confidentiality.

f. Documents in the form of draft agreements between the member states (eg decisions or agreements between the representatives of the member states of the ECSC) which are not to be published when adopted should not normally be deposited.

g. Documents prepared by the Commission for the consideration of the Standing Employment Committee. These documents are usually sent to the Council Secretariat but they are not submitted for

consideration by the Council of Ministers and so fall outside the terms of reference of the Commons Scrutiny Committee unless and until they are forwarded subsequently to the Council.

10. Documents emerging from the European and other Councils, such as communiques, are not normally deposited as they fall outside the terms of reference of the Scrutiny Committees, though copies may be placed in the libraries of both Houses and sent to the Scrutiny Committee Chairmen for information.

DEPOSIT OF DOCUMENTS OTHER THAN COMMISSION DOCUMENTS

11. Documents published for submission to the Council of Ministers by bodies or persons other than the Commission are eligible for deposit. Examples are proposals made to the Council by the Presidency or a member state, or reports by the Court of Auditors. However care should be exercised in relation to the following classes of document -

a. Opinions of the European Parliament or the Economic and Social Committee. These are not normally deposited (although they are received by Parliament direct from these two bodies) other than in the case of certain European Parliament documents dealing with the annual Community budget, for which a separate procedure has been devised.

b. Correspondence from pressure groups to the Council. The bulk of such correspondence is ephemeral in character and is not therefore deposited in Parliament.

EUROPEAN COUNCIL DOCUMENTS

12. Documents published for submission to the European Council are eligible for deposit in Parliament. Whether or not a particular European Council document is deposited should be judged on the same criteria as for other documents falling within the Scrutiny Committees' terms of reference. The fact that documents usually issue only just before a European Council meeting is not in itself a reason for not depositing them in Parliament; this should be done as soon as possible after an English text has been received. Confidential documents for consideration at the European Council are sometimes published at a later stage. Departments should watch closely

for advance copies and consider their status in consultation with the European Secretariat of the Cabinet Office (233-8380 or 6180) and the FCO (233-3594). (See paragraph 10 for guidance on documents emerging from the European and other Councils.)

CONFIDENTIAL DOCUMENTS

13. Some documents must by their nature remain confidential until adoption, for instance certain financial proposals or documents relating to anti-dumping measures. In order that such documents should not bypass the scrutiny procedure it has been agreed, at the request of the Scrutiny Committees, that the final agreed text of such documents should be deposited in Parliament along with an accompanying explanatory memorandum.

III PROCEDURE FOR PROVISION OF EXPLANATORY MEMORANDA

TIMETABLE

14. Explanatory memoranda must normally be provided within 10 working days from the date of deposit of the Community document concerned, though the Scrutiny Committees accept that it may take longer in the case of documents which pose particular problems. In some cases it may be necessary to work to a shorter deadline where progress through Council is rapid. Departments can start to prepare explanatory memoranda before deposit and should do so when a draft instrument is likely to come before the Council for speedy adoption. The aim should be to submit explanatory memoranda as soon as possible, even if the official text is not available (see paragraphs 20-24) if this would help the Scrutiny Committees to proceed. In all circumstances where Departments expect the production of a memorandum to be delayed beyond the 10 day deadline, the European Secretariat of the Cabinet Office (233-6144 or 7006) should be informed of the reasons as early as possible before the expiry of that deadline. The Cabinet Office will in turn inform the Scrutiny Committees.

15. One reason for delay is the difficulty of deciding which Department has the main policy or financial interest in a particular proposal. Where Departments find themselves in this position, they should make urgent efforts to agree responsibility among themselves before approaching the Cabinet Office, within the 10 day deadline. Where they have to report their inability to reach agreement, the Cabinet Office should be informed in

writing by the Departments concerned. Departments should set out their views on the allocation of responsibility for the proposal. In the light of the arguments presented, the Cabinet Office will take a decision on lead responsibility for the preparation of the explanatory memorandum. Departments will be requested to adhere to that decision. If, in the light of fuller discussion, it is decided that the eventual responsibility for the proposal, including participation in any scrutiny debate, lies with another Minister, the Cabinet Office will notify the Scrutiny Committees .

FORM

16. All memoranda should be dated and should bear the same Council number as the document to which they refer (to assist cross referencing the COM number of the document should also be shown). The standard form of explanatory memorandum is shown at Annex C. This form should be used for all proposals for legislation, for substantial amendments to legislative proposals, and for other documents published for submission to the Council of Ministers or the European Council. Exceptions to the provision of full, signed memoranda are rare, and are as follows -

a. Minor amendments to legislative proposals and to non-legislative documents which the Scrutiny Committees originally cleared (ie in the case of the Commons, found to be of no legal or political importance or, in the case of the Lords, have not been referred to a Sub-Committee) and which contain changes of little substance, but nevertheless need some explanation. Only in these exceptional circumstances may a short unsigned memorandum be submitted. Where no explanation is considered necessary the FCO will attach a standard cover note to the document at the time of deposit (for the form of this cover note see Annex D).

b. Self explanatory factual reports which raise no policy issues. These may not require an explanatory memorandum, in which case the FCO will attach a standard cover note as in a. above.

c. Documents of a technical or administrative nature (in particular routine items of budgetary procedure), which may be submitted under a short unsigned memorandum.

d. Minor documents which, if appropriate, may be submitted under an FCO cover note if they are self-explanatory, or under a short, unsigned memorandum.

If Departments consider that a document falls into one of these categories they should consult the European Secretariat of the Cabinet Office (233-8380 or 6144) and should also seek the advice of the staff of the Scrutiny Committees.

CONTENT

17. Explanatory memoranda should deal clearly with the matters covered by the standing headings shown in the model at Annex C so as to minimise the need for further enquiries by the Scrutiny Committees. In particular -

a. The description of the subject matter should be sufficient to enable Members of Parliament to understand broadly what is proposed without reference to the Community document itself. Where the proposal relates to particular kinds of goods or materials, examples should be quoted as an illustration. Reference should also be made to reports by either Scrutiny Committee or to debates in either House which are directly relevant and to the reference number of any other relevant documents which have previously been scrutinised.

b. Mention should be made, under the heading of Ministerial responsibility, of the Departmental Minister primarily responsible for a proposal (usually the Minister in charge of the Department even if another of the Department's Ministers signs the explanatory memorandum) and of any other Minister who may be involved.

c. The section on legal and procedural issues should contain four separate sub-divisions as follows:

i. The Treaty basis upon which the proposal relies should be identified (in accordance with the Prime Minister's written Parliament answer of 19 July 1979 - Hansard Vol 970 No 43 Col 777). If it is intended to pursue in the Council a point on the vires of a draft instrument Departments should indicate this here and provide an adequate explanation of the concerns in layman's terms.

ii. Mention should be made as to whether the co-operation procedure is applicable (see paragraphs 50-55).

iii. Details of the voting procedure applicable for the proposal should also be separately identified.

iv. The impact on United Kingdom law is of fundamental interest to the United Kingdom Parliament. Under this heading the aim should be:

- if there is an impact on United Kingdom law, to give as much detail as possible of the existing provisions or the area of existing law (including both enacted and common law) likely to be affected, whether or not amending or new legislation will be required. Where the position differs in different parts of the United Kingdom, this should be explained in reasonable detail. If, however, there is no impact on existing United Kingdom law, or if the instrument is unlikely to have any implication in this country (eg a proposal relating to Community staff), it may be sufficient to state just that, with a brief explanation.

- to say what legislative action might be required to implement or supplement the instrument. Mention should also be made of any relevant domestic enabling powers; but there is no need at this stage to suggest whether these powersor the powers of section 2(2) of the European Communities Act 1972 will be regarded as more appropriate. The options can be left open for Ministerial consideration. Section 2(2)is very broad in scope and, because of the delays which could be expected, the possibility of using primary legislation should only be a serious option if other overriding factors point that way. In that event a brief explanation should be given.

d. The section on policy implications should present a clear factual account of what is principally at issue from the United Kingdom viewpoint. It may on occasion be helpful to give some factual background on the situation in the rest of the Community if this bears on the nature of the proposal or its origin. If there are no policy implications it is better to avoid a bare negative and to explain why this is so, even at the risk of being obvious. Where possible, the

Government's established attitude to a proposal should be given. Where appropriate, reference might be made to public or Parliamentary statements already made by Ministers on the subjects concerned. Where another member state has publicly questioned the vires or the policy of the proposal, Departments should consider whether these concerns are sufficiently significant to be indicated under this heading. The memorandum should also mention any outside bodies which have been consulted, but should not attempt to summarise their views.

e. Departments should also where possible include among the policy implications of a proposal a broad indication of whether implementation would be likely to impose a significant cost on business, whether in terms of direct cost or of management time, and of the likely effects of the proposal on employment. Guidance on the need to take account of the impact on business of proposals for Community legislation is given in EQO(Guidance)(86)14. A Commission proposal for legislation sent to the Council should be accompanied by a note outlining the expected impact on business costs and jobs. Departments should refer to this in their comments.

f. Departments should provide information on financial implications for the Community, and to those for the United Kingdom if this can be done without prejudicing our negotiating position. Where relevant information has been made available by the Commission (usually in the 'fiche financiere' attached to draft proposals) this should be given. If there is uncertainty about the Commission's figures (eg when they differ from our own estimates) it should be noted that the estimates may be subject to revision. Where European currency units (ecus) are quoted, estimates should also be shown in sterling.

g. The entry under timetable should, in the case of a draft instrument, be as informative as possible on its likely progress in the Community institutions. It should in particular say whether or not the opinions of the European Parliament and the Economic and Social Committee have been sought (and give references to such opinions if they have by then been published) and indicate where possible when the instrument can be expected to come before the Council.

CIRCULATION OF NUMBERED EXPLANATORY MEMORANDA

18. Departments should distribute copies of all numbered explanatory memoranda, whether signed or unsigned (see paragraph 16), including supplementary memoranda (see paragraphs 26-28), as follows -

Vote Office, Norman Shaw Building (N), Victoria Embankment	150 copies
Printed Paper Office, House of Lords	25 copies
The Library, House of Commons	3 copies
Foreign and Commonwealth Office, ECD(I), (Room E 106)	2 copies
Cabinet Office (Room 344B)	9 copies
UK Permanent Representative, Brussels	1 copy
Clerk to Commons European Legislation Committee, Room 429, St Stephen's House, Victoria Embankment (if via IDS or by hand) or House of Commons, London SW1A 0AA (if by post*)	30 copies
Legal Adviser to Commons European Legislation Committee, Room 429, St Stephen's House, Victoria Embankment, (if via IDS or by hand) or House of Commons, London SW1A 0AA (if by post)*	1 copy
Clerk to Lords Select Committee on the European Communities, House of Lords	1 copy
Legal Adviser to Lords Select Committee on the European Communities, House of Lords	1 copy
Committee Office, European Communities Committee, House of Lords	3 copies
Reference Division, Central Office of Information	1 copy
Scottish Office (Scottish Education Department, Room 2/11, New St Andrew's House, Edinburgh)	1 copy
Welsh Office (EDS3, 1st Floor, New Crown Building, Cathays Park, Cardiff)	1 copy
Department of Education for Northern Ireland, Room 605, Rathgael House, Balloo Road, Bangor BT19 2PR	

Addresses and details are subject to change and Departments are advised to use the circulation list included in the request for memoranda sent out by the Cabinet Office. Special arrangements apply to the distribution of unnumbered memoranda (see paragraph 22). Departments should ensure that other Departments who have been involved in the preparation of memoranda receive copies.

19. Departments may make explanatory memoranda available to their own libraries immediately after distribution to the Vote Office. Following agreement by Ministers in 1982, explanatory memoranda are also made available to the public in certain libraries in England by the Cabinet Office and to regional libraries via the Scottish and Welsh Offices and the Department of Education for Northern Ireland.

UNNUMBERED EXPLANATORY MEMORANDA

20. An unnumbered explanatory memorandum is a memorandum which describes a document to be considered by the Council of Ministers for which no depositable (ie no official or numbered) text exists. One should be prepared when –

a. A document is fast moving and is likely to come to the Council of Ministers for decision before a formal text, which can be deposited for Parliamentary scrutiny, is available. In an oral Parliamentary reply of 14 May 1980, the Lord Privy Seal said that where no depositable document was produced before a legislative proposal was considered by the Council, the Government would ensure wherever possible that the Scrutiny Committee was kept fully informed by the use of unnumbered memoranda.

b. The lead Department has a reasonable knowledge of the likely content of an anticipated document, for example because it has a working document or early draft in another Community language or because measures such as annual trade quotas are to be renewed.

21. Unnumbered explanatory memoranda should follow as closely as possible the form and content of numbered memoranda (including a Ministerial signature) except that where a reference number would normally be quoted the words "official text not yet received" should be inserted (see Annex C). When preparing unnumbered memoranda it is sometimes useful to annex an unofficial version of the text, particularly if no depositable document is likely to be available for some time. In the case of bulky documents it may be more cost effective to send copies to the Clerks of the Scrutiny Committees only for information. The European Secretariat of the Cabinet Office (233-8380 or 6180) should be consulted about the desirability of making the proposals publicly available in the absence of an official text. Where a Council working document is used as the annex, care should be taken to remove all references which would indicate its origin. The memorandum should make it clear that the text is made available on the Government's authority only and that the text is not an authoritative Community document.

CIRCULATION OF UNNUMBERED EXPLANATORY MEMORANDA

22. Such memoranda are given a limited distribution as follows:

Vote Office	6
Cabinet Office	4
Scottish Office	0
Welsh Office	0
Department of Education for Northern Ireland	0
Other recipients	as for numbered memoranda

If it is certain that a depositable text will never exist the words "official text not available" should be inserted in the top right hand corner and then distributed in the usual way for numbered memoranda, except that 6 copies only should be sent to the Vote Office.

23. When the official text becomes available the Department should confirm with the European Secretariat of the Cabinet Office (233-7006 or 6144) that this text has been deposited in Parliament, and should prepare an addendum to the unnumbered memorandum which simply states that in their memorandum of [date] the words "official text not yet received" should be replaced by the Council document number. The addendum and copies of the memorandum bearing the Council document number should be circulated as follows:

	Addendum	Full numbered memorandum
Vote Office	1	6
Cabinet Office	4	5
Scottish Office	0	1
Welsh Office	0	1
Department of Education for Northern Ireland	0	1
Other recipients	1 copy to each	0

24. If at any stage it becomes known that an official text will not become available the Department should prepare an addendum which simply states that in their memorandum of [date] the words "official text not yet received" should be replaced by "official text not available". The distribution for the addendum and memorandum should follow that in paragraph 22.

CORRIGENDA TO EXPLANATORY MEMORANDA

25. Occasionally it may be necessary to amend an explanatory memorandum by issuing a corrigendum. The corrigendum should state clearly the date, reference number and title of the original memorandum and be circulated to all the recipients of that memorandum. Corrigenda may cause administrative difficulties for the Vote Office and it is usually advisable to contact them (219-4669) before issuing one.

SUPPLEMENTARY (UPDATING) EXPLANATORY MEMORANDA

26. Supplementary (also known as updating) memoranda should be prepared if a document undergoes substantial revision from a policy point of view in the following cases:

a. documents for which scrutiny has not yet been completed, to ensure that the Committees are kept up to date with progress;

b. documents which are awaiting debate (paragraph 69);

c. documents on which the Commons Scrutiny Committee reports that it is not at this stage recommending a debate but wishes to be kept informed of the progress of dicussions with a view to reviewing its recommendation before a final decision is taken on the document;

d. documents for which scrutiny has been completed, in which case "second stage scrutiny" arises (see paragraphs 48-49);

e. documents which are considered under the co-operation procedure (see paragraphs 50-55) and on which the Commission has issued a revised proposal after the Council had adopted a common position, to which the European Parliament has suggested amendments. Departments should monitor closely the progress of such documents and prepare a supplementary memorandum for the Committee in the event of revised proposals being issued by the Commission containing amendments which could materially affect the Scrutiny Committee's consideration.

In the case of c. a letter either to the Chairman of the Committee from a Minister or the Clerks of the Committee from an official reporting developments may sometimes be adequate. However the supplementary memorandum or letter should be sent in good time before final decisions are taken on the document.

27. Supplementary memoranda should in general follow the format for explanatory memoranda as closely as possible, though appropriate reference should be made to reports by either Scrutiny Committee and to debates in either House. In certain cases, where the original Community text may be out of date, an informal revision can usefully be prepared and annexed to the supplementary explanatory memorandum. As with unnumbered memoranda, the texts are made available on the Government's authority only and the memorandum should make it clear that they are not authoritative Community documents.

IV THE SCRUTINY PROCESS

THE COMMITTEES

28. The Commons Scrutiny Committee is reappointed for the whole of each Parliament, its terms of reference being incorporated in Standing Order No.105 (see Annex A). The Lords Scrutiny Committee members are appointed each session on a rotation basis: its terms of reference are given at Annex B. Each Committee is served by a Clerk, with supporting staff concerned with aspects of Community policy. The Lords Committee also appoints part-time specialist advisers for particular enquiries. In the Commons, the Clerks prepare briefs for the Committees on deposited documents and the Government's explanatory memoranda. In the Lords, the Chairman and Sub-Committees normally depend directly on Commission proposals and explanatory memoranda.

LIAISON WITH THE COMMITTEES

29. An FCO Minister of State has special responsibility on behalf of the Government for the proper functioning of the arrangements for assisting the work of the Scrutiny Committees; the FCO should therefore be consulted on any sensitive issues. The Leader of the House of Commons is concerned that the Government's Parliamentary obligations in relation to scrutiny procedure are fully met. The European Secretariat of the Cabinet Office acts as the central link between the Committees and Government Departments generally. The existence of this central link, however, does not detract from the importance of an effective working liaison between Departments and the staff of the Committees. Departments should deal only with the Committee Clerks or legal advisers, not with specialist advisers. Where Departments are in doubt as to the correct procedure they should consult the European Secretariat (233-6144 or 8380).

COMMITTEE MEETINGS

30. Before each meeting of the Commons Scrutiny Committee the European Secretariat of the Cabinet Office circulates the draft agenda, on which it invites Departments' comments. Departments should consider whether there is any other proposal on which an urgent decision is needed from the Scrutiny Committee which ought to be included on the agenda and inform the Cabinet Office accordingly (233-7006 or 6144). Agendas for the Lords Committee and its Sub-Committees are circulated by the Committee Office in the House of

Lords. The European Secretariat of the Cabinet Office (233-7006 or 6144) can provide extra copies. If Departments identify an additional proposal on which an urgent decision is needed they should inform the Clerk concerned and the European Secretariat quickly.

GIVING EVIDENCE TO THE COMMITTEES

31. The Commons Scrutiny Committee is empowered to report on whether deposited documents raise questions of legal and/or political importance, to give its reasons for its opinion, and to report on what matters of principle or policy may be affected by a proposal. The Lords Scrutiny Committee is required to consider the merits of documents. Both Committees can take evidence both in writing and orally. Despite the difference in their terms of reference a similar approach should be followed in giving evidence to the two Committees.

WRITTEN EVIDENCE

32. Departments should meet specific requests by a Committee for supplementary information on proposals still under scrutiny. Such information is provided for the Committee alone and is not ordinarily laid before Parliament as a whole unless the Committee asks for this to be done. Departments should note that once information has been supplied to one of the Scrutiny Committees, even by means of an informal letter to the Clerk, it normally becomes evidence. It is then entirely a matter for the Committee whether it decides to report and publish it. Departments should clear written evidence in draft with their usual contacts in the FCO, the European Secretariat of the Cabinet Office and any other interested Departments.

ORAL EVIDENCE

33. An undertaking has been given that Ministers and officials will be available to appear before the Committees to give evidence about Community proposals as required. The Clerks to the Committees have been asked to give as much notice as they can of the need for oral evidence - at least two weeks if possible where a proposal is not urgent. Arrangements have on occasion been made for Sub-Committees of the two Scrutiny Committees to meet concurrently for the hearing of evidence. Officials invited to give oral

evidence should refer to the Memorandum of Guidance for Officials Appearing before Select Committees circulated by the Civil Service Department on 16 May 1980 (GEN 80/38). Departments should inform the European Secretariat of the Cabinet Office (233-6180) of any difficulties they experience in giving oral evidence.

CONFIDENTIAL ORAL EVIDENCE

34. If Departments consider that it would be helpful to give a Committee confidential information, they should only do so if the Committee agree to treat it accordingly. The Lords Scrutiny Committee have decided that whenever confidential evidence is given in private prior agreement should be reached with the witness on what, if any, record should be made. There are three options available: to have no record at all; to have a single private note by the Clerk; or to have a strictly limited number of copies of a transcript made which would be made available by the Clerk only to the Members of the Committee and their advisers.

CONSIDERATION BY COMMITTEES

a. Commons

35. The Commons Committee lists in its reports on each of its weekly meetings those documents which in its opinion raise questions of legal and/or political importance and require further consideration by the House; those that raise questions of legal and/or political importance, but where there is no recommendation that they should be debated; those raising no such questions; and a cumulative list of documents outstanding for debate.

b. Lords

36. In the Lords, documents are sifted by the Chairman, once an explanatory memorandum has been received, into those thought not to require special attention (Category A) and those remitted to the appropriate Sub-Committee for further consideration (Category B). A report on the progress of scrutiny is published by the Lords Committee, usually fortnightly, listing the decisions taken. List A records documents sifted as Category A since the previous report. List B gives all documents currently referred to Sub-Committees. List C records documents which previously appeared in List B but are not to be the subject of reports. Lists D and E record reports made for information and debate respectively over a convenient recent period.

COMMITTEE REPORTS

37. After each Scrutiny Committee meeting the European Secretariat of the Cabinet Office informs Departments of the decisions taken. The European Secretariat also circulates to Departments on a weekly basis a full list of outstanding debate recommendations. This list is also sent to the Scrutiny Committees. The Commons Committee's full recommendations are recorded in their weekly Reports to Parliament (copies are available through HMSO), which normally appear a fortnight in arrears. Full information about the decisions of the Lords Committee is included in its Report on the Progress of Scrutiny, normally published fortnightly while Parliament is sitting (copies are available through HMSO).

SCRUTINY CLEARANCE

38. Once a document has been reported on by the Commons Committee with no recommendation for further consideration by the House, and has appeared in List A, C or D in the Lords Committee's report on the Progress of Scrutiny, the scrutiny procedures have been completed and there is no further obstacle from the Parliamentary point of view to the adoption of the document concerned by the Council of Ministers. However either or both Committees may recommend that a document should be given further consideration by the House, ie debated (see Section IV). In this case the scrutiny procedures are not complete until the debate has been held, or in the case of Standing Committee debates, after referral to the House. (But see paragraphs 48–49 on second stage scrutiny).

GOVERNMENT UNDERTAKING

39. During the Parliamentary Recess, or when a proposal needs to make rapid progress through the Council machinery, a proposal may come before the Council of Ministers for decision before the Scrutiny Committees have had an opportunity to consider it, or before the scrutiny procedures have been completed. The Government has given Parliament an undertaking, which has been embodied in a Resolution of the House of Commons of 30 October 1980, (see Annex E) that Ministers will not give agreement to any legislative proposal recommended by the Commons Scrutiny Committee for further consideration by the House, before the House has given it that consideration, unless:

a. the Committee has indicated that agreement need not be withheld, or

b. the Minister decides that for special reasons agreement should not be withheld, in which case the Minister should explain the reasons for this decision at the first opportunity to the House.

The undertaking is embodied in a Resolution of the House of Commons, but has also been given to, and should be held to apply to, the Lords.

40. Even though the letter of the undertaking applies only to legislative proposals which have been considered by the Committees, the spirit of the undertaking should be observed in respect of all documents which involve a policy commitment, whether or not they have yet been considered by the Committees. Departments should therefore ensure that when consideration is given to the adoption of unscrutinised documents, exception b. of the Resolution of 30 October 1980 is satisfied (see also paragraphs 45-47).

EFFECT OF THE UNDERTAKING

41. The effect of the undertaking is that a Minister should be advised not to give agreement in the Council of Ministers to the adoption of any document until the scrutiny procedures are complete, unless the relevant Committee has indicated that agreement need not be withheld or the Minister decides that for special reasons agreement should not be withheld. The undertaking does not specify what might constitute "special reasons", nor have the Committees subsequently expressed a view on the point. In giving evidence to the Commons Scrutiny Committee on 16 May 1984 (House of Commons First Special Report from the Select Committee on European Legislation, HC 527 and 126-iv Session 1983-84), the Leader of the House indicated a number of factors which would influence a Minister's decision in such circumstances:

a. the need to avoid a legal vacuum which might arise if an existing measure were to expire without agreement to an extension or adoption of a successor measure;

b. the desirability of permitting a particular measure of benefit to the United Kingdom to come into operation as soon as possible;

c. the difficulty, particularly if the negotiations in the Community have themselves been difficult or protracted, of putting a late reserve on a measure which will either have little effect on the United Kingdom or which is likely to be of benefit to the United Kingdom.

42. Departments should take steps to arrange debates and clear scrutiny procedures before Council consideration of a document reaches its final stages; adoption without the completion of scrutiny procedures should be regarded as highly exceptional and only justified if one or more of the factors listed in paragraph 41, or a factor of comparable importance, apply.

PARLIAMENTARY RESERVES

43. When it is likely that a Council will attempt to adopt a document which has not completed the scrutiny procedures (see paragraph 38), the normal practice should be for the Department to place a Parliamentary reserve at the appropriate meeting of COREPER I, COREPER II or the Special Committee on Agriculture before the Council meets. At the same time consideration should be given to whether the Government, if content with the document, could indicate agreement subject only to the Parliamentary reserve. Formal adoption in these circumstances does not occur until the reserve is lifted (ie until after the scrutiny procedures have been completed). This does not breach the Government's undertaking as set out in paragraphs 39-42. Departments are responsible for ensuring that the FCO instruct UKRep to place a Parliamentary reserve on a document which has not completed the scrutiny procedures and to inform UKRep, via the FCO, when the reserve can be lifted.

44. Only in the exceptional circumstances described in paragraphs 41 and 41 above should a document be adopted without scrutiny clearance. The procedures to be observed in such circumstances are set out in paragraphs 45 and 46.

ACTION WHERE DOCUMENTS HAVE NOT BEEN CONSIDERED BY THE SCRUTINY COMMITTEES

45. In the case of a document yet to be considered by the Scrutiny Committees the European Secretariat of the Cabinet Office (233-6180 or 8380) should be consulted before a Minister is advised to agree to the document in Council without a Parliamentary reserve. If it is decided that a document is to be adopted in advance of scrutiny, the Minister responsible should explain in writing at the earliest opportunity why this is necessary to the Chairman of both Committees with copies to the Leader of

the House, the FCO Minister of State, the Chief Whip (Lords), the Secretary to the Cabinet and the Clerk(s) of the Committee(s). The letter should indicate that once the Committee has had an opportunity to consider the document in question, the Minister would be prepared to make a statement to the House if the Committee considers that this is necessary. An unnumbered or other explanatory memorandum should also be supplied whenever appropriate. The only exceptions to this procedure are documents, such as anti-dumping measures, to which special arrangements apply (see paragraph 13); routine items such as transfers of appropriations, which are often considered in Brussels before English texts are available in the United Kingdom; and extensions of existing non-controversial arrangements, particularly where legal continuity needs to be preserved. A Department which is unsure whether or not a proposal comes under one of these headings should seek the advice of the Committee Clerk.

ACTION WHERE DOCUMENTS AWAIT DEBATE

46. Similarly, in the case of documents awaiting debate the European Secretariat of the Cabinet Office (233-6180 or 8380) should be consulted before a Minister is advised that, for special reasons, agreement need not be withheld. When it has been agreed to take this course, the Minister responsible should be advised to write to the Chairman of the relevant Committee with copies to the Leader of the House, the FCO Minister of State, the Chief Whip (Lords) the Secretary to the Cabinet and the Clerk(s) of the Committee(s) before the decision is taken in Council, explaining why he/she is satisfied that agreement should not be withheld, why a debate could not have been held before adoption, and indicating that a statement will be made to the House. When agreement is given subject to a Parliamentary reserve the Clerk(s) of the Committee(s) should be notified by telephone.

STATEMENT TO THE HOUSE

47. Where it has been necessary for a Minister to write to the Chairman of the Scrutiny Committee(s) (paragraphs 45-46 refer) the question of whether a statement to the appropriate House is required will depend on the outcome of the Committees' consideration. The Chairman will inform the Minister whether the Committee considers that a statement to the House should be made. The Commons Scrutiny Committee have commented that "this

is a reasonable arrangement which prevents the House being provided with a mass of material that serves no obvious purpose" (House of Commons Second Special Report from the Select Committee on European Legislation, HC400 Session 1985-86). The opinion of the Committee on whether an oral or written statement would be preferable should be taken into account. For cases of obvious importance, the Department should anticipate a request for an oral statement and advise the Minister that such a statement should be made at the earliest opportunity. The statement should include a reference to the scrutiny position, noting, if appropriate, when the document was recommended for debate and the reason why a debate could not have been held before adoption; explaining the special reasons why the Minister had decided not to withhold agreement; and if possible indicating the likely timing of a debate. An expression of regret at the impracticability of arranging an earlier debate will normally be appropriate.

SECOND STAGE SCRUTINY

48. The scrutiny procedure is normally complete once the Committee has reported on the document and any debate or debates recommended by the Committees have taken place. However, a new situation may be created if the proposals subsequently undergo substantial amendment, affecting United Kingdom interests, in the course of Council discussion (see also paragraphs 50-55). Departments should provide Parliament with information on any such changes so that the Scrutiny Committees can have a second look at the proposals and make a further recommendation for debate, if they so desire, before adoption by the Council. Second stage scrutiny is set in motion when the Department concerned deposits a supplementary explanatory memorandum on a proposal which has already been reported on or debated. Wherever possible this should be done at least six weeks before the proposal is due to be adopted by the Council. A chart to assist Departments in identifying candidates for second stage scrutiny is at Annex F.

49. The onus is on Departments to identify cases where such further information should be reported to Parliament. The European Secretariat of the Cabinet Office maintains a list of major proposals which in the lead Department's view are likely to warrant further reference to Parliament before adoption, together with Departments' forecasts of when such reference should be made. The European Secretariat trawls Departments periodically to ask them to consider whether they have any items that require second stage scrutiny and circulates a revised list in the light of information received.

SINGLE EUROPEAN ACT: CO-OPERATION PROCEDURE

50. When a document is subject to the co-operation procedure set out in the Single European Act (SEA), Departments will need - when the Act has come into effect - to monitor its progress carefully and to be ready to keep the Scrutiny Committees informed of any amendments to the proposal by means of supplementary memoranda and to place a further Parliamentary reserve when necessary. The following description of the co-operation procedures may help departments to decide on the action required to ensure that the government's scrutiny obligations to Parliament are fulfilled. A chart to assist departments in identifying the possible alternative courses that a proposal might follow is at Annex G. If Departments are not clear on the procedure to be followed the European Secretariat should be consulted.

51. The co-operation procedure will begin when the Commission puts forward a proposal to the Council under one of the affected Articles i.e. Articles 7; 49;54(2) second sentence; 57 with the exception of the second sentence of paragraph 2 thereof; 100A; 100B; 118A; 130E; and 130Q(2) of the EEC Treaty as amended by the SEA. Normal scrutiny procedures are observed. The Council then adopts a common position by qualified majority and sends the proposal to the European Parliament for its opinion. A decision by the European Parliament must be taken within 3 months.

52. If the European Parliament

i. approves the proposal
ii. takes no position

there is no need for any additional scrutiny procedure.

53. If the European Parliament rejects the Council's common position the Council may nonetheless adopt the proposal in accordance with its original common position, acting by unanimity. In this event no additional scrutiny is necessary. If, in the event of rejection by the European Parliament of the Council's common position, the Commission brings forward a revised proposal, then the scrutiny implications set out in paragraph 54 (i) below apply.

54. If the European Parliament amends the Council's common position, the situation is more complicated. The Commission must, within one month, review the European Parliament amendments, and may put revised proposals to the Council. The Council, has to act within three months and may:

i. adopt, by qualified majority, the "re-examined" proposal put to it by the Commission(which may consist of the Commission's original proposal, or a revised proposal including some or all of the Parliament's proposed amendments).
The scrutiny position here will vary from case to case. If the re-examined proposal does not differ in any significant respect, so that if the Scrutiny Committee(s) were to reconsider the proposal their original recommendations would be expected to stand, there is no need for further scrutiny. Where there is doubt over the significance of the changes or it is clear that the re-examined proposals do contain significant changes, especially on a point on which the Scrutiny Committee(s) has already expressed concern, the Scrutiny Committee(s) will expect to be consulted about it, and the Department concerned should normally submit a supplementary explanatory memorandum. In doing so, the Department should bear in mind the need for the scrutiny process to be completed before the matter comes to the Council for final decision. This is necessary (a) in order to avoid Ministers being put in the awkward position of having to impose a scrutiny reserve twice on the same proposal and (b) to comply with the deadlines laid down in the co-operation procedure which stipulates that a revised proposal will lapse if the Council has not taken a decision on it within three months of its submission to the Council by the Commission (or a maximum of four months if the European Parliament agree to an extension). Other member states are unlikely to accept that a Scrutiny Reserve should cause a proposal to lapse.

If a scrutiny reserve is placed it will be essential therefore for any debate recommended by the Scrutiny Commitee(s) to be scheduled within the three (or four) month period. If a debate cannot be held in the time allowed then the Minister concerned should lift the reserve. But this procedure should be the exception and every effort must be made to hold debates promptly so that scrutiny can be completed in the timescale laid down. In these circumstances, the Minister concerned should inform the Committee in writing at the earliest possible opportunity in the usual way (see paragraphs 45-47).)

ii. amend and adopt, by unanimity, the Commission's revised proposal
Here, too, the scrutiny implications would have to be considered case by case. The Council would presumably have considered and rejected the Commission's proposals (ii. above) before considering an alternative approach, and if the Commission had revised its proposals these would have been deposited for scrutiny if necessary. Whether or not a further Explanatory Memorandum would need to be submitted would depend on how far the alternative version before the Council differed from earlier versions: if the Council decided to return to its original common position there would clearly be no need for any further scrutiny; if the alternative version before the Council involved important new proposals, scrutiny might be needed. (The situation here is no different from the position that exists when a proposal not covered by the cooperation procedure is altered during the course of negotiation (see paragraphs 48-49).)

iii. let the proposal lapse
After the Council has decided to let a proposal lapse there is obviously no scrutiny implication. However until that decision has been taken, Departments should examine proposals in accordance with the criteria set out in sub-paragraphs i and ii above.

55. The procedures described in paragraph 54 relate to the Commission's "re-examined" proposals as put to the Council. Such proposals may be based

on the amendments suggested by the European Parliament, which themselves could be wide ranging and involve significant changes to the Council's agreed common position. Any European Parliament amendments should be monitored very carefully by Departments as soon as they appear. This is particularly important in view of their potential incorporation by the Commission in a re-examined proposal or their possible adoption by the Council (by unanimity) when considering the document again. It will not be appropriate to submit a supplementary explanatory memorandum on every amendment proposed by the European Parliament. Only very significant amendments which might be adopted should be referred to in any supplementary explanatory memorandum on the Commission's re-examined proposals. Early consideration of the European Parliament's amendments will be important. In view of the timing restrictions on Council action it will be essential to submit any supplementary explanatory memorandum as soon as possible after the Commission has put re-examined proposals to the Council or has indicated that no change is contemplated.

CABINET OFFICE RECORDS

56. The European Secretariat of the Cabinet Office maintains a record of all documents which have been deposited in Parliament indicating their progress through the scrutiny process. Departments should supply details of documents that have been adopted by the Council, and their adoption date to the European Secretariat (233-7006 or 6144) in a quarterly return.

WITHDRAWAL OF RECOMMENDATIONS FOR DEBATE

57. The Commons Scrutiny Committee has indicated that it is prepared to consider withdrawing a recommendation for a document to be debated in circumstances where the original recommendation is no longer valid. This may arise in the following circumstances -

a. Where the document in question has been withdrawn by the Commission. Arrangements have been made by the FCO to supply the Committee with lists of withdrawn documents following the Commission's periodical reviews of outstanding proposals.

b. When the document in question has been amended in such a way as to remove those features which the Scrutiny Committee identified as giving rise to the need for debate. If a Department believes this to be the case it should consult the European Secretariat of the Cabinet Office (233-8380 or 6180). Then either the Department should submit a supplementary explanatory memorandum to the Committee, or the responsible Minister should write to the Chairman of the Scrutiny Committee (copied to the Lord Privy Seal, the FCO Minister of State, the Secretary to the Cabinet and the Clerk of the Committee), explaining the circumstances and suggesting that the Committee might wish to reconsider its recommendation for a debate.

58. There is no formal procedure for the withdrawal of recommendations by the Lords Scrutiny Committee. It makes fewer recommendations for debate and these recommendations are normally acted on promptly. If however a case arises in which a Department feels that the need for a debate recommended by the Lords Scrutiny Committee may have been overtaken by events, it should consult the European Secretariat of the Cabinet Office (233-8380 or 6180).

V. ARRANGING DEBATES

A. DEBATES IN THE COMMONS

TIMING

59. Certain commitments have been given to the House of Commons Scrutiny Committee which condition the Government's handling of EC documents. In replying to the conclusions of the First Special Report (1983-84 Session) of the Scrutiny Committee on aspects of scrutiny procedure which had caused concern, the Lord Privy Seal said: "It is the Government's practice that debates on European documents should be held as far in advance as practicable of the expected adoption of the proposal concerned. It is desirable that this should be at the point when the voice of the House can be most influential. As a general rule, this will normally be early rather than late in the life of a proposal. The Committee rightly notes that the selection of an optimum time for debate is very much a matter of judgment. The Government fully accept the Committee's view that, when making this judgment, it should be the rule always to err on the side of an early debate." In order to fulfil these commitments it is necessary for Departments to initiate action as soon as possible after the Committee's recommendation has been made; good advance notice is required to arrange a debate within what is usually a congested programme of Parliamentary business. The first stage of this action is collective consideration in Legislation (L) Committee of the need for a debate, its possible timing and the terms of a Resolution. There should be a presumption that an early debate will take place, but there will be cases where it can be argued that no debate should take place before agreement in Brussels or where debate should take place very much later than would be implied by the general guidelines.

INFORMING L COMMITTEE SECRETARIAT

60. When the Scrutiny Committee recommends a document for debate, the Department should contact L Committee's secretariat in the Cabinet Office (233 7665) to discuss the appropriate procedure to be followed (see paragraphs 61-62). Normally the Department will first wish to await a copy of the Scrutiny Committee's report, but

if the Department considers that the debate is needed within a couple of months contact should be made immediately after the recommendation. In no case should an approach to the secretariat be left longer than 6 weeks.

61. If L Committee's secretariat advises that a discussion by L Committee will be required, the Minister responsible for the Community document should submit a memorandum to L Committee. This should normally be done as soon as possible after the Scrutiny Committee has recommended the document for debate. L Committee usually meets weekly from the beginning of a Parliamentary Session until Easter. The fact that the item needs to come to a meeting should not cause any significant delay. In some cases, such as documents which the Scrutiny Committee have recommended for debate and on which they have asked to be kept informed of developments, it might be appropriate to delay consideration by L Committee. Departments should review the position of such documents on a regular basis and keep L Committee secretariat informed.

62. It may sometimes be desirable for Community documents recommended for debate by the Scrutiny Committee to be cleared by correspondence. If L Committee secretariat advises that the course of action is appropriate, the Minister responsible should write to the Chairman of L Committee explaining why it is not possible/appropriate to observe the Committee's normal procedure set out in paragraph 61. The letter should be copied to members of L Committee, the Chairman and members of OD(E) and any other Ministers who have an interest. The Secretary of the Cabinet and the Secretaries of L and OD(E) should also receive copies. Such a letter may be suitable in the following circumstances :

a. where the subject matter of the document is routine (eg an annual financial or economic report);

b. where the recommendation of the Scrutiny Committee is for a debate in Standing Committee (as opposed to the Floor of the House) and although there is no urgency over the timing of the debate, the Department agrees with the recommendation and wishes to act quickly;

c. where it proves impossible to arrange a debate before a decision is required in Brussels;

d. where circumstances have changed since L Committee's consideration of the handling of the debate (eg where significant amendments are made to the original document or where an additional document is to be included in the debate);

e. where an L Committee meeting is not scheduled to take place in sufficient time.

MEMORANDUM FOR CONSIDERATION BY L COMMITTEE

63. The memorandum or letter to L Committee should be short - only rarely in excess of two sides of A4 paper - and need only give such details of the substance of the document as are necessary to enable the Committee to form a view on its Parliamentary handling. It should also cover the following points:

a. The recommendation made by the Scrutiny Committee, particularly whether or not they propose a debate in Standing Committee.

b. The tactical considerations, in particular the state of negotiations in Brussels and its implication for the timing of a debate. To meet the requirements of genuine Parliamentary scrutiny, it will generally be desirable to hold a debate early, rather than immediately prior to a final Council consideration. If there are special factors which require debate to be held shortly before, or even after, agreement has been reached in the Council, these factors should be brought out at this stage. In those circumstances, the Committee may

wish to consider whether the Chairman of the Scrutiny Committee should be informed and whether the use of a Parliamentary Reserve would be appropriate (see paragraphs 43 and 44).

c. Where and when the debate should take place eg on the Floor of the House after 10.00 pm or in Standing Committee, before a specified date. If the Minister's recommendation differs from that of the Scrutiny Committee, the memorandum should explain why.

d. The exact wording of the motion. This should include reference to all the documents and explanatory memoranda which are to be the subject of the debate, including any supplementary memoranda issued or under preparation for the debate. (Examples of recent motions used are given at Annex H).

e. The proposed line including the line to be taken on likely amendments to the government's motion.

Points d and e need not be covered in detail if a debate is not proposed for the near future. However, two weeks before a debate is eventually held, and following consultation with the Chief Whip's Office and the Foreign and Commonwealth Secretary's Office on the timing of debate (see paragraph 65 below), a letter covering these points should go to L and OD(E) Committees with a copy to the Secretary of the Cabinet.

CONSULTATION WITH BACKBENCHERS

64. When the subject matter of the Community document is controversial the Minister concerned might wish to consult the chairman of the relevant back-bench subject group and possibly other Government back-benchers. Any such consultation should preferably take place before the relevant meeting of L, so that the Minister is in a position to report the outcome of these discussions.

MEETING OF LEGISLATION COMMITTEE

65. The various aspects of the handling of the debate are discussed as necessary by L Committee. The Memorandum by the Minister of the Department concerned forms the basis of L Committee's consideration. The aim is for the discussion on handling to be taken, if possible, well in advance of the likely date of agreement in Brussels. It is then for the Department concerned to liaise with the Chief Whip's Office on the precise timing of a debate in consultation with the Foreign and Commonwealth Secretary's Office.

PLACE

66. Debates may be taken either on the Floor of the House or in Standing Committee. As a general rule only the more technical and specialised Community documents are likely to be recommended by the Scrutiny Committee as suitable for debate in Standing Committee. However the final decision on where the debate is held will be taken by the business managers after discussion through their usual contacts. For instance the Chief Whip's Office may wish to explore the possibility of debates being taken in Standing Committee to relieve the pressure on time on the Floor unless the subject is of major importance and needs to be debated on the Floor.

DURATION

67. Debates on the Floor of the House are usually held after 10.00 pm and last for up to 1½ hours. Exceptionally that time may be extended or prime time may be provided. House of Commons Standing Order No 80(4) provides for up to 2½ hours of debate in Standing Committee.

FORM OF GOVERNMENT MOTION AND AMENDMENTS

68. Debates on Community documents are held on an expanded take note motion. This should cite the relevant documents by their Council numbers and any additional explanatory memoranda issued or under preparation for debate; and should indicate Government policy on the document. Before approaching the Whip's Office, Departments

should seek the advice of the Clerk of the Commons Scrutiny Committee on the description of the documents in the motion's wording. Amendments to motions may be tabled by any Member and are selected by the Speaker, or in the case of a Standing Committee, by the Chairman.

SUPPLEMENTARY EXPLANATORY MEMORANDA

69. Departments should consider whether Parliament has been given sufficient information on the latest state of Council discussions on the document. Any supplementary explanatory memorandum should be provided at least 48 hours before debate and if possible three to four weeks in advance to allow time for the Scrutiny Committee to consider and report further on the document.

SCOPE OF SPEECHES

70. The Minister, or Ministers, responsible for the document opens and winds up the debate on the Floor and in Standing Committee. The Minister's opening speech should explain the contents of the document and any relevant scrutiny points; when the debate is being held after the adoption of the document the speech should cover the ground dealt with in paragraph 47 above.

REFERENCE TO NEW COMMUNITY DOCUMENTS

71. Exceptionally, the Minister might wish to refer to a new Community document which has not been included in the motion; in such cases the European Secretariat of the Cabinet Office (233-6180) or 8380) should be consulted in advance and then the Chief Whip's Office informed. The Speaker has ruled that a Minister is free to quote from a Community document only where it has been available in the Vote Office at least two hours prior to debate (19.6.80 Hansard Vol 986 No 188, Col 301).

ACTION WHERE DOCUMENTS ARE NOT COVERED BY STANDING ORDERS

72. European Community documents are defined in the House of Commons Standing Order No 3 as "draft proposals by the Commission of the European Communities for legislation and other documents published for submission to the Council of Ministers or to the

European Council whether or not such documents originate from the Commission". The standing orders of the House expressly provide for documents so defined to be debated after 10.00 pm on the Floor or to be referred to a Standing Committee. However, some documents (mostly budgetary) fall outside this definition and special arrangements need to be made if they are to be referred to Standing Committee or to be debated after 10.00 pm. The Department must advise the Chief Whip's Office in writing of such cases.

ACTION WHERE THE DEBATE IS ON THE FLOOR

73. The Leader of the House announces the debate, its date and the documents to be taken in the Thursday Business Statement in the House in the week immediately prior to the debate. All documents and memoranda included in the motion are referred to in the Business Statement and it is the responsibility of the Department to ensure that copies are available in the Vote Office by lunchtime on the day of the statement.

ACTION WHERE THE DEBATE IS IN STANDING COMMITTEE

a. Motions to be tabled

74. The Chief Whip's Office will table the necessary motions. If this is agreed to, the item will normally be included on the agenda of the next meeting of the Committee of Selection, which will select the membership of the Standing Committee. The Standing Committee will normally meet on a Wednesday but not until at least a week after the meeting of the Committee of Selection. The Friday before the Standing Committee meets, the responsible Department should contact the Public Bill Office, House of Commons, about the terms of the motion which the Minister intends to move in the Committee. The Public Bill Office will advise on the form of the motion but generally the motion will be that agreed in Legislation Committee prefaced by the words "that the Committee takes note of European Documents ...". This is printed as a notice of motion on a separate (blue) sheet circulated together with the Order Paper, usually the Monday before the Committee meets. On the day of the meeting the motion is re-circulated on a white sheet.

b. Attendance

75. Any Member of the House may attend the Committee, speak and propose amendments, but only the members of the Committee may vote on the motion.

c. Report to the House

76. Following their meeting, and usually on the same day, the Standing Committee reports the document to the House, together with any resolution to which it has come. This report appears in the Votes and Proceedings of the House for that day, and is normally published the following morning.

d. Referral to the Floor

77. A Government motion tabled by the Chief Whip's Office is subsequently made on the Floor of the House on the document reported from the Committee. The terms of this motion will normally be identical to that agreed by the Standing Committee.

B DEBATES IN THE LORDS

78. Debates on Community documents in the House of Lords normally take place on the basis of a motion referring to the relevant report of the Scrutiny Committee. When a document has been recommended for debate in the House of Lords, L Committee needs to be consulted only if particular problems are likely to arise. The motion is customarily moved by a member of the Scrutiny Committee (who will usually be the Chairman of the relevant sub-Committee). The arrangements for these debates are therefore not wholly in the hands of the Government (who in any case have no formal control of business in the Lords) but there is informal liaison between the Government Whip's Office and the Clerk of the Committee to ensure that debates are arranged at a time of mutual convenience. The motions to take note of Reports awaiting debate are included in the section "No Day Named" in the Lords Order Paper. Occasionally reports which have been made for the information of the House (List D) are given a short debate in the context of an unstarred question: such debates are handled according to the usual procedure for unstarred questions.

VI PROCEDURE TO BE FOLLOWED BETWEEN PARLIAMENTS

79. There can be no hard and fast rules on the procedure to be followed during the interregnum between two Parliaments. The Cabinet Office will issue specific guidance on procedure when a General Election is called but the following paragraphs are based on the procedure followed at the time of the 1979 and 1983 Elections.

80. For scrutiny purposes, the "election period" runs from the dissolution of Parliament until the reconstitution of both Committees. Until the dissolution, normal procedures apply.

81. It should be noted that the Commons Committee is appointed under a Standing Order of the House; the Committee will therefore not require any action on the part of the House to ensure its continuation once Parliament returns although it cannot meet until members have been nominated by the House. It is formally for the Committee to elect a Chairman from among its members but, in practice, the Chairmanship will be settled by agreement between the government and Opposition Whips prior to the new Committee's first meeting.

82. At the time of the 1979 and 1983 General Elections the formal deposit of documents and explanatory meoranda was held in abeyance between the ending of one Parliament and the opening of the next. However internal departmental procedures continued as if Parliament were sitting. The depositability of documents was assessed on the criteria which applied in the preceding Parliament. Printing arrangements for depositable documents continued and the documents were distributed as usual to avoid any backlog on the resumption of Parliament. Departments continued to prepare explanatory memoranda on all depositable documents, but these were not signed and no reference was made to their policy implications. Copies of documents and explanatory memoranda were provided on an informal basis to the Scrutiny Committees' Clerks.

83. Departments were advised to assume that outstanding debate recommendations made by the Committees before dissolution would be renewed by the incoming Committees (and this proved to be the case).

84. In some cases, Council adoption with or without a scrutiny reserve was needed before the scrutiny procedures had either been cleared or begun. Departments were then advised to invite their Minister to write to the Leader of the House of Commons (and if appropriate to the Leader of the House of Lords), with copies to the FCO Minister of State and the Secretary to the Cabinet, explaining why agreement was necessary, even if subject to a Parliamentary reserve. Blind copies of such letters were informally passed to the Committee Clerks for information. In turn, the Leader of the House advised Ministers to inform the Committee Chairman, when appointed, of the action taken. In some cases, Departments judged it appropriate to make a statement to the House on the resumption of business by means of a written Parliamentary answer.

85. Once Parliament had been opened, deposit of documents and submission of explanatory memoranda were resumed on the basis applying in the previous Parliament. After a change of Government in 1979 approval to do so was first obtained from the appropriate FCO Minister and the Leader of the House. Departments were informed of this by letter from the Cabinet Office.

86. After the General Election in May 1983 the new members of the Commons Select Committee on European Legislation were appointed on 21 July 1983. The Lords Scrutiny Committee reassembled on 28 June 1983, shortly after the State Opening of Parliament.

ANNEX A

COMMONS SCRUTINY COMMITTEE
TERMS OF REFERENCE

The Select Committee on European Legislation is appointed under Standing Order No 105, viz:

Select Committee on European Legislation

105.-(1) There shall be a Select Committee to consider draft proposals by the Commission of the European Communities for legislation and other documents published for submission to the Council of Ministers or to the European Council whether or not such documents originate from the Commission, and to report its opinion as to whether such proposals or other documents raise questions of legal or political importance, to give its reasons for its opinion, to report what matters of principle or policy may be affected thereby, and to what extent they may affect the law of the United Kingdom, and to make recommendations for the further consideration of such proposals and other documents by the House.

(2) The Committee shall consist of sixteen members.

(3) The Committee and any Sub-Committee appointed by it shall have the assistance of the Counsel to Mr Speaker.

(4) The Committee shall have the power to appoint specialist advisers for the purpose of particular inquiries, either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(5) the Committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report from time to time.

(6) The quorum of the Committee shall be five.

(7) The Committee shall have power to appoint Sub-Committees and to refer to such Sub-Committees any of the matters referred to the Committee.

(8) Every such Sub-Committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report to the Committee from time to time.

(9) The Committee shall have power to report from time to time the minutes of evidence taken before such Sub-Committees.

(10) The quorum of every such Sub-Committee shall be two.

(11) The Committee or any Sub-Committee appointed by it shall have leave to confer and to meet concurrently with any Committee of the Lords on the European Communities or any Sub-Committee of that Committee for the purpose of deliberating and of examining witnesses.

(12) Unless the House otherwise orders, each Member nominated to the Committee shall continue to be a member of it for the remainder of the Parliament.

ANNEX B

LORDS SCRUTINY COMMITTEE

SELECT COMMITTEE ON EUROPEAN COMMUNITIES: TERMS OF REFERENCE AND SUB-COMMITTEES

TERMS OF REFERENCE

That a Select Committee be appointed to consider Community proposals whether in draft or otherwise, to obtain all necessary information about them and to make reports on those which, in the opinion of the Committee, raise important questions of policy or principle, and on other questions to which the Committee consider that the special attention of the House should be drawn.

That the Committee have power to appoint Sub-Committees and to refer to such Sub-Committees any of the matters within the terms of reference of the Committee; that the Committee have power to appoint a Chairman of Sub-Committees, but that such Sub-Committees have power to appoint their own Chairman for the purpose of particular enquiries; that two be the quorum of such Sub-Committees;

That the Committee have power to co-opt any Lord for the purpose of serving on a Sub-Committee;

That the Committee and any Sub-Committees have power to adjourn from place to place;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Reports of the Select Committee from time to time shall be printed, notwithstanding any adjournment of the House;

That the Minutes of Evidence taken before the Committee or any Sub-Committee from time to time shall, if the Committee think fit, be printed and delivered out; and

That the Committee or any Sub-Committee appointed by them have leave to confer and to meet concurrently with any Committee of the Commons on European Legislation, etc or any Sub-Committee of that Committee for the purpose of deliberating and of examining witnesses; and have leave to agree with the Commons in the appointment of a Chairman for any such meeting.

SUB-COMMITTEES

Sub-Committees of the House of Lords Scrutiny Committee are -

a. Finance, Economics and Regional Policy
b. External Relations, Trade and Industry
c. Education, Employment and Social Affairs
d. Agriculture and Consumer Affairs
e. Law
f. Energy, Transport, Technology and Research
g. Environment

TERMS OF REFERENCE OF SUB-COMMITTEE E (LAW)

To consider and report to the Committee on:

a. any Community proposal which would lead to significant changes in UK law, or have far-reaching implications for areas of UK law other than those to which it is immediately directed;

b. the merits of such proposals as are referred to them by the Select Committee;

c. whether any important developments have taken place in Community law; and

d. any matters which they consider should be drawn to the attention of the Committee concerning the vires of any proposal.

ANNEX C

STANDARD FORM OF EXPLANATORY MEMORANDUM

Council number*
COM number

EXPLANATORY MEMORANDUM ON EUROPEAN COMMUNITY LEGISLATION**

[Title of document]

Submitted by the [Department] [day/month/year]

SUBJECT MATTER

MINISTERIAL RESPONSIBILITY

LEGAL AND PROCEDURAL ISSUES

i. Treaty basis

ii. Co-operation procedure***

iii. Voting procedure

iv. Impact on United Kingdom Law

POLICY IMPLICATIONS
(including possible impact on business costs and employment)

FINANCIAL IMPLICATIONS

TIMETABLE

OTHER OBSERVATIONS

[Minister's signature]
[Title]
[Department]

* For an unnumbered Explanatory Memorandum substitute "Official text not yet received", or "Official text not available" as appropriate.

** For Explanatory Memoranda on documents not containing proposals for legislation substitute the word 'DOCUMENT' for 'LEGISLATION".

*** This heading should not be incorporated until the Single European Act has been formally ratified by all member states.

ANNEX D

STANDARD FORMS OF FCO COVER NOTE

The attached document, dealing with .....
.....
is a self-explanatory factual report prepared by the Commission on which no explanatory memorandum is considered necessary.

The lead Department is -

or

The attached document, dealing with minor amendments to .....
.....
is self-explanatory and no explanatory memorandum is considered necessary.

The lead Department is -

ANNEX E

HOUSE OF COMMONS RESOLUTION OF 30 OCTOBER 1980

"Resolved,

That, in the opinion of this House, no Minister of the Crown should give agreement in the Council of Ministers to any proposal for European Legislation which has been recommended by the Select Committee on European legislation, for consideration by the House before the House has given it that consideration unless -

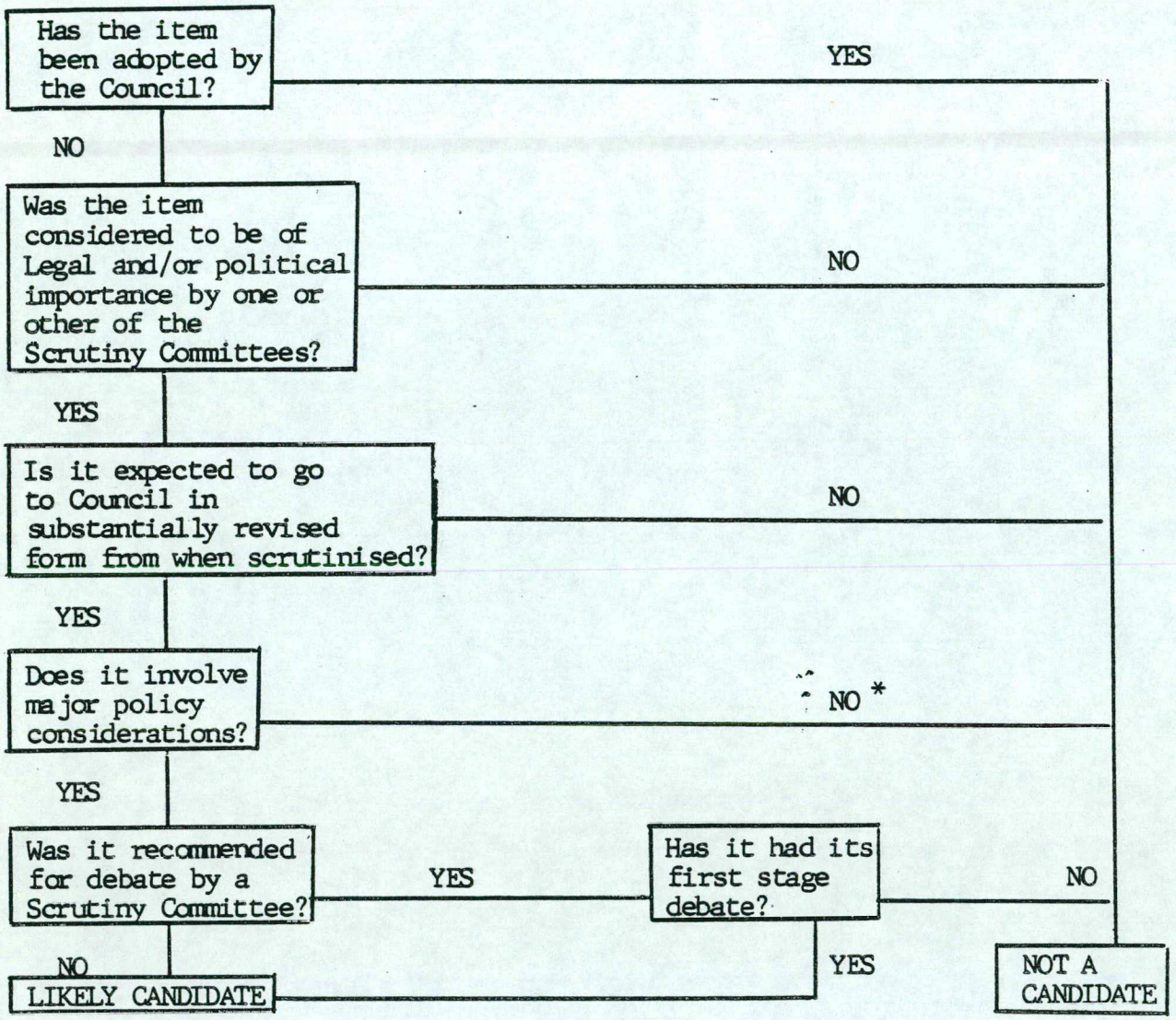
a. that Committee has indicated that agreement need not be withheld, or

b. the Minister concerned decides that for special reasons agreement should not be withheld;

and in the latter case the Minister should, at the first opportunity thereafter, explain the reasons for his decision to the House."

ANNEX F

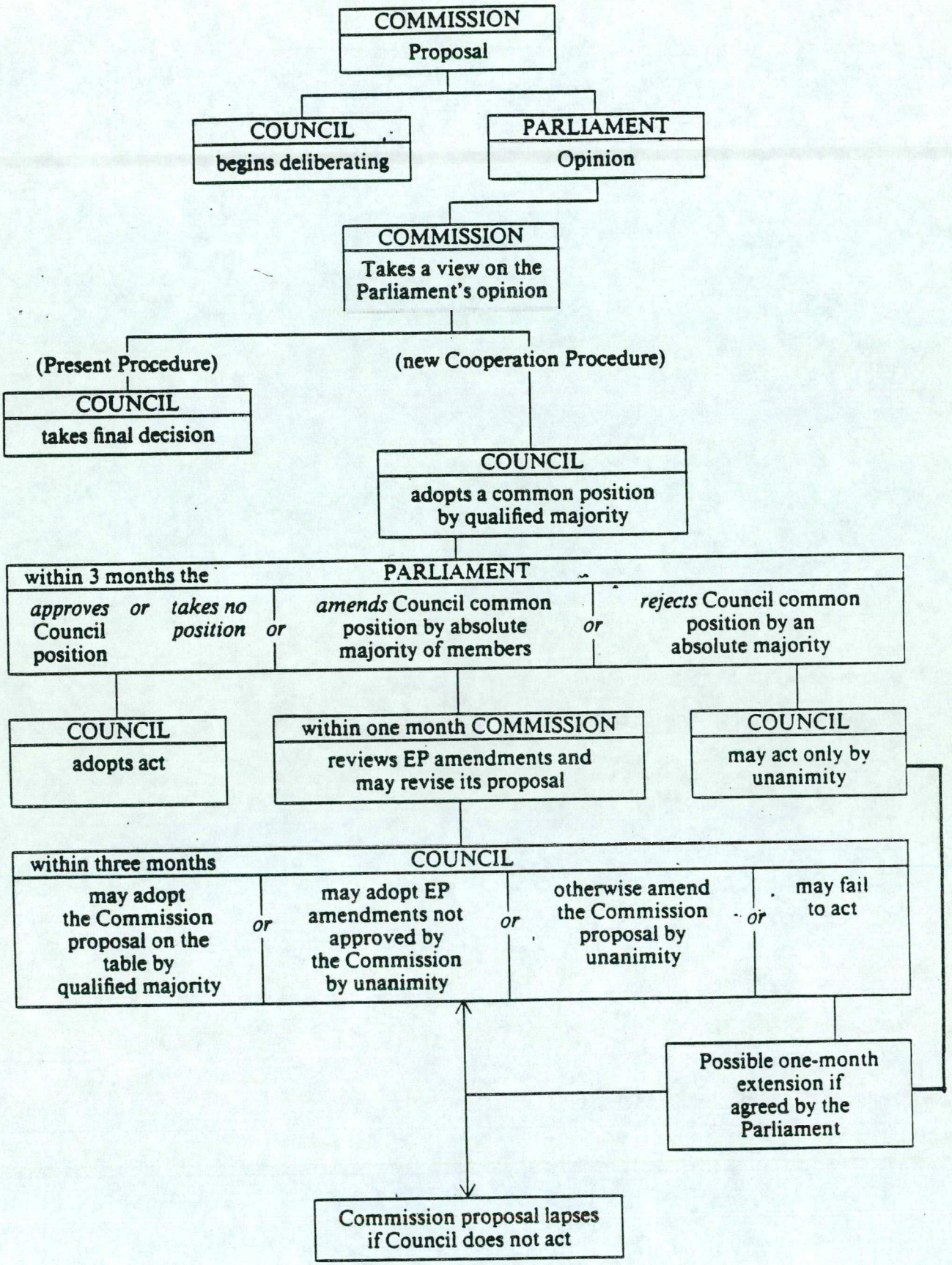
CRITERIA TO BE APPLIED TO CANDIDATES FOR SECOND STAGE SCRUTINY



* The agreement of the European Secretariat should be sought.

ANNEX G

FLOW-CHART ILLUSTRATING LEGISLATIVE PROCESS IN THE COMMUNITY



ANNEX H

EXAMPLES OF MOTIONS FOR DEBATES ON COMMUNITY DOCUMENTS

That this House, while stressing the importance of maintaining continued close links between Greenland and the Community, recognises that the proposed change in the status of Greenland has wide support; and takes note of European Community Document No. 5064/84 transmitting legal texts providing for a change of the legal status of Greenland and fishery arrangements with regard to Greenland.

That this House takes note of European Community Documents Nos. 7685/84, 7686/84 and 7948/84; and in respect of 7685/84 and 7686/84 supports the Government's approach in pressing for charging provisions which reduce distortions to trade; and in respect of 7948/84, supports the Government's intention to seek to ensure that the provisions of any new directive should be based on a scientific assessment of the available information as to safety in use and should take full account of the interests of consumers, livestock producers, the meat trade and the pharmaceutical industry.

That this House takes note of European Community Documents Nos. 4692/81 and 4465/84, draft proposals for Directives and a Decision on the right of establishment for certain activities in the field of pharmacy, and the Explanatory Memorandum from the Department of Health and Social Security dated 16 July 1984; endorses the view that the instruments are necessary; and welcomes the United Kingdom's endeavours to encourage the adoption and implementation of these measures which will give pharmacists the same freedom of movement within the Community already afforded to the other health professions.

That this House takes note of European Community Document No. 9272/1/83, the first Annual Report of the Commission on the Community's anti-dumping and anti-subsidy legislation; and supports the Government's intention to ensure that the Commission's action in this field continues to take full account of United Kingdom interests.

That this House takes note of European Community Document No. 8175/84, Proposal for a Third Council Directive on Summer Time Arrangements, and, while recognising the reasons for the proposal, urges Her Majesty's Government to press for the retention of the existing arrangements.

597.26

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PUP

FROM: A J C EDWARDS
29 October 1986

CHIEF SECRETARY

cc Chancellor
MST
Sir P Middleton
Mr F E R Butler
Sir G Littler
Mr Lavelle
Mr Burgner Mr Schola
Mr Turnbull Mr Croppe
Mr Bonney
Mr Crabbie
Mr Gray
Mr Mortimer
Mr MacAuslan
Miss Simpson
Mr Wetherell

C/ might like to be aware.

CR 29/10

Have not attached papers because this fairly self-contained, but shall do so if you wish

ERDF RECEIPTS: DRAFT MINUTE TO PRIME MINISTER

As you will recall, the long exchange of Ministerial correspondence about whether normal "non-additionality" rules should apply to ERDF grants for newly privatised industries culminated in your agreement 10 days ago that officials in PESC(EC) should produce an analytical paper which you would circulate to colleagues.

2. Mr Walker argued that the paper must be prepared under "neutral" Cabinet Office chairmanship. You said that you could not agree to this any more than you could agree that the public expenditure survey report should be prepared under Cabinet Office chairmanship. You added however that you had no objections to the issue being discussed under Cabinet Office chairmanship as well.

3. I now attach the paper as it has emerged. Its preparation has, I fear, caused endless trouble. The Department of Energy and DOE have participated fully in the drafting processes and have indeed contributed large tracts of dubiously relevant material to the paper, which for tactical reasons we included with attribution to the departments concerned. However, Department of Energy officials have now said that they cannot be associated with the resulting paper, and DOE have not confirmed whether they are prepared to be associated with it. The Department of Energy's attitude is the

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more unreasonable in that it is at Mr Walker's request that we have pulled out all the stops to produce this paper quickly. The discomfort of the two departments is much increased, I suspect, by a consciousness that they do not have the better of the argument.

4. Despite these problems, the way is now open for you to circulate the paper to other Ministers with a covering note by yourself. I suggest that you should address your note to the Prime Minister with copies to the members of E(A), and I attach a draft minute accordingly. The Cabinet Office have taken the precaution of fixing a provisional meeting of E(A) for Tuesday next (4 November), though I understand that this meeting may in fact be needed for another topic, and the draft minute notes accordingly that the Prime Minister may want to arrange a discussion there if there is disagreement with what you say.

5. I suggest that you should finesse the vexatious problem about which departments are and are not committed by the official paper by describing it as a paper prepared in PESC(EC) by officials from the Treasury and some of the other departments concerned.

6. On substance, I recommend that you should stand by the existing policy and that you should take the opportunity in your cover note to bring out that the policy is in fact correct, well-considered and not totally inflexible. On past form, the Prime Minister may be expected to support our line strongly.

7. We will of course brief you fully for the E(A) meeting if and when it takes place. It will be important for the Treasury to win at that meeting.

8. The more moderate departments will probably argue there for a new dispensation which would shift the presumption of the policy by enabling them to channel receipts to privatised industries without an obligation to provide offsetting savings from their own programmes provided that they can demonstrate that the UK will otherwise lose the receipts to another country.

9. An outcome on these lines would not, I suggest, be satisfactory from our point of view. As soon as departments have the presumption that they can channel public money from the Community to particular privatised industries "for free" in terms of their own public expenditure programmes, they will be sorely tempted to forward such applications instead of making a determined effort to identify and put forward suitable public sector projects. The result could well be an increase in public expenditure of the order of £100 million a year or more after water privatisation.

AJCE

A J C EDWARDS

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PRIME MINISTER

PUBLIC EXPENDITURE TREATMENTS OF ERDF RECEIPTS BY PRIVATISED INDUSTRIES

Several colleagues in spending departments have suggested that we need to consider further how ERDF receipts by newly privatised industries should be treated for the purposes of public expenditure control. The attached note by officials from the Treasury and some of the other departments concerned, prepared in PESC(EC) and discussed in EQS, sets out the issues and the competing arguments.

2. The background is, very briefly, that about 30 per cent of our receipts from the ERDF are currently going to nationalised industries which have been privatised or are planned to be privatised over the next few years. So long as the industries are nationalised, these receipts reduce public expenditure by helping to finance public sector investments (though we lose 66 per cent of the receipts in the form of reduced Fontainebleau abatement in the following year). After privatisation, the industries will probably continue to be eligible for ERDF grants for projects which would not otherwise have taken place; but such grants will then lead to an increase in public expenditure, not a reduction, because there will no longer be any reductions in public expenditure to set against the 66 per cent loss of Fontainebleau abatement.

3. Our general policy on Community budget receipts provides for:

(a) maximising the UK's share of receipts without compromising our posture on budget discipline, and

(b) using the receipts, to the greatest extent possible, to finance existing public expenditure programmes (thus reducing the public expenditure total), not additional programmes or private sector programmes.

If departments wish to claim ERDF grants for passing on to the private sector, the presumption is that they must protect the public expenditure total and the taxpayer by making offsetting savings of the same amount elsewhere in their departmental programmes.

4. Ministers decided when British Telecom was privatised that the policy on private sector receipts should apply equally to BT's receipts. The DTI decided accordingly not to forward further applications to the ERDF on behalf of BT but to concentrate on other projects instead.

5. The departments which sponsor industries in the privatisation programme mostly contend that it is not appropriate to treat privatised industry receipts like other private sector receipts. They feel that they cannot reasonably be expected to find offsetting savings within their own departmental programmes to cover ERDF grants to the privatised sector. At the same time they argue that, particularly after water privatisation at the end of the decade, the UK may not be able to assemble public sector projects of a quality and on a scale to enable us to obtain the maximum (or possibly even the minimum) of our ERDF quota share unless we are prepared to put forward privatised industry projects as well, particularly water projects. The underlying assumption is that it will always be worthwhile spending an extra 66 units of public expenditure in order to obtain 34 units of extra UK receipts (net) from the Community budget.

6. In my view our policy on Community budget receipts is well-considered, and we should continue to treat grants claimed by departments for newly privatised industries in the same way as other grants to the private sector, subject to the qualification about receipts in respect of preprivatisation commitments mentioned in paragraph 25 of the note. The arguments are clearly set out in paragraphs 25-28 of the note. Three points which I would particularly underline are:

- First, we can ill afford to relax the objectives of controlling public expenditure and protecting the taxpayer which underlie the existing policy. The point of the policy is to ensure that payments to the private sector are treated in the same way whether they are made direct from a departmental budget or via the Community budget.

- Second, possible future quota take-up problems should not be allowed to dictate our control system. The correct solution to the problem of a potential shortfall of public sector projects to cover our quota entitlement is to find other public sector and industrial projects which can be put forward for support. The privatisation programme will anyway not have a major impact on the take-up problem until the water industry has been privatised, which cannot happen quickly.

- Third, I would dispute the assumption that it will always be worthwhile incurring an extra 66 units of public expenditure in order to attract an extra 34 units of net inflow into the UK from the Community. It may be more important to have the public expenditure we want than to get a project at something of a discount. I do not think, in any case, that the trade-off between extra Community receipts and extra public expenditure will generally be as favourable as this suggests, since privatised sector receipts would be likely to substitute, in part at least, for public sector receipts. A more realistic hypothesis, in my view, is that we might achieve a slightly higher point within our quota range if we are able to offer a wider and more appealing menu of projects to the Commission. In other words, the improvement in the net flow of resources to the UK in return for an extra 66 units of public expenditure is likely to be between 0 and 34 units and quite possibly closer to the former than the latter.

7. The other point which I would emphasise is that the policy is not totally inflexible. It is, and will remain, open to departments to put forward additional bids in the public expenditure survey or to make claims on the Reserve if they believe there to be compelling reasons for applying for particular ERDF grants for privatised industries without making offsetting changes in their departmental programme. As the paper says, the policy does not prohibit departments from making such bids. It does establish a presumption against accepting them.

8. In the light of the above, I hope that you and other colleagues

will agree that the policy on private sector receipts should be applied to privatised industry receipts, subject to the glosses mentioned in paragraphs 6 and 7 above. If there is no agreement on this, you may wish to arrange a short discussion, and I understand that the Cabinet Office have provisionally set up a meeting of E(A) for this purpose on Tuesday, 4 November at 11.00am.

9. I am copying this minute to Geoffrey Howe, members of E(A) and to Sir Robert Armstrong.

JOHN MacGREGOR

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PUBLIC EXPENDITURE TREATMENT OF ERDF RECEIPTS BY PRIVATISED INDUSTRIES

Introduction

1. The purpose of this paper is to set out the existing public expenditure treatment of European Regional Development Fund (ERDF) infrastructure grants received by private and newly privatised industries, the reasons for that treatment, and departments' views on possible changes of the treatment.

Background

2. Industries which have been, or are scheduled to be, privatised have since 1983-84 received ERDF payments as follows:

(£m)

	Date of Privatisation	1983-4	1984-5	1985-6	1986-7 forecast
Water	(after 1987)	21.4	17.9	50.5	55.0
Ports	(1984)	3.6	3.1	5.2	14.1
N.Bus[1]	(1986 onwards)	-	-	-	0.525
BAA[1]	(1987)	-	-	0.457	-
Gas (BGC)	(1986)	6.0	4.3	4.3	2.9
British Telecom (BT)	(1984)	15.0	11.6	6.8	3.5
TOTAL		46.0	36.9	67.3	76.0
% of total UK ERDF receipts		25.6%	18.5%	31%	31%

(1) It is possible that the Commission could refuse to support projects by local authority bus companies and airports if the UK decided as a matter of policy not to submit applications from privatised operators, on the grounds that to do so would involve distortion of competition. If this were to prove the case, the sums of money at stake in the transport sector could be significantly larger: Manchester International Airport, for example, is planning considerable expansion for which they would expect to get some ERDF support.

As the table illustrates, receipts by these industries presently account for about 30 per cent of the UK's total ERDF receipts. Among the industries by far the largest recipient, accounting for the lion's share of the receipts, is the water industry, and in particular the North West Water Authority: the industry is expecting this year to receive some 22.5 per cent of the total forecast ERDF receipts by the UK included in the latest Public Expenditure White Paper (Cmnd 9702), Table 3.3.2, compared with around 1.2 per cent for BGC.

3. BAA receipts could well increase in the next few years because of a specific project at Glasgow airport. The decline in BT's receipts is due to the policy adopted on privatisation (see paragraph 8 below): if a decision were taken to change this policy, their receipts could well increase again.

4. Decisions on ERDF funding are made in terms of commitments: each member state is allocated a range within which its total share of commitments ought to fall provided that sufficient eligible applications are forthcoming. The Commission can decide in one year to grant a certain amount of support to a project or programme while the payments flowing from that commitment will spread over several years. It is therefore relevant to look also at the commitment figures for the industries. These figures for 1983-85 are shown at the Annex. As the figures show, the industries listed in paragraph 2 accounted for 37 per cent of the new UK commitments in 1983, but the percentage fell to 9 per cent in 1985 because of the various embargos placed on ports, gas and water schemes by the European Commission while they looked at the privatisation issue.

Eligibility for receipts

5. There is some uncertainty at this stage about the extent to which privatised industries will continue to be eligible for ERDF receipts. ERDF grants for infrastructure projects have normally been limited to public sector undertakings, although there is a provision in the 1984 Regulation that private sector bodies acting in the same way as a public authority may be eligible for grant. European Commission officials have been considering the matter

and it is understood that they are recommending that eligibility should continue after privatisation subject to the additional criterion that the schemes undertaken by privatised bodies would not have gone ahead without ERDF. Private ports schemes are expected to feature in the 8th round of the Commission's 1986 ERDF approvals. In some industries, such as bus transport and airports, there is likely to be a mixture of newly privatised firms and existing private sector or continuing public sector undertakings. If for any reason ERDF grants are not in practice available to one sector of an industry, departments could be inhibited on grounds of fair competition from submitting ERDF applications from other parts of the industry both from a domestic and a Commission point of view. Even if the Government agrees to let applications go forward, there can be no guarantee, of course, that grants will in all cases be forthcoming. This applies to all ERDF applications.

Existing policy on Community budget receipts

6. The Government's general policy on receipts from Community sources, which Ministers have decided and reaffirmed on several occasions, provides for:

(a) maximising the UK's share of receipts without compromising our posture on budget discipline, and

(b) using the receipts, to the greatest extent possible, to finance existing public expenditure programmes, not additional programmes or private sector programmes.

The rationale which underlies (b) above is that use of Community receipts to finance existing public sector programmes reduces the demands made by the public sector on the taxpayer. More precisely, it helps to offset the increases in public expenditure which result from our gross contributions to the Community budget. Use of Community receipts to finance additional public expenditure or private sector programmes, on the other hand, does not have these beneficial effects on public expenditure. If therefore departments wish to use Community receipts to finance additional public expenditure programmes or to claim grants for passing on to the private sector, the presumption is that, with minor exceptions, they must protect the public expenditure

total and the taxpayer by making offsetting savings of the same amount elsewhere in their departmental programmes.

7. The policy outlined above has continued to be applied since the introduction of the Fontainebleau abatement system. Under that system, the net benefit to the UK of an increased share of Community budget receipts, whether public or private sector, is now 34 per cent of the gross value of the receipts: our abatement entitlement in the succeeding year falls by an amount equal to 66 per cent of the receipts. The case for maximising our share of receipts, on the basis set out in paragraph 6(a) above, remains, since a net inflow to the UK (or reduction in our net budgetary contribution) of 34 per cent of the gross receipts, though less favourable than a net inflow of 100 per cent of the gross receipts, is clearly preferable, other things being equal, to no net inflow. The net inflow, or reduction in our net budgetary contribution, will not, however, be reflected in a corresponding reduction in public expenditure unless the receipts are used to finance existing public expenditure programmes. On the contrary, if departments use them to finance additional public sector programmes the public expenditure total will rise by 66 per cent of the amount of the gross receipts, the reduction in our net budgetary contribution being more than offset by the extra spending from departmental programmes. In the case of receipts being claimed for private sector projects instead of public sector ones, there would be a similar adverse effect on public expenditure except in so far as the prospect of these receipts may increase the flotation price of the industry.

BT

8. Ministers considered the public expenditure treatment of ERDF receipts by newly privatised industries for the first time when BT was privatised in 1984. They agreed that the existing rules governing ERDF grants going to the private sector should apply to BT. As explained above, these rules provide that offsetting savings should be found for any ERDF money passed on to the private sector, in this case BT, and the Treasury will normally look to the sponsor department for these. Ministers also agreed that if

BT were to continue to receive ERDF grants, the same opportunities would have to be extended to competitor companies already in the private sector. The same rules on offsetting savings would have to be applied in these cases. The DTI, the department chiefly concerned in the BT case, concluded that, on balance, this would not be the most cost-effective use of their public expenditure resources. It was therefore agreed that, in future, applications from BT for ERDF grants would not be forwarded to the Commission. The decision was made at a time when there were no real difficulties with the take-up of the UK share of ERDF, and it was not seen as being applicable to all privatisations, the extent of which was not fully appreciated. It was agreed that payments flowing from grants made before privatisation could be passed on to BT without offsetting savings being sought, on the ground that these payments would have been reflected in higher receipts from the sale of BT.

9. Under the proposed STAR Community programme, ie a programme proposed by the Commission rather than Member States, ERDF aid of some £16m will be available for telecommunications infrastructure projects in Northern Ireland. British Telecom is the only serious contender for this aid but it is not yet clear to what extent (if any) aid will be applied for; the Secretary of State for Northern Ireland will decide this in the light of an economic assessment of the British Telecom proposals (and possibly others). Treasury Ministers have agreed in principle that this Community aid, if granted, can be passed on to British Telecom provided that the Northern Ireland Office makes public expenditure savings of equivalent amounts within the Northern Ireland expenditure block. This is consistent with the existing policy described in paragraph 6 above.

Possible problems on UK take-up of ERDF funds

10. There are considerable anxieties among departments which deal with the ERDF as to whether the UK will continue to be able to put forward public sector applications on a scale to cover our quota entitlement to 14.50-19.31 per cent of the Fund. These departments feel that to achieve the maximum of our quota range it is going to be necessary to put forward privatised industry projects as well, assuming that such projects are deemed eligible, and that it may even be necessary to do so to achieve the minimum.

11. The departments concerned point out that the main categories under which application can be made to the ERDF are

- aid to industry
- aid to infrastructure - paid for by local authorities
  - paid for by public authorities (or private organisations acting like a public authority)
  - paid for by central government

As already indicated in paragraphs 2-5, a substantial proportion of the commitments awarded in recent years has been through applications for aid to infrastructure carried out by the public authorities currently under consideration for privatisation. Clearly if those industries were not to receive ERDF assistance in future then, other things being equal, the difference would have to be made up by other applications if we are to maintain our quota share.

12. In the view of the departments concerned, this would be difficult. Because of controls on overall local authority spending their capital spending eligible for ERDF aid has been declining, and this has been reflected in a reduced volume of applications, and also in their quality and consequent success with the European Commission. There is no reason to suppose that this decline will be reversed. The main problem is in England, where, by way of illustration, 167 applications for ERDF aid worth £61m were submitted by English local authorities to DOE in 1986, compared with 319 similar applications, worth £106m, in 1985. The Welsh and Scottish Offices could take up in their countries any loss of ERDF aid caused by the loss of the privatised industry claims and could close some of the gap caused by the English losses. However, this would increase Commission and domestic objections to regional imbalance of ERDF assistance within the UK.

13. The other traditional sources of ERDF applications (ie aid to industry, public authorities not subject to privatisation and central government expenditure on infrastructure) are unlikely to come near to making up the remaining gap. On industrial aid, DTI has put to the Commission a draft Programme of Community Interest covering all industrial aid in Great Britain. If this were to

be accepted there could be a much increased level of commitment, but the initial Commission response is not favourable. In the Department of Energy's view the CEGC's capacity to increase its applications, for example, is also not significant since it is already putting forward all potential applications.

14. As regards central government expenditure on infrastructure, support for Trunk Road Projects is currently being sought to help offset the decline in English local authority applications. Those responsible for finding eligible schemes in England consider that they are exhausting their possible sources of Exchequer funded schemes. In looking at any new source the Commission criteria also have to be borne in mind.

15. In the judgement of the departments concerned, therefore, loss of ERDF assistance for privatised industries as a whole would significantly impair our ability to make sufficient applications to ensure a satisfactory level of take-up of the UK's annual quota share. The receipts available to industries already privatised or planned to be privatised could be of the order of £100m per year (mostly for water).

Case for changing the policy

16. The Departments of the Environment, Energy and Transport, supported by the Welsh Office and Scottish Office, take the view that the current treatment for private sector receipts should no longer be applied to newly privatised industries. This view is influenced by their concern about the UK's ability to secure its quota entitlement in the absence of ERDF grants for privatised industries, in particular when the water industry is privatised (see paragraphs 10-15 above). They also feel that there are wider political considerations which ought to be taken into account.

17. The Department of the Environment and the Welsh Office consider that the success of the Government's policy of privatising water authorities will be undermined unless the availability, after privatisation, of ERDF grant for eligible water and sewerage projects can be assured. Seven water authorities and three water companies

have benefitted from ERDF grants, which are more significant to their individual finances than to those of BT. For example, in 1985-86, ERDF grant (£6m) equates to 18 per cent of the Northumbrian Water Authority's capital programme, and 5 per cent of its turnover.

18. In the case of the North West Water Authority, the European Community has accepted as a National Programme of Community Interest the Mersey clean-up project and has so far approved £68m of ERDF aid to the programme, the greater part to the Authority. Over 25 years, capital expenditure by the Authority on the Mersey clean-up is expected to amount to £1.7 billion (40 per cent of its present annual rate of capital spend), and ERDF grant is expected to contribute £500m. The Mersey clean-up project, important as it is environmentally, for the regeneration of the area, and for tourism, brings no financial return to the Authority. The Department of the Environment therefore considers that without ERDF grant, the Mersey clean-up project, if it does not founder, will have its timescale considerably extended or will require water service charges to be raised by about 5 per cent (on top of the real increase in charges of about 10 per cent which will be necessary if the Authority is to be flotable). Successive Secretaries of State for the Environment have personally initiated and supported the Mersey clean-up programme. If the privatisation and EC receipts policies are allowed to set it back, or to put it in doubt, the Government will lay itself open to serious criticism from European, environmental and regional interests alike.

19. The Department of Employment have noted in addition that any reduction in ERDF grants to water authorities could well delay the rate at which desirable improvements to sewage disposal at resorts were made, and that any such delay would have an adverse effect on the tourism in the areas concerned.

20. Some departments also feel that a wider perspective ought to be adopted, even on the question of the costs to the Exchequer from ERDF private sector receipts. They suggest that in counting these costs, in particular the loss of public sector receipts or Fontainebleau abatement, account ought to be taken of possible offsets in the form of increased Corporation Tax payments from the industries, reduced unemployment benefits and increased income

tax and national insurance contributions from workers involved in the project benefiting from the ERDF money. In their view, the total effect on the Exchequer, after allowing for such offsets, could even be broadly neutral. Moreover, they consider that greater consideration should be given to the impact on investment and employment in the Assisted Areas where eligible projects are situated. They consider that in the absence of ERDF grants, the industries are likely to concentrate their investment in other areas, and that if the infrastructure is not available in the Assisted Areas, other industries too will be unlikely to invest there.

21. Some departments also argue that privatisations bring substantial gains to public expenditure in the form of flotation proceeds, and that it would therefore be reasonable to treat ERDF grants to privatised industries as relatively modest and acceptable offsets, to be set against these gains. Some of these offsets can be realised: to the extent that the EC Commission have committed themselves to ERDF grants, that can be stated in prospectuses when the company is offered for sale, and can be expected to enhance the sale proceeds pro tanto. In some cases, and especially in the longer term, ERDF grants are admittedly uncertain, and the possibility of future ERDF grants will have a relatively small and uncertain effect on sale proceeds. But in the case of most water authorities the effects on the flotation price will be partly quantifiable, and in one or two cases will be substantial. The ERDF grant aspect will need to be considered case-by-case along with all the other public expenditure implications of each privatisation.

22. Some departments also consider that it is unreasonable to expect them to make offsetting savings for privatised industries as this could only be done at the expense of other departmental programmes (eg Inner Cities). They point out that at present the expected ERDF receipts of nationalised industries generally count as internal finance and are taken into account during the annual Investment and Financing Review (IFR), and in the setting of the industries' External Financing Limits (EFLs) which are therefore lower than would otherwise be the case. Departmental budgets have not hitherto been affected. Finding offsetting savings will therefore be a new call on departments.

23. On presentation, some departments argue that it would be difficult to justify domestically a Government decision not to put forward to Brussels projects for privatised bodies which the European Commission deemed eligible for ERDF aid. They suggest that it would be even more difficult in the case of the water industry if schemes for England and Wales are not submitted when ERDF applciations are made and approved by water authorities in Scotland and Northern Ireland.

24. To argue that applications for grants to privatised industries were not being made because under the domestic rules, the departments responsible would have to make offsetting savings from their own programmes would also not be well received in Europe, since it would be regarded as inconsistent with the Joint Declaration of the Council, the Parliament and the Commission in 1984 whereby ERDF aid will, in general, be an additional overall source of finance for the development of beneficiary regions or areas.

Case for maintaining the policy

25. In the Treasury's view the existing policy on private sector receipts is well-founded and should continue to be applied to the newly privatised industries, though it may in certain cases be reasonable, as with BT, that no offsetting savings should be sought for receipts flowing from grants committed in advance of privatisation.

26. The main and positive reason for taking this view is that control of public expenditure and protection of the taxpayer, which are the objectives of the Government's existing policy on ERDF receipts, are as important now as they have ever been. Public expenditure which is financed through the Community budget needs to be scrutinised and controlled just as much as expenditure that is financed directly from our own national budget. In the Treasury's view it would be perverse to allow the privatisation programme, after the initial proceeds from sales of the industries, to increase public expenditure and the demands on the taxpayer. Yet this would be the effect if receipts which have hitherto been used to reduce demands on public expenditure by reducing EFLs were in future not to perform that function.

27. As regards the other issues raised in the two preceding sections, the Treasury offers the following observations.

(i) Public sector take-up. It is clear that privatisation will make the task of assembling sufficient public sector projects to cover our ERDF quota entitlement more difficult, though the impact of the privatisation programme seems unlikely to have major effects until after privatisation of the water authorities (which cannot now begin until the autumn of 1988 at the earliest). But the first response to this should be, not to change the existing framework of public expenditure control, but to identify areas where more public sector projects can be put forward (roads are one possible example) and more non-infrastructure industrial projects where ERDF grant can substitute for domestic regional assistance expenditure.

(ii) Private sector projects. If there should turn out to be a residual shortfall which cannot be covered by other public sector projects, it will still be open to departments under the existing policy to put forward private sector infrastructure projects for ERDF support, including privatised industry projects, though the presumption will be that they will have to make corresponding savings in their own programmes.

(iii) Water privatisation. Whatever the Government's domestic policy may be, there must be significant uncertainty as to the amounts of ERDF assistance which will be available to the Water Authorities over time, and the North West is the only Authority where really large sums are involved. It is therefore difficult to see how the availability or otherwise of ERDF assistance can decisively affect the success of the general privatisation programme for water. In the case of the North West Water Authority, similarly, £68 million of ERDF funds has been committed so far; but there is no commitment by either the UK Government or the EC to any specific levels or phasing of expenditure on the Mersey clean-up programme beyond the PES period. It is therefore difficult to see how

the possibility or even probability of further ERDF assistance (about whose scale and duration there would be no certainty) could of itself be the decisive factor in making the privatisation of this Authority viable.

(iv) Sale proceeds. Extra public sector receipts from sale of the privatised industries are a by-product of a policy of asset transfers whose objectives are to roll back the public sector and enhance efficiency: they are not savings available for other public spending.

(v) Flotation prices. The unavoidable uncertainty about the continuing availability and scale of ERDF grants for any particular privatised industry is bound to limit any favourable effects on flotation prices: privatisation prospectuses will have where appropriate to acknowledge this uncertainty.

(vi) Flow-backs. The argument about flow-backs to the public sector in the form of extra Corporation Tax and Income Tax applies similarly to other forms of public expenditure and to tax reliefs: in the final analysis, it boils down to an argument for reflation.

(vii) Direct expenditure and expenditure via Community budget. It would be hard to justify a system whereby departments would have a general exemption from the obligation to provide offsetting savings for Community funds diverted to the private sector when such savings will continue to be expected if departments provide funds for the private sector directly from their own budgets.

(viii) Presentation. It is not clear why the Government needs to make any secret of its preference for taking Community receipts into public programmes (which are thereby enabled to be maintained at levels higher than would otherwise have been possible) and letting the private sector stand on its own feet.

28. It is of course open to departments to put forward additional bids in the Public Expenditure Survey or to make claims on the Reserve if they believe there to be an unavoidable clash between the receipts share maximisation and public expenditure objectives in paragraph 6 above and wish to apply for particular ERDF grants for private industries without making offsetting changes in their departmental programmes. The policy does not prohibit departments from making such bids. It does establish a presumption against accepting them.

Summary

29. The main points from this paper can be briefly summarised as follows:

- Industries already privatised or planned to be privatised at present account for some 30 per cent of ERDF receipts, with water authorities taking the lion's share.

- Although decisions have still to be taken, the Commission seems likely to decide that ERDF grants should continue to be available for suitable privatised industry projects which would not otherwise take place.

- There is anxiety among departments that privatisation may mean that there will no longer be enough public sector projects to enable the UK to take up a full share of the ERDF.

- Some departments conclude that, for this and other reasons set out in paragraphs 16-21, they should be allowed to forward claims for ERDF grant by privatised industries without being expected to offer offsetting savings.

- In the Treasury's view, for the reasons set out in paragraphs 22-24, it would be wrong to exempt Community financed expenditure in this way from the existing control processes, though it should remains open to departments to make proposals in individual cases if they feel that exceptional treatment is justified.

Next action

30. Ministers are invited to decide, in the light of the analysis in the paper, whether or not the policy on private sector receipts should continue to be applied to newly privatised industries, subject to the possible qualification noted in paragraph 25 above about grants already committed, or whether some different treatment should be envisaged either for privatised industry receipts or for private sector receipts generally.

HM Treasury
29 October 1986

ANNEX

ERDF COMMITMENTS: UK

£m

	1983	1984	1985[1]
Water	37.9	39.7	21.1[2]
Transport (incl ports)	17.3	16.9	7.8
BAA	-	0.552	-
Gas	6.4	6.6	2.5
Telecom (BT)	34.9	29.9	-
TOTAL	96.5	93.7	31.4
% of total commitments	37%	29%	9%
TOTAL UK COMMITMENTS	262.8	327.7	345.0[2]
Quota achieved[3]	21.2%	27%	24%
Quota range	23.8%	23.8%	21.42%-28.56%
Quota achieved excluding privatisation candidates	13.4%	19.3%	21.8%

(1) Applications for water and gas projects in 1985 were low because a number of applications were held back by the Commission pending decisions on the status of the industries. The water commitment held up is estimated at £12 million: that for gas is £4m. The same condition applies for applications for transport projects, but a figure for these is not at present available.

(2) The Mersey Basin Clean-up is recognised by the EC as part of a National Programme of Community Interest, the value of water projects for which, covered so far by the 1985 NPCI, commitment is £25 million. This is not included in the water figures quoted above for 1985 but is included in the total commitment figure. With this and the adjustment at (1) the total for the five industries in 1985 is estimated at a minimum of £72.4 million.

(3) Quota achieved = % share of commitments allocated to UK, not the UK's 'quota share', which is calculated on a different basis.

H.M. CUSTOMS AND EXCISE
KING'S BEAM HOUSE, MARK LANE
LONDON EC3R 7HE
01-626 1515
Direct Line - (01) 382 5579

FROM: P B KENT

31 October 1986

1. Mr Hawken

2. Chancellor of the Exchequer

cc Minister of State
Mr Scholar
Mr Edwards
Ms Sinclair
Mr Cropper

INTRA-COMMUNITY DUTY- & TAX-FREE ALLOWANCES: 7TH DIRECTIVE

1. Our note on the German Buttership problem raised with you by Dr Stoltenberg at Gleneagles foreshadowed this submission to Ministers concerning the future of duty- and tax-free shops in intra-Community travel in the context of the completion of the Internal Market.

2. Following extensive inter-deparmental discussions at official level, we have been asked to invite you to write to your colleagues on OD(E) to seek their agreement on the line to be taken when discussions on the 7th Directive resume in Brussels on 6 November.

3. The 7th Directive is intended to provide a firm legal basis for duty- and tax-free shopping in intra-Community travel following the uncertainty introduced by the European Court judgments outlawing the German Buttership operations. The wish of the duty-free trade to have its legal basis made certain, coupled with the desirability for the British Airports Authority privatisation prospectus to contain some positive statement on the future of the duty-free trade and the need to put the Channel Fixed Link (CFL) on the same competitive footing as the cross-channel ferries, have led to assurances being given that the UK would give this proposal priority during our Presidency.

4. The first working group discussion on 10 July revealed several obstacles to progress, principally a concern that there should be some terminal date to duty-free facilities in intra-Community trade, and strong opposition to a special concession for German butterships. At that stage the problems of the CFL and of the Danes who want their existing derogation prolonged beyond 31 December 1986 had not been raised.

5. French support is crucial. Although the initial French line was hostile, subsequent discussions in Paris have clarified their attitude, and they are now prepared to support not only the 7th Directive but also an amendment to bring the CFL within its ambit. The Commission have also indicated that they will adopt a neutral position on such an amendment. Although they consider duty-free an anomaly in Internal Market terms, they recognise that the CFL should not be placed at a fiscal disadvantage vis a vis other cross-channel services.

6. Officials consider that the UK should seek adoption of the 7th Directive provided that the CFL can be brought within its scope. The price to be paid for this would be, as far as the UK is concerned, some acknowledgment that duty-free trading in intra-Community travel cannot last for ever. As this is strongly felt not only by the Commission but also by many member states, some recognition of this will be necessary, but wording such as "for as long as fiscal frontiers remain" would leave the question of the ending of duty-free allowances open to future argument.

7. There is also the risk, of which the duty-free lobby is well aware, that an attempt at this late stage to introduce the CFL complication could finally scupper a proposal already beset by some fairly intractable problems. That would inevitably lead to recriminations that HMG had thrown away the only serious opportunity which had presented itself since the Buttership judgments to secure their immediate future against any legal challenge.

8. However, officials concluded that the balance of advantage lies in attempting to cover the CFL position in the 7th Directive as the last legislative opportunity to do so, since the Commission will not itself put forward any proposal. With support from the French and from those other member states such as Germany and Denmark who also have special concerns to be met, there is a modest chance of reaching agreement on a package. Should agreement to cover the CFL not be possible, officials consider that maintenance of the status quo would be the best outcome, and that we should ensure that the 7th Directive is not adopted. Although the duty-free trade would be denied their firm legal base, they would not be inhibited from carrying on as now, and the present legal uncertainty might not actually prevent duty-free facilities being introduced on the CFL though a legal challenge is always possible.

9. If you agree with the suggested UK line, we recommend that you write to your OD(E) colleagues seeking their agreement to putting forward these Presidency proposals at the next meeting of the working group on 6 November. Officials will thereafter review the situation in the light of that discussion and report again to Ministers.

10. The attached letter is suggested for you to send to the Foreign Secretary, copied to other members of OD(E).

PBK

P B KENT

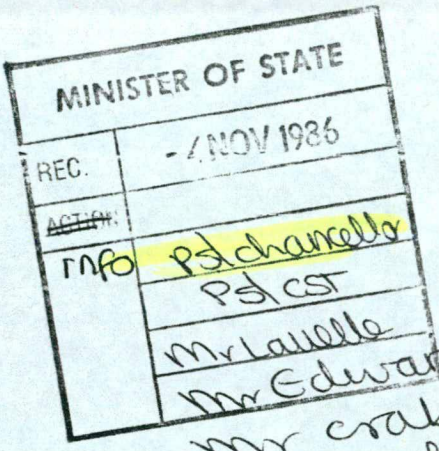
Internal Circulation: CPS; Mr Knox; Mr Nash; Mr Wilmott; Mr Bolt; Mr Cockerell; Mr Fotherby; Mr Walton UKREP; File.

Foreign and Commonwealth Office

London SW1A 2AH

3 November 1986

M W Norgrove Esq
Private Secretary
to The Hon Peter Brooke MP
Minister of State
HM Treasury
Parliament Street
SW1P 3AG



Dear Mike,

UK PRESIDENCY OF THE EUROPEAN COMMUNITY

Thank you for your letter of 28 October.

I understand that Treasury and FCO officials have now agreed a suitable text on our VAT abatements, and an amendment has been issued accordingly. May I apologise for the error.

Yours ever,

John

R J Sawers Esq
Private Secretary
to Mrs Lynda Chalker

3118/43

1. Alex - I gather this came up in the context of 1st Order PQs

FROM: A G TYRIE
DATE: 3 NOVEMBER 1986

CHANCELLOR

2. Chancellor

NR wasn't to comment on this, I don't think

cc Chief Secretary
Financial Secretary
Economic Secretary
Minister of State
Mr Cropper
Mr Ross Goobey
Mr Pickering
Mr Donnelly

1. Alex
2. Andrew

I attach a copy of Alf Lomas's discussion paper. It has not yet received endorsement of the Labour Group as a whole although a majority probably favour withdrawal from the Community.

2. Paragraph 6(e) is a key passage on withdrawal. Lomas advocates that the Labour Government repeal Section 2 of the European Communities Act, tantamount to withdrawal. Mr Lomas assumes that a Labour Government policies would be in breach of the Treaty of Rome. For example paragraph 6(d) says: "Essential measures like import planning, exchange controls, selective public investment in industry and services, reducing indirect taxation, continued support for nationalised industries - all of which will form part of Labour's programme for recovery - could be declared illegal because they conflict with the Treaty of Rome."

3. Mr Lomas also rejects membership of the EMS (paragraph 12) and favours "the mutual winding up of NATO and the Warsaw Pact." (paragraph 19).

Line to take

1. Withdrawal from the European Community is one of the few policies in Labour's 1983 manifesto which has not been revived by Mr Kinnock and his team. Labour's 1983 manifesto read:

"British withdrawal from the Community is the right

policy for Britain - to be completed well within the lifetime of the Parliament. That is our commitment." The question Labour must answer is: "If Labour find themselves impeded by European Community law in implementing any of their socialist policies will you withdraw?"

2. Mr Lomas and company are an embarrassment to Labour, home and abroad. As Mr Hattersley said: "By threatening to leave the EEC, we sacrifice all hope of working with our socialist allies." (Guardian 8 August 1983).

3. If Labour's policy does, once again, become withdrawal this would be the Labour Party's sixth change of mind on the question of membership.

4. The British Labour Group's policy on membership is like Mr Hattersley's on the EMS - happy to join the club if Labour can write the rule book.

M. Macy

A G TYRIE

Tony
Is there any need to circulate this?
Meera 5/11

PWP

Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

5 November 1986

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

CH/EXCHEQUER
REC. 05 NOV 1986
ACTION MR P.B. KENT C&E 5/11
COPIES TO PS/MST,
MR SCHOLAR
MR A. EDWARDS
MISS SINCLAIR
MR CROPPER
PS/C&E

Dear Nigel

INTRA-COMMUNITY TRAVELLERS ALLOWANCES: 7TH DIRECTIVE

Thank you for your letter of 3 November to Geoffrey Howe who is away.

I agree that we should launch a compromise along the lines you suggest at the Working Group on 6 November.

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

Yours ever

Lynda

Mrs Lynda Chalker

FCS/86/256

THE LORD PRIVY SEAL

Departmental Guidance on Parliamentary Scrutiny of European Community Documents

1. Thank you for your letter of 28 October enclosing the text of the revised guidance, with which I agree.

2. I am copying this minute to members of L and OD(E) Committees, to other Ministers in charge of Departments and to Sir Robert Armstrong.

GEOFFREY HOWE

Foreign & Commonwealth Office
5 November 1986

LA/5

ERDF RECEIPTS BY PRIVATISED INDUSTRIES

The proposals building up here are a fundamental challenge to our objectives of using EC receipts to finance existing public expenditure programmes. Our EC contributions add to public expenditure. If we let our EC receipts be passed on to private sector firms (including privatised industries) we get no offsetting saving. The public expenditure costs of the EC rise.

2. Relaxing the rules on non-additionality also weakens our ability to ensure that ERDF receipts finance projects which reflect our priorities (rather than the Commission's). It would increase the Commission's influence over our regional policy. It is essential that we head this off by making sure that ERDF receipts finance our own plans for spending on regional assistance and on infrastructure in the regions. The ERDF was originally set up to provide a budgetary transfer to the UK to offset our low share of other EC programmes (especially agriculture).

3. Any relaxation on the policy of non-additionality will lead to even more claims for special treatment. The first of these has already emerged in Mr Ridley's request for a relaxation on the rules applying to ERDF receipts for LA capital expenditure. The eventual cost could rise to over £100 million a year.

4. Putting the issues in terms of privatisation is a red herring. The Chief Secretary's paper demonstrates that the main problem comes with the North West Water Authority, which takes 22.5% of ERDF receipts (compared, for example, with 1.2% for BGC). The NWA's privatisation is several years away. But it is being used as an excuse to change the rules for all other privatised industries - and more widely.

UNION DES INDUSTRIES DE LA COMMUNAUTÉ EUROPÉENNE

Mr Nigel Lawson
Chancellor of the Exchequer
and President of the
Council of Finance Ministers

LE PRÉSIDENT

KGR/BV/DC/1d 2.5/13/1

6 November 1986

Dear Chancellor,

Second Community framework-programme for research and technological development

With regard to the examination of the second Community framework-programme for research and technological development at the forthcoming session of the Finance Council on 17 November, I have pleasure in sending you enclosed the position paper which UNICE has just adopted in the light of recent developments at Community level on this subject.

In April 1986 UNICE had given its full support on behalf of European industry to the Commission's original guidelines for the R&TD programme. UNICE had stressed in particular the need, in view of the new impetus given to technological policy in the United States and Japan, to intensify the Community's own action in this field (ie. ESPRIT, RACE and BRITE ...) so as to enhance the competitiveness of its own industry and services.

There is now the danger that actions of industrial interest in the framework programme will be allocated significantly fewer financial resources than those proposed by the Commission. By squeezing the budget in this way, these programmes will be prevented from reaching their critical threshold of effectiveness. Restrictions on industrial R&D would, moreover, hinder the achievement of the internal market; indeed, experience with ESPRIT shows that technological cooperation is a powerful lever for speeding up the integration of markets and industrial structures.

European industry does not understand why the Member States should limit their support for the technologies of the future in order to save an amount that is minute compared with the massive expenditure they agree to for the purposes of the common agricultural policy.

./.

RUE DE LOXUM 6 1000 BRUXELLES TEL.513 45 62 - 512 67 80

I very much hope that the present appeal will not fall on deaf ears, and that the hopes which European firms pin on the Community will not be dashed.

I would appreciate it if you would take up this matter with your colleagues in the Council on our behalf.

Yours faithfully,

Karl G. Ratjen

K.G. Ratjen

16 October 1986

UNICE OPINION ON THE OFFICIAL PROPOSALS SUBMITTED BY THE COMMISSION TO THE COUNCIL ON THE SECOND R&TD FRAMEWORK PROGRAMME (COM (86) 430 FINAL)

1. An essential test of credibility for the Community

The launching in 1983 of a new phase in the common policy on science and technology has produced promising results. This has led European industry (represented by UNICE) to propose that in producing its 2nd R&TD framework programme, the Community should redouble its efforts to lay the foundations for further progress.

However, industry notes with concern that owing to overall budgetary constraints and the size of agricultural's share of expenditure, this new effort is slow in getting off the ground. It should go hand in hand with the creation of a genuine internal market, but a gap is in fact developing between:

- the clearly positive experience on the one hand which firms are enjoying in the context of cooperation at Community level through programmes such as ESPRIT, RACE and BRITE - collaboration which they feel is vital to meet the technological challenge and facilitate the completion of the internal market;
- and, on the other, the restrictive approach which currently prevails in the handling of Commission budgetary proposals; this is demonstrated by the cut in the budget for the framework programme (from 9-10.5 to 7.7 billion ECUs), and there are plans to reduce it even further.

By reducing the budget, the authorities give the impression that the merits of Community projects are in fact limited and that one can therefore make them less ambitious without seriously harming the Community's technological competitiveness or its political credibility in the eyes of industry.

Such a view would be a fundamental error of judgement.

Industry is well aware that Community action is not the only way to meet the technological challenge. Community efforts are part of a much wider panoply which includes first and foremost national measures, but also international and multi-national measures. Community policy must find its place within this larger spectrum - nothing but its place, but nevertheless its entire place.

2. Strategic lines of action to be followed by the Community

Without wishing to bring up yet again the detailed comments presented in its opinion of 1 April 1986 on document COM (86) 129 final, UNICE would nevertheless reiterate the basic requirements which must be met if the Community is to be given a genuine chance to avoid scientific and technological balkanisation:

RUE DE LOXUM 6 BTE 21 - B 1000 BRUXELLES - TVA 536 059 612 - TÉL. 513 45 62 / 512 67 80 - TÉLÉFAX 513 32 30 - TÉLEX UNICE B 26013 - TÉLÉGR. UNINDUSEUROP

a) the need for action on high technology and on international-level competitive R&D;

b) the need to put strict limits on direct actions and resort increasingly to concerted efforts whenever the Member States play an important role in a specific technological field; the activities of the JRC must be restricted, and it should concentrate on projects of an international standard geared to the economic needs of the future;

c) the need to increase concertation and encourage the mobility of personnel to prevent unnecessary duplication of work;

d) the need, whenever national action proves relatively inefficient, to mobilise Community funds in excess of the critical financial mass for effectiveness;

e) the need to give greater priority to activities of industrial interest, working these out in close collaboration with industry;

f) the need for a better balance between electronic and communication technologies, and advanced technologies geared to traditional industries.

The budget of 7.7 billion ECUs proposed by the Commission would not be sufficient to satisfy these requirements, and it would be dangerous to reduce this even further. But whatever the size of the budget earmarked for specific programmes of industrial interest, it is important to have a high proportion of quality projects accepted to avoid discouraging firms, even if this means limiting the number of sub-programmes.

* * *

597.28

CONFIDENTIAL

PS/CHIEF SECRETARY

FROM : A J C EDWARDS
7 November 1986

cc PS/Chancellor
PS/MST
Sir P Middleton
Mr F E R Butler
Sir G Littler
Mr Lavelle
Mr Burgner
Mr Scholar
Mr Turnbull
Mr Moore
Mr Pirie
Mr Bonney
Mrs M E Brown
Mr Crabbie
Mr Gray
Mr Mortimer
Mr Judge
Mr MacAuslan
Miss Simpson
Mr Wetherell
Mr Cropper

ERDF RECEIPTS: REVISED DRAFT MINUTE TO THE PRIME MINISTER

... As requested in your note of 5 November, I attach a revised draft minute to the Prime Minister which acknowledges more fully the arguments against the present non-additionality policy.

2. In paragraphs 3-6 I have followed closely the synopsis set out in paragraphs 5-6 of your minute.

3. In the later paragraphs of the minute I have retained most of the "Treasury case" from the earlier draft. The Chief Secretary may feel that this argues our case too forcefully. But I would respectfully counsel against going too far in the direction suggested in paragraph 7 of your minute, whereby our argument would only be that "there is nothing wrong in principle with the current regime, and, in general, it should be maintained". To say this would be to hint clearly that we are prepared to make exceptions, not least for water. The risk then would be that we could quickly find the whole policy in ruins.

4. In response to the other points in your note, may I offer the following thoughts.

5. Past history. There is no question that the non-additionality policy is uncomfortable to execute. Departments feel strongly about it and lose no opportunity to challenge it. The Prime Minister and Treasury Ministers did address the issue squarely, however, in 1980 and concluded that hard-won Community receipts must used to reduce public expenditure. The immediate context was our budget refunds but Ministers consciously decided in subsequent discussions

that they intended the same approach to apply generally. This is what lay behind the phrase 'well-considered' in my earlier note. More recently, the Chancellor has taken the further initiative of introducing the EUROPES system, which is designed to ensure that the principles of non-additionality are applied to the R&D sector as well, and has underlined the weight which the Department is to attach to the public expenditure control objective as well as to the receipts maximisation objective in cases where the two objectives conflict.

6. Orders of magnitude. The implications for the public expenditure total are significant and are tending to become more so over time. Without the non-additionality policy as a whole, public expenditure could rise by well over £½ billion a year. Without the private sector element which departments are effectively contesting at the moment, public expenditure could rise by perhaps £100 million a year initially, after water privatisation, and by considerably more in later years.

7. Take-up problem. There is little doubt that, as departments argue, we shall find it more difficult to take up our full quota share of the ERDF, and in particular to reach the upper end of our quota range, after the privatisation programme has run its course.

8. But it is important to bear two points in mind. First, it is only water privatisation, and privatisation of the North West Water Authority in particular, that are likely to have a major impact on the take-up problem. It seems unlikely that the water privatisation programme will be completed before the end of the decade.

9. Second, we have had much previous experience of claims by departments that in the year or two immediately ahead it will become impossible to identify projects to cover our quota entitlement. With the help of the existing policy, however, such projects have in fact been found, and as noted in the draft minute there do remain substantial areas of public sector investment where we should be able to obtain more receipts.

10. Substance. The problem is that, if we remove from the policy the presumption that departments should find savings to offset ERDF grants to the private sector, departments would find private sector grant applications extremely attractive: they would in effect obtain extra public expenditure "for free". They would have substantial incentives to go for ERDF grants to the private sector rather than ERDF grants to the public sector since their departmental interests would benefit from the former but not the latter. That is why it seems important to retain the acid test that departments should in general apply for ERDF grants for private sector programmes only if they would be willing to use their own money for the programmes in question. That is what the offsetting savings requirement is all about.

11. Fall-backs. For the reasons outlined above, I hope very much that the Chief Secretary may be able to persuade his colleagues that the correct way ahead is to retain the existing policy and to apply it sensibly. He will wish to note that neither the present draft minute to the Prime Minister nor its predecessor rule out the possibility of a future concession on water privatisation. The argument is rather that the policy should remain as it is and that the presumption of offsetting savings should be retained, but it will remain open to departments to make a contrary case on particular grants for particular industries if they feel that there is an overwhelming case for different treatment.

12. That said, there are perhaps four main fall-backs which one might consider:

i. recognise explicitly that we are not settling the issue on water privatisation here and now;

ii. concede now that no offsetting savings should be required for water privatisation;

iii. change the presumption of the policy by agreeing that departments should be able to channel receipts to privatised industries without an obligation to provide offsetting savings provided that they can demonstrate that the UK will otherwise lose the receipts to another country;

iv. change the policy from 'gross' to 'net' non-additionality: that is, departments would have to find savings to offset 66 per cent of the receipts they claimed for private industries rather than 100 per cent, the 66 per cent corresponding to the loss of Fontainebleau abatement.

I suggest that fallback i. would be a reasonable outcome, provided that it was accompanied by a re-affirmation of the existing policy. None of the other fallbacks is, I fear, very attractive. The trouble with fall-back ii. is that such a concession may be unnecessary: it would certainly be premature and cause other departments to demand parity of treatment. Fall-back iii. may sound reasonable at first hearing. The problem is that it would be relatively easy for departments to swear that there was no other way of obtaining these receipts for the UK, but it would be difficult to rely on such oaths since the departments would have no incentive to look for public sector receipts and it is almost certain in practice that in the absence of privatised industry grants we would obtain some extra public sector grants. Another objection is that we may sometimes judge it better to forego the receipts altogether than to trade 34 units of extra net UK receipts for a further 66 units of public expenditure. This point too is made in the draft minute. The trouble with fall-back iv. is that it would not satisfy departments and yet it would tend to undermine the general principle of the policy that the full amount of the receipts must be applied to reducing public expenditure. (The Chief Secretary will recall his recent/ success in the similar argument with the DTI over treatment of the Fontainebleau abatement in the EUROPES context.) Departments would almost certainly claim a similar dispensation with regard to other Community budget receipts.

13. The conclusion which I would draw is that it will be important not to go beyond fall-back i., under which the Chief Secretary would acknowledge explicitly that the present re-affirmation of the policy was not intended to pre-empt any decision which Ministers might finally wish to take on water. The Chief Secretary would aim, in other words, for an explicit "draw" on water privatisation.

14. <u>ERDF grants to local authorities</u>. We entirely take the Chief Secretary's point that it is necessary to bear in mind the read-across between the privatisation issue and ERDF Article 15 grants

to local authorities for support of small businesses. These grants will score as current expenditure but are not likely to exceed £25 million a year in the foreseeable future.

15. The paper by officials to which the Chief Secretary refers is unlikely to be ready before mid-December, if only because the law officers need to be consulted again. This means that the issue will not in practice be ripe for Ministerial decision before January.

16. When the paper does emerge, it is likely to identify three options (probably but not necessarily mutually exclusive):

i. ERDF grants would be deducted informally from aggregate Exchequer grant;

ii. local authorities would be asked to undertake that the grants would be used to reduce rates rather than increase expenditure;

iii. offsetting savings would be sought from the sponsoring government department.

Our chances of securing agreement to the offsetting savings solution for these Article 15 grants are not good. The main problem is that analogous grants from the Social Fund to local authorities to finance employment and training schemes are treated as at ii. above: the authorities are required only to swear that the grants will reduce rates rather than increase expenditure. A further problem is that it is harder in this instance than in the case of infrastructure grants to identify the sponsor department. Approach i. may still give concern to the law officers and would anyway become increasingly theoretical over time. DOE officials expect that Mr Ridley will not favour any of these options and will argue for exemption on de minimis grounds.

17. If we do not expect to secure an offsetting savings solution on Article 15 grants, that is to my mind a strong reason for treating the privatised industries issue separately and at a different time. It would not help our case to be arguing for offsetting savings in the one case but simultaneously conceding it in the other. A better objective, I suggest, will be to try to get the privatised

industry issue resolved now, ahead of the Article 15 issue. We understand informally from the Cabinet Office that the Prime Minister is prepared to take a meeting on the subject if necessary. As noted in my earlier minute, it is crucial from the Treasury's point of view that the Prime Minister herself should be in the chair. The likely result of any Ministerial discussion without the Prime Minister would be an impasse.

18. Next steps. If you are content with the approach suggested, I suggest that you should minute the Prime Minister as soon as convenient. The Cabinet Office are aiming to arrange an E(A) meeting under the Prime Minister's chairmanship in the week beginning 17 November for discussion on the R&D framework programme and would like to add this item to the agenda. The Cabinet Office have told us, incidentally, that they would expect the Treasury to win on this issue.

19. We should of course be glad to discuss these difficult issues with you if you would find that helpful.

A J C EDWARDS

CONFIDENTIAL

PRIME MINISTER

PUBLIC EXPENDITURE TREATMENTS OF ERDF RECEIPTS BY PRIVATISED INDUSTRIES

Several colleagues in spending departments have suggested that we need to consider further how ERDF receipts by newly privatised industries should be treated for the purposes ... of public expenditure control. The attached note which incorporates contributions by officials from the Treasury and some of the other departments concerned, prepared in PESC(EC) and discussed in EQS, sets out the issues and the competing arguments.

2. The background is, very briefly, that about 30 per cent of our total ERDF receipts of some £250 million a year are currently going to nationalised industries which have been privatised or are planned to be privatised over the next few years (mainly the water authorities). So long as the industries are nationalised, these receipts have a favourable effect on public expenditure by helping to reduce external financing limits, though we lose 66 per cent of the receipts in the form of reduced Fontainebleau abatement in the following year. After privatisation, the industries will probably continue to be eligible for ERDF grants for projects which would not otherwise have taken place; but such grants will then lead to an increase in public expenditure because there will no longer be any favourable effects to set against the 66 per cent loss of Fontainebleau abatement.

3. Our general policy on Community budget receipts provides for:

(a) maximising the UK's share of receipts without compromising our posture on budget discipline, and

(b) using the receipts, to the greatest extent possible, to finance existing public expenditure programmes

(thus protecting the public expenditure total), not additional programmes or private sector programmes.

If departments wish to claim ERDF grants for passing on to the private sector, the presumption is that they must protect the public expenditure total and the taxpayer by making offsetting savings of the same amount elsewhere in their departmental programmes.

4. The rationale which underlies this policy is that we need to contain as far as possible the public expenditure impact of the Community budget, which includes not just our net budgetary contribution of approaching £1 billion a year but also spending of approaching £1½ billion a year by departments on Community-financed programmes which we would not necessarily have undertaken ourselves.

5. So far as the ERDF and social fund are concerned, our aim is to avoid a position where receipts from these funds lead to increased public expenditure and to use them instead to help finance our own public expenditure programmes. In keeping with this, we have encouraged applications for grants for public sector projects while discouraging applications for private sector projects. Before the privatisation programme got under way, this approach raised no major problems. When BT was privatised, Ministers decided that the policy on private sector receipts should apply equally to BT's receipts. In the light of this DTI decided not to forward further ERDF applications on behalf of BT but to concentrate on other projects instead. BT is therefore treated in the same way, in effect, as any other private sector company.

6. The main reason why colleagues are now questioning the policy is that, as the privatisation programme proceeds, it will become more difficult to find public sector projects to enable us to take up our full quota share of the ERDF. While the water authorities and other industries concerned remain in the public sector, offsetting savings can be

made within the external financing limits for the industries. After privatisation, the presumption under existing policy will be that departments forwarding applications on behalf of the industries will need to find offsetting savings within their own departmental programmes. Departments are understandably reluctant to offer such offsetting savings but at the same time they are naturally concerned that our ability to take up our full quota share of the ERDF may be impaired if they decide not to put such programmes forward, particularly water programmes. An underlying assumption commonly made is that it must be worthwhile to spend an extra 66 units of public expenditure in order to obtain 34 units of extra UK receipts (net) from the Community budget.

7. As implied above, I understand departments' point of view. But I think that the solution should be, not to change the general policy, but to be prepared to apply it sensibly. In my view we should continue to treat grants claimed by departments for newly privatised industries in the same way as other grants to the private sector, subject to the qualification about receipts already committed before privatisation mentioned in paragraph 25 of the accompanying note. The points which I would particularly wish to underline are:

- First, we can ill afford to relax the objectives of controlling public expenditure and protecting the taxpayer which underlie the existing policy. The point of the policy is to ensure that payments to the private sector are treated in the same way whether they are made direct from a departmental budget or via the Community budget.

- Second, I believe that we must do everything we can to solve the potential ERDF take-up problem by finding other public sector and industrial projects which can be put forward for support. Possible examples are Scottish and Welsh projects, central government roads projects and industrial support projects where Community grants would

substitute for our own regional development assistance. We have also to bear in mind that the privatisation programme will not have a major impact on the take-up problem until the water industry has been privatised, which cannot happen quickly.

- Third, I would question the underlying assumption that it must be worthwhile incurring an extra 66 units of public expenditure in order to attract a further 34 units of net inflow into the UK from the Community. It may be more important to have the public expenditure we want than to enable a privatised industry project to which we attach less priority to proceed at something of a discount. I do not think, in any case, that the trade-off between extra Community receipts and extra public expenditure will generally be as favourable as the above comparison suggests, since privatised sector receipts would be likely to substitute, in part at least, for public sector receipts. A more realistic hypothesis, in my view, is that we might achieve a slightly higher point within our quota range if we are able to offer a wider and more appealing menu of projects to the Commission. In other words, the improvement in the net flow of resources to the UK in return for an extra 66 units of public expenditure is likely to be between 0 and 34 units and quite possibly closer to the former than the latter.

8. A final point which I would like to emphasise is that the existing policy is not totally inflexible. It is, and will remain, open to departments to put forward additional bids in the public expenditure survey or to make claims on the Reserve if they believe there to be compelling reasons for applying for particular ERDF grants for a particular privatised industry without making offsetting changes in their departmental programme. As the paper says, the policy does not prohibit departments from making such bids, though it does establish a presumption against accepting them.

9. In the light of the above, I hope that you and other colleagues will agree that the policy on private sector receipts should continue to be applied to privatised industry receipts, subject to the important glosses mentioned in paragraphs 7 and 8 above. If there is no agreement on this, you may wish to arrange a short discussion. I understand that the Cabinet Office are aiming to set up in the near future a meeting of E(A) which could discuss this as well as the R&D framework programme.

10. I am copying this minute to Geoffrey Howe, members of E(A) and to Sir Robert Armstrong.

JOHN MacGREGOR

CONFIDENTIAL

FROM: M W Norgrove

DATE: 10 November 1986

PS/CHIEF SECRETARY

cc PS/Chancellor
Sir Peter Middleton
Mr F E R Butler
Sir Geoffrey Littler
Mr Lavelle
Mr Edwards
Mr Burgner
Mr Scholar
Mr Turnbull
Mr Moore
Mr Pirie
Mr Bonney
Mrs M E Brown
Mr Crabbie
Mr Gray
Mr Mortimer
Mr Judge
Mr MacAuslan
Miss Simpson
Mr Wetherell
Mr Cropper

ERDF RECEIPTS: REVISED DRAFT MINUTE TO THE PRIME MINSITER

The Minister of State has seen Mr Edwards's minute of 7 November and supports the line proposed, commenting:

> "All my experience with EEC finance to date suggests that its discussion takes place not so much in a treacle well as on a slope specially greased for Gadarene lemmings. I err therefore on the side of anything that introduces friction into the process".

M W NORGROVE
Private Secretary

Prejudice [illegible] in favour of [illegible] frontier controls.

But Commission proposals

a) politically unrealistic

eg excise tax approximation

food/tobacco/alcohol

direct / indirect [central only power]

other countries ... e — Denmark Ireland

sovereignty

b) practical: ~~VAT clearing system~~ satisfactory [illegible] not yet worked out

~~If no approximation, then to frontier controls needed to protect revenue [& other reasons]~~

But some streamlining still possible.

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H.M. CUSTOMS AND EXCISE
KING'S BEAM HOUSE, MARK LANE
LONDON EC3R 7HE

Please Dial my Extension Direct:
Use Code (01)-382 followed by
Extension Number 5...023...

FROM: P G WILMOTT

DATE: 12 November 1986

Chancellor of the Exchequer

cc Minister of State
Sir P Middleton
Sir G Littler
Mr Lavelle
Mr Edwards
Mr Mortimer
Miss Sinclair
Mr Romanski
Mr Cropper

OD(E) MEETING: THURSDAY 13 NOVEMBER 1986

1. I attach briefing for the meeting of OD(E) on Thursday to discuss certain internal market issues.

2. We expect discussion to concentrate on the papers being presented by the Home Secretary and the Secretary of State for Transport where Ministers are being asked to decide on further action. The Home Office paper should pose no particular problems for you, but we recommend that you resist certain conclusions that the Department of Transport has noted OD(E) to endorse.

Internal circulation: CPS, Mr Hawken, Mr Knox, Mr Jefferson Smith, Mr Howard, Mr Nash, Mr Kent, Mr Tweddle, Mr Bolt, Mr Cockerell, Ms French.

3. As for the paper you are to introduce, we expect most of your colleagues to accept it as a realistic assessment. A number of Ministers should be relieved to find that the efficacy of controls designed to implement policies within their responsibility (eg on drugs, rabies, statistics, endangered species) will be safe from the kind of erosion the White Paper proposals imply. The exception is the Foreign Office, which is likely to be critical of our analysis and may try to undermine certain of the assumptions on which the paper is based. For example, they may argue that the UK has less to lose from indirect tax rate approximation than other Member States so we can afford to take a positive stance. Equally, they may argue that we should be prepared to do more to reduce frontier formalities by, for example, increasing the use of inland clearance for goods from other Member States. The brief covers these points in some detail because these are policy questions for which Treasury Ministers have prime responsibility. If the Foreign Office attacks the paper's conclusions in other policy areas it will be for other Departmental Ministers to defend the line taken.

P G WILMOTT

CONFIDENTIAL

MEETING OF OD(E): THURSDAY 13 NOVEMBER 1986

1993 AND BEYOND: FRONTIER CONTROLS ON GOODS IN THE INTERNAL MARKET

Objective: To obtain the sub-committee's endorsement for the assessment of the future of frontier controls on goods contained in paper OD(E)(86) 17. (Your paper)

Introductory Speaking note: There can be no denying that frontier controls do represent a barrier to trade between Member States. What is less clear is just how much of a problem they really are and whether the alternatives proposed in the Commission's White Paper would really be as beneficial as has been claimed.

The analysis contained in this paper concludes that the Commission's proposals are deficient in a number of respects. They are politically unrealistic. They have impractical features. They would not allow existing policies to be implemented to present-day standards. Even the Single European Act - which defines the internal market as 'an area without internal frontiers' - recognises that certain controls at borders will continue to be needed for social and health reasons for the foreseeable future. The paper before us sets out the reasons why systematic controls on goods will need to be retained. It's logic is, I think, impeccable.

This is not to say that progress cannot be made in reducing frontier checks and freeing intra-Community trade. As the paper makes clear, much can and is being done to simplify formalities and to reduce border delays. I invite the Committee to endorse this approach, based as it is on an assessment of the future of frontier controls in the internal market that takes account of political and practical realities in a way that the Commission have failed to do.

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Background:

Why the Commission's fiscal proposals are unlikely to be successful

1. Indirect tax approximation - the UK view: There is no doubt that tax approximation raises problems for the UK. The weight to be given to these problems may be open to debate, but it has to be recognised that they are a source of considerable controversy in this country. The main issues are:

- loss of parliamentary sovereignty; this is likely to raise considerable political controversy, judging by the views expressed during debates on the European Communities (Amendment) Bill, but is likely to weigh heavily with some other Member States too.

- fiscal management and the nature of the constraints approximation would impose; it cannot be assumed that the EC's twelve economies would develop identically after 1992, yet approximation would virtually eliminate Member States' scope for matching tax changes to differing economic circumstances (policy decisions of all kinds would be affected: for example, how would the system cope with revalorisation of the excise duties if Member States had markedly different rates of inflation; how would a Member State's desire to alter the balance between direct and indirect taxes be accommodated?)

- impact on UK industries (eg distilling, brewing, tobacco) and serious social repercussions (eg UK spirits duty down by half and cigarette tax down by a quarter). A particular issue of great political significance for the UK would be the future of our VAT zero rates which Commission plans assume would be abolished.

The difficulties raised by these issues outweigh the fact that the narrow budgetary impact for the UK would not be great (the reductions in excise duties being broadly offset by an increase in VAT revenue).

2. In addition to political and fiscal policy difficulties, the Commission's proposals also raise a number of purely practical and administrative problems

- integrating the VAT and excise systems across borders would not work without greatly improved mutual assistance between Member States; experience to date does not suggest that an efficient and effective system of cooperation could be set up quickly, and this would undoubtedly increase the uncertainty of the tax system, putting at risk principles such as equity and consistency.

- there is continuing doubt about whether the proposed VAT clearing system can be made to function properly. The Commission have not convinced anyone that their clearing system would allow the right revenue to accrue to the right Member State at the right time. Nor have they demonstrated that it would not lead to increased administrative burdens on importers and exporters, who would have both to provide more information about intra-Community trade on their VAT returns and to cope with different systems for intra-Community and 3rd country transactions.

- agreeing the scope and coverage of a two rate VAT system between 12 Member States would be a major task in itself; it would also mean setting up a bureaucratic apparatus to deal with borderline problems and disputes.

3. Other Member States: We think that most Member States would share our analysis of the problems. For some, the consequences of approximation could be far worse than for the UK - in particular, for those Member States with high excise duties and VAT rates (notably Denmark and Ireland) who would suffer large budgetary losses. Others would be faced with politically difficult changes, such as the introduction of a wine duty in Germany and Italy. The Danes have already made it clear that they are opposed to approximation and it seems likely they would block any proposals. The Irish too would face major difficulties and the Greeks and Spanish have hinted that they would expect compensation for any harmful effects of approximation.

4. Although we thus have much in common with the more vocal critics of the Commission's proposals, we have not so far come out into the open about the extent of our reservations. The reason for this is twofold - first because we do not want obstructiveness on fiscal barriers to undermine our positive stance on other internal market issues; and secondly because we want to avoid any possible embarrassment during the UK Presidency. Both these arguments remain valid, and fortunately, while we wait for the Commission's detailed approximation proposals to appear, we can still reasonably take a non-committal line on the question of approximation. Other Member States have also refrained from coming into the open about their doubts, but when it comes to the point they too can be expected to baulk at the principle of approximation. The Commission seem unlikely to be able to come up with convincing answers to these difficulties, and the fate of their proposals for approximation seems to be sealed. As the paper explains, without approximation, integration of the VAT and excise systems across borders cannot be achieved without running serious risks, and it is hard to see how the Council can avoid concluding that fiscal frontiers must remain.

5. Other considerations: Tactically, there is another option. The UK could accept that approximation is right in principle and a valid long-term objective, but argue against it in the short to medium term on the grounds listed above. Such a line has major drawbacks. Although we have technical objections to the Commission's proposals, our main difficulties are on points of principle. Conceding these now would sell the pass, and do nothing to answer criticisms at home from those whose interests could be threatened by approximation of tax rates (eg those whose products are currently zero-rated). Although we might gain some credit with the Commission and some of our Community partners, it would be at the unattractive price of reopening constitutional arguments about sovereignty for no tangible gain.

6. Proponents of approximation could attempt to argue that the UK is already committed in principle, by the terms of the Single European Act (which defines the internal market as "an area without internal frontiers") and the revised article 99 (which provides for the harmonisation of tax legislation to the extent "necessary to ensure the establishment and functioning of the internal market"). Their line would be that, if (as tax experts have in effect advised)

fiscal frontiers cannot be removed without approximating tax rates, Member States are bound by the revised Treaties to approximation. But in practice there is considerable scope for debate over the meaning of these provisions and the extent to which they support this rather facile interpretation; in particular, it is possible to envisage a form of internal market without wholly integrated tax systems that conveyed the benefits of free movement of goods without the disadvantages of approximation.

7. 14th VAT directive: Re-introduction of the postponed accounting system through adoption of the 14th VAT directive is perhaps the most valuable way of reducing (but not removing) the need for fiscal checks at frontiers. But it is not a universal panacea and besides involving a once-and-for-all cost to the Exchequer of some £1.5 billion it is also open to fraud and abuse. The proposal is at present hopelessly blocked in Brussels and, although the UK has made clear its willingness to agree the directive if all other Member States do so too, the chances of adoption in the near future are remote. The proposal will come into its own again as a useful fallback measure if, and when, the principle of approximation and the Commission's proposals is rejected in the Council.

8. Inland clearance: It may be argued that a much greater proportion of import cargo should be cleared by Customs inland. However, importers already have the choice of clearing goods at the port of importation or at either an inland clearance depot (ICD) or, if they have sufficient volume of traffic (a minimum of ten contrainer loads a month), at their own premises.

The large majority of importers have chosen to clear their goods at the ports. There has been significant investment by the trading community in sophisticated port-based systems which give direct access to the Customs computer system and enables freight to be cleared very quickly and efficiently. This has resulted in the majority of current ICDs being under-utilised and they cannot be staffed by Customs on a cost-effective basis. A recent review has concluded that customs facilities should be withdrawn from ICDs which do not achieve a minimum level of traffic.

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Customs and Excise is fully committed to the continuing availability of inland clearance facilities where it is cost effective to provide them. For example, it is planned to provide inland clearance facilities for both road and rail freight using the Channel Fixed Link. However, certain imported goods, mainly in the agricultural area, must continue to be cleared at, or very close to, the place of arrival in the UK if controls which Customs carry out on behalf of other Government Departments for animal and plant health purposes are to be maintained at an effective level. A large increase in demand for clearance at traders premises would result in the inefficient deployment of Customs staff and additional resources would be required.

FROM : MISS J C SIMPSON
DATE : 12 NOVEMBER 1986

1. MR MORTIMER

2. CHANCELLOR

cc Chief Secretary
PS/Financial Secretary
PS/Economic Secretary
PS/Minister of State
Sir Peter Middleton
Sir Geoffrey Littler
Mr Lavelle o/r
Mr Edwards o/r
Mr Scholar
Mr F K Jones
Mr M Hall
Ms Sinclair
Mr Romanski
Miss Barber
Miss French - C & E

OD(E), 13 NOVEMBER : INTERNAL MARKET ITEMS

1. You are attending OD(E) at 9.00am on Thursday, 13 November.

2. Item II on the agenda will be an oral report by the Secretary of State for Trade and Industry on progress in completing the internal market. OD(E)(86)18 is a background note by the European Secretariat in the Cabinet Office setting out the present position on all the internal market programmes which were targetted for adoption during the UK Presidency.

3. Mr Channon has also circulated a letter on the counterfeit goods directive, where an unresolved question of who should pay for the extra Customs and Excise staff needed to implement the directive has meant the UK has imposed a substantive reserve. A separate detailed brief on this prepared by FP is attached.

Line to take

4. Agree with Mr Channon's message on the need for further concerted efforts to ensure maximum achievement in UK Presidency in all the relevant Councils. Support proposal that Foreign Secretary should invite Prime Minister to write to other heads of Government seeking their endorsement of proposed package of Internal Market Council items. Make clear, however, that will only be content to see UK reserve on counterfeit goods lifted if DTI transfer necessary resources to Customs and Excise.

Points to make

5. - content with 'political package' approach and that in principle my departments' items should be included as agreed by officials provided purchasing departments are content with public supplies directive and provided outstanding difficulties on counterfeit goods can be resolved

- glad to be able to report that ECOFIN likely on Monday to agree directive on liberalisation of capital movements by qualified majority. Although a relatively modest measure, one to which we attach great importance

- ECOFIN also seems likely to adopt in December the Bank Accounts Directive ahead of schedule

- great bulk of my items in original White Paper and rolling programme were tax measures. One modest VAT directive likely to be agreed on Monday. We shall also be presenting Presidency report on progress so far on the other measures which ECOFIN in June instructed officials to deal with. Pleased to be able to report that work has been taken forward on 11 draft directives during the Presidency.

- [for further points on counterfeit goods see separate brief attached]

Background

5. Making progress on completing the internal market is one of the UK's primary objectives as Presidency. It was largely at our initiative that the rolling Presidency action programme was first drawn up in December 1985, and we have during both the Dutch and the UK Presidencies done our best to keep up the momentum. The rolling programme targetted some 70 items for adoption under the UK Presidency (listed in OD(E)(86)18). 10 of these, together with three items which were not in the programme, have been adopted so far, leaving another 60 for adoption in the next six weeks.

6. In an attempt to maximise our chances of achieving this target, officials have proposed that a 'political package' should be identified where the Prime Minister should write to her opposite numbers asking them to withdraw, along with the UK, their objections to any items in the package. This 'political package' covers only the Internal Market Council. It consists largely of items where the voting provisions will change from unanimity to qualified majority voting when the Single European Act is ratified and which will also then become subject to the new co-operation procedure with the European Parliament. The items involved are the 'pharmaceutical package' (items 69-73); border controls (38) and dozers and loaders (78), where there is a specific Danish trade-off in mind; counterfeit goods (7), legal protection of micro-circuits (127), forklift trucks (80), IT/telecommunications standards (120), public supplies directive (86), tractor front ROPs (44) and good laboratory practice (74).

7. Treasury Ministers' interest in this package is limited to counterfeit goods, border controls (both Customs and Excise) and the public supplies directive (HMT jointly with DTI). On counterfeit goods see separate note attached.

8. The public supplies directive is both a UK and an EC priority and we have generally welcomed the proposals. At present we have a formal reserve on the restrictive procedures elements of the proposal which we could give up without too much difficulty. It is also possible that the UK may wish to reimpose a reserve on the mandatory standards provisions, which are in a considerable state of flux at present, if the purchasing departments are not content with them. There is also something of a question mark over whether the directive will be technically ready for agreement at the 1 December Council. The directive will become subject to qualified majority voting and to the new co-operation procedure on ratification of the Single European Act. The proposal has not yet completed its scrutiny procedures, as the Scrutiny Committee have recommended it for debate in Standing Committee. TOA are making arrangements to discharge this responsiblity. There are no problems with the border controls proposals.

8. So far as ECOFIN items are concerned, we are hoping to agree the 13th VAT Directive and capital movements at the 17 November ECOFIN, and the Bank Accounts Directive in December. The 19th VAT Directive is now held up not only by member states' difficulties but by the refusal of the European Parliament to give the Opinion without which the Council cannot finally adopt the Directive. The two UCITS directives are detailed technical and amending directives. Our contacts in UKREP do not think that they will be ready for agreement by 1 December, but DTI have policy responsbility for these items, so Mr Channon will be better placed to assess their prospects. A Presidency report is going to ECOFIn on 17 November on progress at official level on a number of tax proposals.

9. Last time Ministers discussed the internal market, the question of ERASMUS (student mobility in further eduction) was raised. The position here is that the DES do not have sufficient Euro-PES cover for the UK share of this programme. Mr Baker has also agreed with the Chief Secretary that he will not put in an additional bid to cover it, as it is very low down his list of priorities. As a result, the UK has a financial reserve on the proposal. The existence of that reserve means that the DES have begun deliberately to play the proposal long so that substantive Ministerial discussion can be put off to the Belgian Presidency. If the UK itself were able to accept the proposal, they would have hopes of being able to persuade others to agree to it during the UK Presidency. The FCO are very anxious that the UK stance will

leave Mr Baker in an embarrassing Presidency position, and may try to promplt him to reopen the question. It seems to be accepted, in the circumstances, however, that there is no prospect now of getting agreement before the end of the year.

JS

MISS J C SIMPSON

ANNEX A

BRIEF DESCRIPTION OF ITEMS OF TREASURY INTEREST

1. Public Supplied Directive

Proposals for the modification of the existing Supplies Directives on the rules for the award of public sector supplies contracts. They will involve changes on deadlines, standards, coverage and pre-publication of purchasing programmes.

2. Counterfeit goods

Intended to strengthen controls on importation of counterfeit goods by setting up a system whereby manufacturers can ask Customs to monitor imports of a category of goods where they have reason to believe attempts to import counterfeit goods may be made.

3. Liberalisation of capital movements

Tightening of liberalisation obligations of 1960 Capital Movements Directive on certain categories of transaction.

4. UCITS Directives (undertakings for collective investment in transferable securities)

These two directives would enable UCITS to invest in other UCITS and in certain types of securities to a greater extent than now, and would provide that disputes involving breach of marketing rules should be heard by courts in the country whose rules are breached.

5. 13th VAT Directive

Measures on the refund of VAT to taxable persons established outside the Community.

6. 19th VAT Directive

Technical amendments to basic 6th VAT Directive.

7. Bank Accounts Directive

Provisions to enable banks and similar institutions to fulfil requirements of Fourth Company Law Directive and to take advantage of certain provisions of Seventh Company Law Directive.

98/005

ANNEX B

NB CST to lead on this.

DRAFT EC REGULATION ON COUNTERFEIT GOODS

Objective

Not to agree to lifting the UK reserve on this draft EC Regulation unless the DTI agree to transfer the resources to Customs and Excise which they will need to implement the Regulation.

Copy attached; see also separate blue folder dWK

Tactics

Mr Channon wrote to the Chief Secretary on 12 November about this. It seems inevitable that the issue will be discussed at OD(E). You may come under heavy pressure to agree to lift the UK reserve now, so that this Regulation can be included in the "political package" on the Internal market, leaving the resources questions to be settled later. Significant expenditure will not arise until 1988-89. But agreeing to lift the reserve will inevitably weaken the chances of getting DTI to make a resource transfer.

+CST

You will want to judge how hard to dig in on this. Customs estimate that 65 additional staff would be required to implement this Regulation. But provided DTI gave them certain assurances (see background), they would be prepared to operate on the basis of only 25 additional staff, costing £500,000, in the first year - 1988-89. You may feel that honour would be satisfied if Mr Channon offered to transfer half of this. But this could mean that Customs manpower total and running costs provision in 1988-89 would need to be increased to cover the other half.

CST

You should in no circumstances agree to exempt the new service from gross running controls (the option favoured by Mr Channon). This looks a particularly poor case against the criteria endorsed by E(A) Committee last year. (See background note). And it would have immediate repercussions elsewhere. It would be preferable, in the last resort, to agree to an increase in running costs and manpower. There need be no increase in public expenditure because

there will be offsetting fees. (?) (No increase in PSRR?)

Line to take

Cannot agree to lifting of UK Reserve on this Regulation until there is agreement on provision of resources. Mr Channon's proposal to exempt this service from gross running-cost control is not the answer. It does not meet criteria agreed by E(A) Committee last December [see background note]. In particular, cannot be ring-fenced, difficulty of ensuring that fees cover costs, no efficiency criteria.

Cannot agree to increase in overall Civil Service running costs and manpower to accommodate this work. Customs and Excise cannot provide resources for this work without affecting their main priorities of drugs prevention and VAT collection.

Anti-counterfeiting work is a DTI priority therefore look to them to provide the resources for this work.

Background

The draft EC Regulation on counterfeit goods aims to strengthen controls on importation of such goods by setting up a system whereby manufacturers can apply to Customs to monitor imports of a category of goods where they have reason to believe that attempts to import counterfeit goods may be made. The Regulation permits a charge to be made which covers the administrative costs.

Adoption of the Regulation is a priority target for the UK Presidency, endorsed by OD(E) on 1 October. The Treasury and Customs and Excise have no difficulties with the policy of the draft Regulation, but Customs and Excise will need additional resources to implement it. Our line, endorsed by the Chief Secretary, has been that there must be no overall increase in Civil Service running costs and manpower for implementation, and that Customs should not be asked to divert resources away from their priority tasks of drugs enforcement and VAT collection. As this work is a DTI priority, we have been pressing them to provide the resources by reordering their priorities, but

they have argued that their manpower targets are already under pressure and they cannot find any offsetting savings. At our insistence, the UK has placed on a Reserve on adoption of this Regulation, pending resolution of the resources aspect.

The Regulation is likely to come into force on 1 January 1988, but if DTI accept that Customs should delay taking action on it for 3 or 4 months, Customs additional manpower requirements in 1987-88 can be limited to 5 Headquarters staff, to set the system up. In order to secure an overall agreement, Customs would be prepared to find them from existing resources. Forecasting staff requirements in the Outfield to operate the new system is very difficult, as it depends on the level of demand, but Customs estimate that they would need 60 additional staff in 1988-89 to operate the Regulation based on their estimate of demand. There are 5 existing staff on Trade Descriptions Act work who could be transferred to this work if DTI agree that their current work should no longer be done. It would appear that the trade (encouraged by DTI) will be looking to make good use of the Regulation from the date of implementation, so any reduction is Customs staff is likely to take place against high demand. Customs would, however, be prepared to operate the Regulation with only 30 staff in the first year, provided that DTI agree to support them against trade criticisms that they are doing insufficient work to protect them against counterfeit goods, and also to transfer additional resources if the volume of work builds up so much that it becomes essential. If DTI make these commitments, that would reduce the staff requirement to 25 in 1988-89. Customs cannot find these staff from within their existing provision, without reducing their effort on priority areas such as VAT collection and drugs.

Department of Trade and Industry argue that anti-counterfeiting work should be exempted from gross running cost control, because fees can be charged to cover all the additional costs. This means that there would no overall increase in Civil Service running costs, nor in Customs' running costs, though there would on addition to the manpower total. E(A) Committee agreed in December last year

criteria on which the Chief Secretary might judge cases for exemption for fee-earning business. There were:

- full costs to be met from fee income;

- adequate efficiency criteria and performance yardsticks agreed with Treasury;

- no unacceptable threat to manpower control.

In our view this is a complete non-starter, as there is no chance of the criteria for exemption from controls to be met. In particular, it would be impossible to ring-fence this work from other work, as very often the Customs officer will be checking a consignment for more than one purpose eg anti-counterfeiting and import licensing. It would be very difficult for him to allocate his time between the two functions. Also, at least in the early years, there is no guarantee that fees will actually cover costs, as they will have to be set in advance, when Customs will not know the level of demand or the amount of work they will have to do on each application.

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Secretary of State for Trade and Industry

CONFIDENTIAL

12 November 1986

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign &
Commonwealth Affairs
Downing Street
London
SW1A 2AL

Dear Geoffrey.

At our meeting on 1 October we agreed a target list of 62 internal market items for adoption by the end of the Presidency. This list was additional to ten items which had already been adopted. Since then our score has risen to just fourteen following agreement in the Internal Market Council to directives on frontier signs; direct broadcasting by satellite; commercial agents; and noise of domestic appliances.

The assessment we made collectively in October was that a total of 40 or 50 items would be a realistic and creditable target for adoption by the end of the Presidency. Most of these items are now targeted for December. Some encouraging progress has been made in the Council Working Groups and in COREPER but firm results are still to be achieved.

The Internal Market Council deals with about a third of the proposals on the target list, and is scheduled to meet on 1 December, shortly before the European Council. In order to ensure the best possible chance of success I have agreed that a political initiative should be undertaken in an effort to persuade all Member States to give effect to the commitments made by their Heads of Government at successive European Councils. The initiative covers 14 Internal Market Council items (list at Annex) which are ripe for decision (although like counterfeit goods some

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of them cause even us difficulties in reaching collective agreement). It will need determined and imaginative handling by the Presidency to achieve adoption. Many are blocked by just one or two Member States. Alan Clark and DTI officials will be visiting the key capitals later in the month to lay the foundations for agreement at the 1 December IMC.

Copies of this letter go to all OD(E) colleagues and to Sir Robert Armstrong.

PAUL CHANNON

JG3ADT

ANNEX

(7) Counterfeit Goods

The UK (availability of resources to implement the directive) and Italy (question of competence) have major difficulties.

(74) Good Laboratory Practice

Close to agreement.

(80) Forklift Trucks

Blocked by disagreement on one element (pedal layout). The French (alone) may object to the latest Commission compromise.

(120) IT/Telecoms Standardisation

UK and German reservations about the original text. The Commission is now sympathetic towards revised proposals submitted by the UK (with partial German backing). May need pressure on Germany to accept compromise.

(122) Legal Protection of Microcircuits

The UK industry wishes the directive to prohibit "reserve engineering" (copying of a competitor's chips). The UK is isolated on this issue although France and Italy have problems of Commission competence.

(86) Public Supplies Directive

Discussion is proceeding well although it would be appropriate to put some new political impetus behind it.

(38) Intra Community Border Controls

Denmark wishes to preserve its existing arrangemetns with the Nordic Union. A solution might be a (time-limited) derogation to Denmark pending the results of negotiation with the Union. (This would be as much a concession by other Member States as by Denmark).

(78) Noise of dozers and loaders

The Danes are insisting on stricter controls than the Directive specifies and should be pressed to concede.

(70)(71)(72) Pharmaceutical Package (part)

The Germans (and Greeks) have expressed dissatisfaction with the proposed committee system which they believe would place too much power in the hands of the Commission. However the Germans have recently hinted that they would accept a compromise.

(69)(73) Pharmaceutical package (part)

The Spanish have major objections in principle to the protection from copying which the Directives would provide for new medicines. They need to be pressed to concede.

(44) Front Roll-over Protective Structures for Tractors

Minor difficulties remain for a number of Member States.

Prev pps

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Secretary of State for Trade and Industry

CONFIDENTIAL

12 November 1986

Rt Hon John MacGregor CBE MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
London
SW1P 3AG

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Dear John.

EC DRAFT REGULATION ON COUNTERFEIT GOODS

As you know, the EC draft Regulation on Counterfeit Goods has been under discussion for two years in Brussels, and is now virtually ready for adoption. OD(E) agreed on 1 October that this was a major item for adoption under the UK Presidency internal market rolling action programme. UK industry has been following the negotiations on the Regulation with the keenest concern, since it will empower the Customs authorities of Member States, on application by the owner of a trade mark, to refuse to release for free circulation in the Community goods which are found to be counterfeit (ie which bear a trademark without authorization) and to dispose of them outside commercial channels. Adoption by the Community of this Regulation would not only provide an important means of redress for Community firms injured by the import of counterfeits into the EC; it would be a significant deterrent to counterfeiters, and would also give a strong boost to our efforts to get a Code on Counterfeits agreed in GATT as part of the new Uruguay Round.

So far we are unable to implement the decision of OD(E) and support adoption of the Regulation because at the Treasury's insistence the UK has had to place a general reserve on it. The issue is the resources which Customs say they would need to implement the Regulation - totalling 65 extra staff. Peter Brooke and Alan Clark corresponded on this issue on 30 September and 6 October, and

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1786 1986 BOARD OF TRADE BICENTENARY

subsequent discussions between officials have not managed to resolve it. The situation is now extremely urgent and embarrassing because as I say the Regulation is a matter to which Ministers in OD(E) attached priority; the last chance to adopt it in our Presidency will be at the Internal Market Council on 1 December, the other Member States have all agreed the text (subject to a few minor waiting reservations), and have accepted many points argued strongly by the UK; UK industry is keenly interested; and the only impediment to adoption is our own general reserve which arises not from policy, but from purely procedural grounds within the UK.

I can of course understand why your officials should take this position given our common concern to contain and if possible reduce Civil Service staff numbers. However, you will recall from our discussion on manpower in the PES bilateral that this Department has very real problems with the reduced manpower ceiling for 1 April 1988 - we are required to slim down from 12,843 posts to 12,504 over the next 15 months. These figures include the increased provision you agreed in the bilateral for the Companies Registration Office.

Against a background of rising demand for fee-earning activities such as licensing of the radio spectrum and the Insolvency Service, and increasing work on other demand-led activities such as COCOM, I advised you in the bilateral that I would have great difficulty in meeting this target.

It has been suggested by your officials that, subject to your views, the Treasury might accept some smaller contribution from this Department towards Customs and Excise's needs. It would be tempting to go along with this offer, in the hope that offsetting savings could be found in the next 15 months, in order to lift the reserve on counterfeiting in Brussels and thereby achieve one of the major objectives of the UK Presidency. But it would be disingenuous for me to do so in view of the severe manpower problems already faced by this Department.

I must therefore ask you to reconsider the possibility of Treasury providing Customs and Excise with the additional posts needed for this new task. As you know it is the intention that its costs should be fully recovered from fees and although it cannot easily be "ring fenced" for running cost purposes the introduction of new management accounting systems under the FMI should make it possible

JG3ADW

for a satisfactory unit cost regime to be developed. For my part I would be quite content for this regime to be subject to a Treasury capping figure on the number of staff involved, for the cost of the service to be met entirely from fees.

I am copying this letter to OD(E) colleagues and to Sir Robert Armstrong.

PAUL CHANNON

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FRAME ECONOMIC

COREPER 13 NOVEMBER: PREPARATION FOR ECOFIN:

R AND D FRAMEWORK PROGRAMME

SUMMARY

1. FURTHER SNIPING BY A NUMBER OF DELEGATIONS AT DRAFT REPORT TO COUNCIL, WHICH WILL GO FORWARD TO COUNCIL AS A PRESIDENCY DOCUMENT. MONDAY'S DISCUSSION PROMISES TO BE DIFFICULT.

DETAIL

2. FROM THE CHAIR I INTRODUCED THE DRAFT REPORT TO THE COUNCIL (10298/86), EXPLAINING THAT IT WAS BASED ON THE BUDGET COMMITTEE'S REPORT MINUS STATEMENTS OF OPINION BY PARTICULAR DELEGATIONS, PLUS ADDITIONAL CALCULATIONS COMPARING THE COMMISSION'S PROPOSAL AND CALCULATING A 'THRESHOLD' LEVEL FOR THE NEW PROGRAMME ON THE BASIS OF THE AVERAGE SHARE OF R AND D IN THE COMMUNITY BUDGET IN 1984, 1985 AND 1986.

3. RAVASIO (COMMISSION) COMMENDED THE DRAFT REPORT AS A BALANCED PRESENTATION WHICH SHOULD BE USEFUL FOR MINISTERIAL DISCUSSION. HE THEN CIRCULATED A COMMISSION PAPER, (MUFAXED TO DONNELLY, CABINET OFFICE AND CRABBIE, TREASURY) INDICATING THAT IT PROVIDED FURTHER TECHNICAL, FACTUAL DETAILS ABOUT THE FRAMEWORK PROGRAMME AND THAT IT WOULD FORM THE BASIS OF CHRISTOPHERSEN'S INTERVENTION ON MONDAY. (IN FACT IT CONTAINS THE SAME MISLEADING PRESENTATION OF THE COMMISSION'S PROPOSALS AS HAS ALREADY BEEN GIVEN TO THE RESEARCH GROUP: A COMPARISON BASED ON MAINTAINING THE REAL VALUE OF THE FRAMEWORK PROGRAMME, STARTING FROM THE HYPOTHETICAL FIGURE OF 3.75 BECU FOR THE PRESENT PROGRAMME AND UPRATING FOR INFLATION FROM 1982 TO 1989. THE DOCUMENT WILL NOT BE IN MINISTERS' DOSSIERS, BUT THE MINISTER OF STATE MAY HAVE TO INTERVENE TO REFUTE THE VALIDITY OF THESE FIGURES).

4. MOST DISCUSSION CENTRED ON PARAGRAPHS 8 AND 9 OF 10298/86 AND ON THE ATTEMPT TO ESTABLISH A THRESHOLD FIGURE ABOVE WHICH THE NEW FRAMEWORK PROGRAMME WOULD HAVE TO BE SET IN ORDER TO COMPLY WITH THE EUROPEAN COUNCIL'S AGREEMENT THAT R AND D SHOULD ABSORB AN INCREASING SHARE OF COMMUNITY RESOURCES. ESPER LARSEN (DENMARK) SUGGESTED THAT THE ATTEMPT TO ESTABLISH A 'THRESHOLD' FIGURE MISINTERPRETED THE EUROPEAN COUNCIL'S INTENTIONS: NIEMAN (NETHERLANDS) SUGGESTED THAT PARAGRAPH 8 WAS UNNECESSARY. CALAMIA (ITALY) ATTACKED THE HYPOTHESES ON WHICH THE ANALYSIS IN THE DRAFT REPORT WAS BASED, FORMALLY DISSOCIATED HIMSELF FROM THE REPORT AND DEFENDED THE COMMISSION'S PROPOSAL. LYBEROPOULOS (GREECE) AND THE PORTUGUESE REPRESENTATIVE SUPPORTED THESE CRITICISMS.

5. SCHEER (FRANCE) AND UNGERER (GERMANY) SPOKE IN SUPPORT OF THE DRAFT REPORT.

6. I SUMMED UP AS FOLLOWS:

(A) THE REPORT WOULD GO FORWARD TO THE COUNCIL AS A PRESIDENCY REPORT: OTHER DELEGATIONS WERE THUS NOT COMMITTED.
(B) PARAGRAPHS 8 AND 9 WOULD BE REDRAFTED TO INDICATE THAT THERE EXISTED DIFFERENT POSSIBLE ESTIMATES OF THE EFFECT OF KEEPING CONSTANT THE SHARE OF THE EC BUDGET ACCOUNTED FOR BY R AND D, WITH THE CONCLUSIONS OF THE MARCH EUROPEAN COUNCIL REPEATED WITHOUT COMMENT.
(C) THE TEXT WOULD ALSO MAKE CLEAR THE AVERAGE ANNUAL RATE OF GROWTH OF R AND D IMPLIED BY THE COMMISSION'S PROPOSAL (AT GERMAN REQUEST) AND THE PERCENTAGE OF THE BUDGET REPRESENTED BY A ''CONSTANT SHARE'' (AT DANISH REQUEST).

COMMENT

7. FINANCE MINISTERS CAN BE EXPECTED TO BE LESS RESISTANT THAN A NUMBER OF MY COLLEAGUES TO ATTEMPT TO BRING A LITTLE FINANCIAL ORDER INTO DISCUSSION OF THE R AND D FRAMEWORK PROGRAMME. BUT MONDAY'S DISCUSSION NONETHELESS PROMISES TO BE DIFFICULT, WITH A LOT OF

/CRITICISM.

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CRITICISM EVEN OF THE MODEST DRAFT CONCLUSIONS WHICH WE INTENT TO CIRCULATE.

HANNAY

YYYY
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Ms. Janet Barber
HM Treasury
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_____ gennemslag copy(copies) 1 bilag enclosure(s) J. nr.: Ref.: 500.F.1. Dato Date 13 November 1986

Dear Madam,

./. Please find attached as announced today the copy of the letter from our Minister of Finance Palle Simonsen to the Chancellor of the Exchequer Nigel Lawson in his capacity as President in the forthcoming ECOFIN-meeting in Brussels.

The original letter will be forwarded as soon as possible.

Yours faithfully,

Svend Roed Nielsen
Economic Counsellor

ROYAL DANISH EMBASSY

C O P Y

Dear Colleague,

Monday 17th of November you are presiding the monthly ECOFIN-Council in Brussels. I am looking forward to seeing you and to discuss the important matters on the agenda.

As you may have heard from the British Permanent Representative in Brussels I want to bring forward during our lunch a subject which is of extreme importance to my country.

The Danish derogation from EEC provisions of travellers allowances will be eroded by the 1st of January 1987 unless the Commission suggests and the Council adopts a prolongation of the derogation.

If the derogation is not prolonged the Danish budget will lose revenue corresponding to approximately 10/0 of GDP. A revenue which cannot be replaced.

The enclosed PM has a more thorough analyses of the problems.

I am confident that you leave time during the lunch to allow for a discussion of the subject.

Yours sincerely,
Palle Simonsen

SG/K72

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The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for
Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
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SW1A 2AL

14 November 1986

Dear Secretary.

EC EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

The European Commission issued a reasoned opinion on 13 October alleging that the UK is in breach of the Equal Treatment Directive in respect of sections 11, 51 and 52 of the Sex Discrimination Act. These concern:

(a) discrimination by partnerships in their treatment of partners (section 11); partnerships with 5 or fewer members have hitherto been exempt from the Section but will be brought within its scope by the Sex Discrimination Act 1986.

(b) discriminatory acts which persons may be required to perform under legilsation (eg on health and safety restricting women's employment) which was enacted before the Sex Discrimination Act 1975 (section 51);

(c) acts safeguarding national security (section 52) on which the Home Office has the lead interest.

I am writing to seek your views and those of colleagues on the line we should take in replying to the first two heads of the opinion. Douglas Hurd is writing to you separately on the third. We have asked the Commission for an extension of the period for reply to 13 December and I understand that this is likely to be granted.

I do not think we need spend much time on section 11 (partnerships). The Sex Discrimination Act passed at the end of the last session extends Section 11 of the Act to partnerships with 5 or fewer people (including applications to

join such partnerships) and thus effectively meets the Commission's wishes. We propose to deal with this in the reply in a way which leaves open the question as to whether we concede the principle that the Directive does in fact extend beyond employment.

The major problems arise on section 51. When the Commission first raised the matter in their letter of 5 May 1985, our reply (on 6 August of that year) refused to accept that section 51 was in itself contrary to the Equal Treatment Directive, while expressing willingness to meet the Commission to discuss specific applications which might be revealed by a review of the various enactments covered by it. A meeting with Commission officials subsequently took place on 19 June 1986. However, we were unable to change the Commission's view that the conflict with the Directive arose ffom the existence of section 51 itself rather than from individual enactments affected by it. This view is largely confirmed by an opinion of the Law Officers, reported in a letter to my Department on 11 September 1985. This stated that it would not be possible to sustain the UK's view if the matter were taken to the European Court and "that there is little doubt that the European Court would uphold the Commission's contention that section 51 of the 1975 Act is contrary to the requirements of the Equal Treatment Directive".

In the light of this opinion, I feel bound to conclude that we should follow the Commission in addressing ourselves to section 51 as a whole. However, since the section can apply to matters outside the scope of the Directive, the Commission has no ground for questioning it in this respect and we would look for an acceptable means of limiting any repeal to matters within scope. Moreover, there are a number of specific statutory provisions where we would wish protection to be retained.

Annex A outlines five areas where I believe we should try to retain protection for acts which would otherwise be held to be discriminatory. These are differential ages for the ending of entitlement to statutory redundancy payment, head teachers in religious schools, Oxbridge colleges whose statutes preclude the appointment of men fellows, protective legislation covering women at work and some other restrictions on women's and girls' employment eg underground.

Additionally there may be other provisions where discrimination is protected under section 51 which we have not so far identified. The terms of the reasoned opinion however, indicate that the Commission is not impressed by the argument that it is necessary to insure against possible cases by retaining the provision. On the contrary, it is the generality of section 51 which they consider objectionable.

PAYMASTER GENERAL

I am therefore proposing that the main line of our response should be to accept in principle the case for a general repeal of section 51 so far as it applies to matters covered by the Equal Treatment Directive; but to indicate that we shall be retaining protection for existing legislative provisions covering matters within the scope of exceptions permitted by the Directive or otherwise recognised in Community law. It would not however by my intention to specify these provisions in the reply. I think we shall considerably improve our chances of preserving their protection if we avoid putting ourselves in the position of having to defend them individually at this stage. I hope we shall be able to implement this approach under Section 2(2) of the European Communities Act thereby avoiding the need for primary legislation. (We shall of course need to keep in mind the Equal Opportunities Commission's recent consultative document "legislating for change" which includes a plea for a general repeal of Section 51 (paras 3.3.16-3.3.22); comments on the document have been invited by the end of February and will clearly be relevant to further consideration of the reasoned opinion as well as to the future of Sex discrimination legislation).

I am sending copies of this letter to Douglas Hurd and other members of ODE and to the Lord Advocate and Sir Robert Armstrong. Subject to comments on the approach set out above, which I should be grateful to have by 21 November, I will ask my officials to draft a reply to the reasoned opinion which we would aim to circulate for final agreement, concurrently with the Home Office reply to the opinion on section 52, as early as possible in December.

Finally, in the light of paragraph 7 above, perhaps I could urge colleagues to institute a search of the legislation for which they are responsible to see if there are any other areas where we should endeavour to mount a defence.

KENNETH CLARKE

Annex A

AREAS WHERE WE WOULD WISH TO RETAIN PROTECTION

Redundancy Payments

1. First, and probably most important, section 51 may be the only provision which makes it lawful for an employer to pay a statutory redundancy payment to a man aged between 60 and 65 but not to a woman of the same age. When we were considering the implications of the Marshall case earlier this year we concluded that in spite of the prohibition of discrimination in compulsory retirement ages under the Sex Discrimination Bill, we should not equalise the cut-off age for statutory redundancy payments. A common age of 60 would be politically unacceptable in relation to men, while a common age of 65 would involve employers in significant costs in relation to women and would also be inequitable in giving women the possibility of a double benefit (ie both the redundancy payment and the state retirement pension) so long as their state pension ages remain different from men's.

2. The continuing exemption of statutory redundancy payments (which stem from an Act of 1965) could it is felt be justified with reference to the European Court's decision on the Burton case (19/81). This concerned a man who was refused access to a voluntary redundancy scheme permitting redundancy 5 years before normal retirement age (60 for women and 65 for men). The Court held that the benefit of access at discriminatory ages sprang from the difference in state minimum pensionable age. This was permitted by Directive 79/7, the Social Security Directive, which allows (Article 7.1(a)) member states to exclude from its scope the determination of pensionable age for the purpose of granting old-age and retirement pensions and the possible consequence thereof for other benefits, and there was therefore no discrimination within the Equal Treatment Directive. (In the Marshall case, by contrast, the Court held that dismissal at different ages could not be regarded as a "benefit"). In view of the prima facie inequitable result involved in giving women a double benefit and of the fact that member states are able under Community law to maintain different state pension ages, there is a respectable argument for defending the continuation of the different age limits for redundancy payments.

Appointment of head teachers in religious schools

3. This is the second area where we might wish the possibility of discrimination to continue. Provisions in the instruments of government of schools made under the pre 1975 education legislation required such discrimination. As it was not thought clear whether the Education Bill recently before Parliament was a re-enactment of that pre 1975 legislation within the meaning of subsection (2) of section 51 an amendment has been included in the new Act maintaining the status quo.

4. Paragraph 19(2) of the Commission's reasoned opinion suggests that an exception for the heads of schools required to be members of religious orders would be acceptable to the Commission. However, the existing provision in our legislation appears to go much wider and it is proposed that if challenged we should invite the Commission to make clear what they have in mind in the application of the Directive to religious schools. Where the circumstances of such a school are similar to those of a state school, there is at least a fair case for bringing its appointments under the Sex Discrimination Act (as a consequence of a partial repeal of section 51).

Oxbridge colleges

5. A third possible difficulty arises on the Oxbridge women colleges, some of which have statutes precluding the appointment of men as fellows. Parallel provisions referring to men have now been removed from all but one of the men's or mixed colleges.) At a meeting with officials in June, the Commission indicated that they might be willing to consider transitional provisions allowing continuing discrimination by women's colleges for a period, provided that the colleges could satisfy them that a case could be established under the Directive on the ground of under-representation of women in university teaching. DES have asked the colleges for further information and it seems sensible to conduct any further discussions with the Commission in the light of their replies.

Women at work

6. Fourthly, we also need to consider protective legislation covering women at work. Section 2 of the Health and Safety at Work etc Act 1974 places a duty on employers to ensure, so far as reasonably practicable, the health, safety and welfare of all their employees. This can and has been successfully used under section 51 where the act was done because of women's biological vulnerability to a substance. There is at least a strong possibility that this would be regarded as a permissible exception under the Directive.

Other restrictions on women's and girls' employment

7 Fifthly, certain provisions remain in force restricting women's employment (eg in underground mines) or differentiating between young men and women as part of the general protection of young people. These are currently the subject of reviews and we are as yet uncertain whether we shall (a) wish or (b) be able to retain these differences.

(NON-OFFICIAL TRANSLATION)

Lisbon, 14th November 1986

Dear Prime Minister,

As you are aware Portugal's adhesion to the European Economic Communities constitutes a landmark in the history of my country.

With our full and active presence it is not only Communitary Europe that is reinforced in its political, economic and cultural expression. For the Portuguese too, the adhesion to the European Communities reflects a clear political will and is closely linked to a development project, which my Government deems as a prioritary objective.

Besides, during the conversation we had in London the 12th May last, I had the occasion to refer to you the importance that I atribute to this question.

We would seriously be eluding the expectations, so frank and diligent from most portuguese, should it not be possible to ensure, in the short term and in the context of the European Community, the paths to economic and social development of my country.

The Portuguese economy faces a difficult challenge, since it must simultaneously promote its recovery and adapt to new conditions emerging from european integration.

Being the motor of economic development, Portuguese industry reveals the need for a deep and sistematic effort of modernization - without which it will be impossible to insure a sustained progress of the Portuguese economy.

Acknowledging this reality, the Community assumed, in the context of the negotiations for the adhesion, the engagement of supporting Portugal in the development of its industry. That engagement results evident and inequivocal from Protocol 21 and from a Declaration of the Community inserted in the Acts of adhesion.

The end of the first year after the adhesion approaches and it is clear that the Community has not yet taken the necessary initiatives to the fulfilment of that engagement. This situation causes profound concern to my Government, hurts the legitime expectations of our industrial sector and has political implications of serious consequences, namely about the credibility of our european option itself.

We believe, naturally, that the technical and finantial support to the modernization of Portuguese industry may assume several forms and different modalities. We are willing to search,with the Governments of other Member States and the Commission for the more adequate framework to the fulfilment of this supplementary effort directed to the industrial development of my country.

I would not like to elude the budgetary crises that the Community is confronted with and before which Portugal has assumed a position of balance and defense of the economic interests at stake. However, my Government can not renounce to a support foreseen on the occasion of Portugal's adhesion to the Communities,nor accept solutions differed in time or with imponderable results.

It will not be reasonable to ask Portugal to participate and follow the efforts to the realization of the internal market , which, for us, should be parallel to the strengthening of economic and social cohesion, if the essential support to update its industrial sector is denied.

I feel it is urgent to give a decisive impulse to this communitary engagement, so important to the strategy of recovery of the Portuguese economy.

I believe that you are aware of the political importance this question has for Portugal. I would like to inform you that in the absence of any positive development from the communitary instances it is my intention to raise this question in the next European Council, in the belief that the Community wishes to fulfil in its integrity the engagements derived from the adhesion of my country.

I avail myself of this opportunity, Prime Minister, to renew to you the assurances of my highest consideration.

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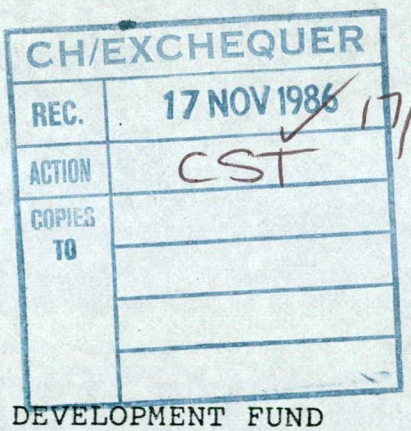


ALOX

17/11/86

PRIME MINISTER

PUBLIC EXPENDITURE AND THE EUROPEAN REGIONAL DEVELOPMENT FUND

We are to discuss the treatment of ERDF receipts for privatised industries at E(A) on Thursday on the basis of the Chief Secretary's minute to you of 13 November.

My purpose in this note is to inform colleagues of the widespread damage which the present public expenditure treatment of ERDF receipts could do if applied inflexibly to privatised industries; to report briefly on how the policy generally is affecting local authorities; and to offer some suggestions. I am sure that we need to solve the whole question of the handling of ERDF as it applies to both privatised industries and local authorities, before it causes us unnecessary risk of embarrassment and damage to our policies. The main facts are that:

i. Industries which have been or are to be privatised now account for almost one-third of the UK's share of the ERDF;

ii. In England at least local authority applications for ERDF grants are falling rapidly as the capital control system bites harder. This is because they do not give sufficient priority to them in the use of the scarce capital allocation. The number of applications was almost halved between last year and this and fell by 40% in value. The importance of bids from privatised industries therefore increases;

iii. If the UK does not put enough bids in to take up its share of the ERDF, other member states will step in. The UK's deficit on the European Community budget (even after the Fontainebleau rebate) will increase.

More generally, the credibility of our water privatisation policy would be undermined if it were perceived that as a direct result ERDF assistance were cut off (or, alternatively, arbitrary and damaging cuts were sought from the remainder of my Department's expenditure programme).

In particular, my predecessors have initiated a massive programme for cleaning up the Mersey. The North-West Water Authority will contribute a substantial amount. Over the life of the project, ERDF grant of some £500m will be attracted to it. Without the grant, the time-scale will be extended or water charges will have to be substantially raised. We will be open to most damaging criticism from local as well as European interests if we were to withdraw support now. The atractiveness of the Water Privatisation Bill could also be seriously impaired.

The floatation price we could obtain for the water service PLCs would be reduced if ERDF grant is not going to be available. Or, in other words, the more we can honestly look forward to in a prospectus for sale by way of ERDF grant, the more we can expect the sale proceeds to contribute to the Exchequer.

The paper which is covered by the Chief Secretary's note, suggests (paragraph 20) that the investment which the ERDF grants support may bring in extra tax revenue and contributions from the industries and individuals concerned and reduce unemployment benefit. Against this background it would be unreasonable to expect Departments to have an arbitrary cut in their programmes on account of any ERDF grants received by industries they used to sponsor.

We need to find a more satisfactory way of channelling ERDF grants to privatised industries without undermining the general policy of non-additionality. Unless some solution is found, we cannot keep up our take from the ERDF. There simply will not be enough applicants to take the place of privatised bodies. The requirement

to make offsetting savings in public expenditure would have the effect of making the net cost of our contributions to the Community go up.

I quite understand the Chief Secretary's concern that ERDF transactions should be properly brought to account in the public expenditure arithmetic. One possible solution would be to make provision for a separate programme within public expenditure generally rather than take account in any individual departmental programme at the estimated level of receipts from the ERDF. This would preserve the principle of non-additionality in much the same way that we do now for ERDF receipts in general.

I should also refer to the impact on ERDF applications of our system of controls on local authority capital spending. It was my intention, had we overhauled the system before the Election to "top slice" the total allocation to local authorities in such a way that those local authorities which subsequently applied for ERDF grant could do so without having to find separate capital cover. Our existing commitments - including the 80% guarantee on capital allocations - make this for the most part impossible in 1987/88. We therefore continue to face considerable difficulty in squaring the need to encourage take up of ERDF grants with the need to control capital expenditure as a whole.

There is one short-term measure that will help with the worst cases which will result from this situation next year. Some £5m was deducted from the total available for local authority capital expenditure in 1987-88 before the allocation total was determined in anticipation of bids for ERDF grant from Local Authority companies. I shall therefore be able to allow payments to Local Authority companies.

The £5m is however only a palliative. The tighter we control local authority capital expenditure the less able are local authorities to submit applications for ERDF grant; and if we do not take up the grant, we increase our deficit with the Community. If we are

not to let this unsatisfactory situation persist, and expose ourselves to potential criticism and difficulty we need to decide now in the context of the future of the capital control system how this dilemma might be resolved. I hope we can discuss all these issues on Thursday.

One final point: the Water Authorities have been sufficiently worried by the Brussels embargo on water schemes, now lifted, to press me to agree that they will continue to be able to receive these grants after privatisation. I must tell them where they stand from the point of view of the United Kingdom Government.

I am copying this minute to other E(A) members and to Sir Robert Armstrong.

NR

17 November 1986

Tony - for you I think.

CONFIDENTIAL

PRIME MINISTER

E(A), 20 NOVEMBER - EC R&D FRAMEWORK PROGRAMME

We are due to discuss with colleagues in E(A) on Thursday our attitude to the proposed EC R&D Framework Programme. This proposal poses substantial domestic public expenditure problems for my Department, which we need to resolve now, so that we can decide on our national and Presidency position in advance of the 9 December Research Council.

2 The European Secretariat's paper (E(A)(86)54) discusses the main issues in terms reflecting the differing views among Departments about both substance and tactics for the Council. I think it is however important that you and colleagues should be aware, before the meeting, of how difficult these decisions are for my Department. My main concerns are with redistribution of the EUROPES baseline, and with the size of the Framework Programme. The wrong decisions on either would present me with severe public expenditure problems.

Redistribution

3 The allocation of EUROPES baselines was set in 1984. However as the European Secretariat's paper states the new Framework Programme will involve a completely different pattern of spend. Expenditure under even a 5 becu programme will significantly exceed baselines, requiring offsetting savings on Departments' budgets. The issue of redistribution is essentially a question of how this should be allocated amongst Departments.

DWlCFE

4 Redistributing baselines would mean that the overspend would be allocated pro rata to expected expenditure on programmes. This approach is logical and equitable, and is fully supported by the Treasury as well as ourselves. Since in line with the Government's negotiating objectives, the new Framework Programme will concentrate more on industrially relevant programmes, DTI would still be left with the greatest overspend over the 5 year programme. While I recognise that the Department of Energy would face particular difficulties in the early years, there can be no argument for allowing them to retain 37 per cent of the baseline against an expected share of the new Programme of only 23 per cent, with DTI holding only 19 per cent compared with an expected share of 53 per cent. This would distort the disciplines that EUROPES is intended to impose on all Departments, and have the paradoxical effect of forcing DTI to argue, against current policy, for reducing the industrial relevance of the eventual programme in order to reduce our liability to find offsetting savings. A failure to redistribute the baselines would leave DTI with a further bill of over £200m on a 5 becu programme with virtually no cost at all to any other Department. This would necessitate a major cut back in our support for domestic R&D where the budget already shows no increase in real terms over the PES years.

5 I am afraid that I could not, therefore, accept even a 5 becu programme at the 9 December Council unless E(A) takes a firm decision to redistribute on the basis set out at Annex B of the Secretariat paper.

DW1CFE

A programme above 5 becu

6 The Secretariat paper recognises that settlement at 5 becu will be difficult to achieve at the Council. Some colleagues may therefore argue that we should be prepared to go somewhat beyond, to get a settlement. This would provide even more difficulties for my budget which I could not countenance. My firm view, which I understand the Treasury share, is that we should not go higher than 5 becu. In any case I am not convinced that the UK Presidency will provide an opportunity for the lowest possible settlement on a Framework Programme, recognising the pressures that our Presidency inevitably places on us to compromise. And so long as France and Germany support us, future Presidencies will not readily see off the arguments for a smaller programme, as budgetary constraints become more apparent.

Conclusion

7 For these reasons, I consider it essential that E(A) decides now on a redistribution of EUROPES baselines, as set out in the Secretariat paper. Without this I could not agree even to a 5 becu programme at the 9 December Research Council. I also believe that we should confirm that 5 becu remains our negotiating limit, even if this proves insufficient to achieve a settlement. We need to settle these questions quickly, so that Geoffrey Pattie knows where he stands in his bilateral Presidency contacts with other Member States later this month.

DW1CFE

CONFIDENTIAL

8 I am copying this to other Members of E(A), to Geoffrey Howe and to Sir Robert Armstrong.

P.C.

PAUL CHANNON

18 November 1986

DEPARTMENT OF TRADE & INDUSTRY

DW1CFE

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215) .....
(Switchboard) 01-215 7877

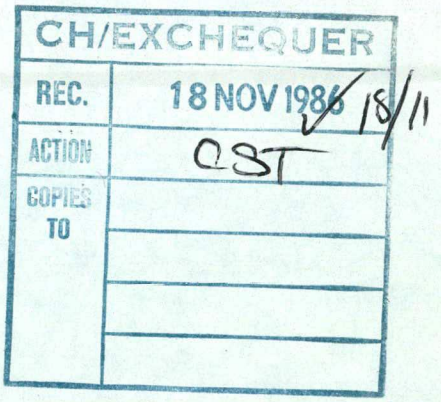
Secretary of State for Trade and Industry

CONFIDENTIAL

18 November 1986

The Rt Hon John MacGregor OBE MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1

Dear John,



EC DRAFT REGULATION ON COUNTERFEIT GOODS

I am writing further to the discussion at OD(E) on 13 November about the resources required to implement the draft regulation, which we all agree is a priority for adoption at the Internal Market Council on 1 December under our Presidency.

Officials have discussed the issues further in the light of the Committee's decision. While estimates of the workload which may arise under the Regulation as from 1 January 1988 are naturally subject to much uncertainty, I accept that the best estimate which Customs can make at the moment is that 65 staff will be required (or 60, net of work under the Trade Descriptions Act which would no longer be done). In order for the Regulation to be operated effectively from the date of its coming into force, the full complement of staff or something near it would be required from the outset.

You have said that offsetting staff savings must be found in order to provide the resources for implementation of the Regulation. OD(E) concluded that such savings should be divided equally between this Department and Customs and Excise, since the operation did not meet the criteria for exemptions from gross running costs controls.

Neither Customs nor I can find offsetting savings of 30 staff each for this work. In view of the importance of the operation, however, we are prepared to accept a ceiling on the staff resources allocated by Customs for the operation of the Regulation of 40 as from the year ended 31 December 1988, subject to review in the light of experience. This should represent an ability on the part of Customs to handle 175 live cases at any one time, or a total of

DW2BGP

700 a year. The offsetting savings would be shared equally between Customs and this Department at 20 each, although in the light of further consideration I may need to include appropriate provision in my staff proposals in next autumn's PES review.

I hope that we can agree on this basis. If so, it should be possible to lift the UK's reserve on the Regulation, which I should like to be able to do at COREPER tomorrow.

There are, of course, political risks entailed. If Customs were to find that they could not handle the weight of cases coming to them under the Regulation, we could be in a very difficult situation and there could be much criticism from industry. We should also not lose sight of the fact that implementation of the Regulation, when it comes into force, will be a legal obligation under Community law. In the light of all the uncertainties I am prepared to face these risks, and I hope that we can agree to lift our reserve on the Regulation on the above basis, which accords with the decision of OD(E).

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

PAUL CHANNON

DW2BGP

18

Ch

A letter from Mr Cadilhe to you, delivered via David Bostock & Roger Lavelle in Brussels yesterday. Andrew Edwards will advise.

AWK
19/11

Mr Lavelle

A message from the Portuguese Finance Minister (translation attached). It refers to the modernization programme for Portuguese industry referred to in Protocol 21 to the Accession Treaty.

This is for consideration in the Industry Council. But NB there is a link to the 1987 Budget negotiations. So the MST should be made aware.

David Bostock

17/xi

TRANSLATION

To Minister Nigel Lawson

Your Excellency

The integration of Portugal in the European Community is linked to a project of country which is an important priority of my Government.

In this context the Portuguese industry should play a decisive rôle , taking into account its importance in the economic and social environnement, as well as the fact that it gives the main contribution to developement in Portugal. During the transitional period after accession the Portuguese industrial sector has to face a set of problems: adjustment to new conditions resulting from European integration, fast adaptation to recent technological innovation and also pressures emerging from competition of the new industrialized countries.

In the process of negotiations for accession the Community acknowleged the dimension of such problems and commited itself to support Portugal in its effort for modernizing the industrial sector, a commitment which was laid down in Protocol 21 and in a statement included in the Act of Accession.

Such an assistance cannot be neglected mainly because of its importance for an area of economic activity which is a decisive one for recovering and developping the Portuguese economy.

This matter is being reviewed by the Commission, which has prepared already its first report with proposals and suggestions, and is dealt with by The Industry Council. However, having in mind the implications of these problems both in the implementation of economic and financial policies, and in the Community budget, we think there

are surely good reasons for bringing such matter to the attention of the ECOFIN Council and as well of the Budget Council.

In fact it is our understanding that the Community budget for 1987 should include a specific budgetary item for the modernization of the Portuguese industry in order to implement the guidelines and commitments stated in the documents above mentioned which are a part of the Act of Accession.

I would like therefore to stress the importance given by Portugal to this matter and ask you also to transmit to the President of the Budget Council our concern and expectations.

I am confident that this Portuguese request will be considered by Your Excellency with great attention.

Best regards,

MINISTÉRIO DAS FINANÇAS

GABINETE DO MINISTRO

Lisboa, 17 de Novembro de 1986

Senhor Ministro Nigel Lawson

Excelência,

A adesão de Portugal às Comunidades Europeias está associada a um projecto de desenvolvimento económico e social do País que constitui prioridade de primeira ordem do Governo de que faço parte.

Nesse contexto cabe à indústria portuguesa um papel cimeiro, não só pela importância que assume no tecido económico e social, como também pelo facto de se constituir como verdadeiro motor do desenvolvimento em Portugal. Durante o período transitório após a adesão o sector industrial português vai estar sujeito a um triplo desafio: a adaptação às novas condições emergentes da integração europeia; a assimilação rápida dos recentes impulsos tecnológicos; o confronto com as pressões concorrenciais dos novos países industrializados.

Reconhecendo a dimensão destas dificuldades, a Comunidade assumiu, no contexto das negociações de adesão, o compromisso de apoiar Portugal no seu esforço de modernização industrial - - compromisso que consta do Protocolo nº 21 e de uma Declaração inserida nos actos de adesão.

../..

MINISTÉRIO DAS FINANÇAS

GABINETE DO MINISTRO

Trata-se de um apoio de que Portugal não pode abdicar, por relevar para um segmento da actividade económica decisivo para a recuperação e desenvolvimento da economia portuguesa.

Este dossier está a ser apreciado pela Comissão que apresentou já as suas primeiras propostas e sugestões e tem sido acompanhado pelo Conselho Indústria.Atendendo, porém, às implicações que estes problemas têm quer na condução da política económica e financeira, quer no Orçamento das Comunidades, justifica-se certamente que o assunto seja objecto de atenção por parte do Conselho ECOFIN e igualmente do Conselho Orçamento.

De facto, é nosso entendimento que o Orçamento comunitário para 1987 deve já conter uma linha orçamental específica para o apoio à modernização da indústria portuguesa, concretizando as orientações e compromissos expressos nos documentos constantes do Acto de Adesão.

Permito-me, pois, alertar V. Exa. para este assunto e para a importância que Portugal lhe atribui, pedindo-lhe também que transmita ao Presidente do Conselho Orçamento as nossas preocupações e anseios.

Estou convicto de que V. Exa. não deixará de prestar a esta legítima pretensão portuguesa o melhor da sua atenção.

Com os melhores cumprimentos,

A muito estimada

(Miguel Cadilhe)

Declaração da Comunidade Económica Europeia

relativa à adaptação e modernização da economia portuguesa

A adesão da República Portuguesa às Comunidades Europeias situa-se na perspectiva da modernização da sua economia e do aumento das suas possibilidades de crescimento.

Com este objectivo, será aplicado imediatamente após a adesão ao longo de um período de dez anos um programa específico de desenvolvimento para a agricultura, definido anteriormente no artigo 263º e no Protocolo nº 24.

No domínio industrial impõe-se um esforço análogo, a fim de modernizar o sector produtivo e de o adaptar às realidades da economia europeia e internacional. A Comunidade está disposta, no mesmo espírito que em relação à agricultura, a prestar o seu auxílio às empresas portuguesas, fazendo-as beneficiar do seu apoio técnico e dos seus instrumentos de crédito — tanto o NIC [Novo Instrumento Comunitário] como as operações privadas —, bem como por meio de maiores intervenções do Banco Europeu de Investimento.

Declaração da Comunidade Económica Europeia

relativa à aplicação do mecanismo dos empréstimos comunitários a favor de Portugal

No âmbito do mecanismo dos empréstimos comunitários destinados a apoiar as balanças de pagamentos dos Estados-membros, nos termos do disposto no Regulamento (CEE) nº 682/81 do Conselho, de 16 de Março de 1981, alterado pelo Regulamento (CEE) nº 1131/85 do Conselho, de 30 de Abril de 1985, será concedido à República Portuguesa o montante de 1 000 milhões de ECUs, sob a forma de empréstimo, no período de 1986 a 1991. Para a repartição anual deste montante total, será feito um esforço especial em 1986 e 1991.

Declaração da Comunidade Económica Europeia

relativa à aplicação do montante regulador

A Comunidade constata que a aplicação do regime do montante regulador não deveria afectar as correntes tradicionais de trocas comerciais.

Declaração do Reino de Espanha: zona CECAF

O Reino de Espanha considera que qualquer referência à zona abrangida pelo Comité das Pescas do Atlântico Centro-Este (CECAF) deve entender-se sem prejuízo dos direitos do Reino de Espanha para efeitos da delimitação das águas espanholas.

With the Compliments

of

Private Secretary

19 November 19 86

LORD ADVOCATE'S CHAMBERS
FIELDEN HOUSE
10 GREAT COLLEGE STREET
LONDON SW1P 3SL

Telephone: Direct Line 01-212 0100
Switchboard 01-212 7676

RP

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL
Telephone Direct Line 01-212 0100
Switchboard 01-212 7676

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State Foreign & Commonwealth Affairs
Foreign & Commonwealth Office
Downing Street
LONDON SW1A 2AL

19 November 1986

Dear Geoffrey,

EC EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

Kenneth Clarke's letter to you of 14 November was copied to me.

So far as section 11 of the Sex Discrimination Act 1975 is concerned, we have now taken steps to ensure that section 11 complies with our obligations under the Directive. As was made clear in the Opinion given by Patrick Mayhew and myself on 11 March 1986, we believe that the European Council "would scarcely hesitate to find that [the Directive's] purpose was to ensure equal treatment in working life in general". Consequently, although I have no strong views on whether the response to the Commission should expressly concede the application of the Directive to partnership, I do think that we should be extremely careful not to say anything provocative which could cause the Commission to doubt the good faith and intention behind the amendment which brings all partnerships with the scope of section 11.

As Kenneth Clarke says, the question of section 51 of the Act is more difficult. I fully appreciate the problems which arise in trying to identify these areas in respect of which we would wish to retain the protection for discriminatory acts. I am bound to say, however, that if we attempt to approach the Commission on the basis that we cannot say what specific provisions we intend to preserve, I believe the Commission will view our approach with great suspicion. If there are areas which we have identified and which we are reasonably confident of being able to defend, I suggest that it may be better to disclose those to the Commission at this stage and explain the difficulty of identifying all of the areas in respect of which we would wish to preserve the protection. We could then undertake to let the Commission have particulars of the remaining areas as soon as possible. In effect, this means trying to work out the mechanism we would wish to adopt for the repeal of section 51 before responding to the Commission.

I should also say that I very much doubt if it would be appropriate to use section 2(2) of the European Communities Act for this purpose. We are claiming that there are aspects of discrimination which are <u>not</u> caught by the Directive.

THE LORD ADVOCATE

If we have to legislate to deal with these matters, it seems to me to be difficult to argue that such legislation is required to implement a Community obligation.

I am sending copies of this letter to Douglas Hurd, Kenneth Clarke, members of OD(E) and Sir Robert Armstrong.

Yours ever

Kenny

CAMERON OF LOCHBROOM

For E(A) tomorrow.

PRIME MINISTER

PUBLIC EXPENDITURE AND THE EUROPEAN REGIONAL DEVELOPMENT FUND

We are to discuss the treatment of ERDF receipts by privatised industries at E(A) on Thursday.

I am deeply concerned about this issue. I believe that strict adherence to narrow definitions is obscuring the wider issues which we must address. Nicholas Ridley's minute of 17 November has highlighted some of these issues particularly as they affect the water industry. My own Departmental concern is British Gas. Although its past ERDF receipts are small compared with those in the water industry it remains politically important for them to continue post privatisation. But it will be impossible to find the compensating savings from my Department's other programmes. Thus even if the Commission agree, as I understand they may well do, to private sector utilities remaining eligible for grant we shall be unable to forward any further applications for gas projects.

The choice colleagues face is whether we pass ERDF grants to privatised industries, without compensating savings from Departmental budgets (at a cost of 66% through reduced abatement), or under existing rules risk the loss of the nation's entitlement to the available funds and its consequences on balance of payments, regional development policy and our privatisation programme.

Under the Fontainebleau mechanism receipts from ERDF reduce our abatement by 66% irrespective of whether they go towards public or private sector projects. Whilst I accept that receipts in respect of existing public sector projects benefit public expenditure, there is as Nicholas Ridley made clear, a real risk of there not being sufficient suitable public sector projects within existing plans to attract aid.

If privatised industries are discouraged from applying for aid we therefore risk losing our entitlements. The grants foregone less

abatement, will count against our balance of payments and will simply go to subsidise other Member States. That is surely undesirable.

As the privatisation programme proceeds the infrastructure projects eligible for grant, eg telecommunications, gas, water etc, will increasingly be in the privatised industries. We understand that the Commission are likely to decide that such projects will only be regarded as eligible for grant if they cannot otherwise be undertaken. Hence, in the absence of ERDF aid these projects will not go ahead and lack of this infrastructure will compound the difficulties of attracting other industries to the Assisted Areas which need all the help they can get to stimulate the local economies.

Through our privatisation policy we are already reducing the size of the public sector (including public expenditure in the Assisted Areas). Furthermore public expenditure derives a substantial one-off benefit from flotation proceeds, which in certain circumstances would be even higher if it was known at the time of flotation that ERDF would continue to be available to the privatisation candidate. In addition the gross investment by the industries in projects attracting aid is likely to benefit the Exchequer in other ways, eg higher PAYE and National Insurance Receipts, reduced unemployment benefits, higher Corporation Tax Receipts. To argue that passing grants to the privatised industries increases public expenditure therefore is an over simplification.

I am copying this to Geoffrey Howe, Members of E(A) and Sir Robert Armstrong.

SECRETARY OF STATE FOR ENERGY

19 November 1986

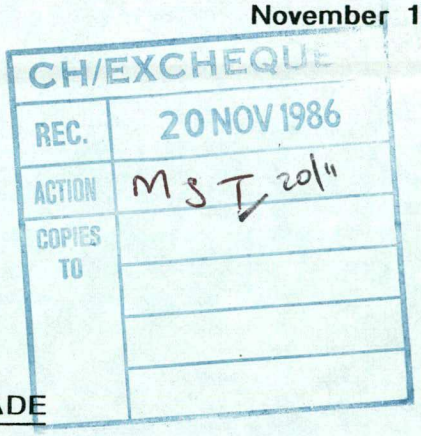
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

SOLICITOR GENERAL

~~DX 44005 CHANCERY LANE~~
01-936 6407

The Rt. Hon. Michael Jopling, MP,
Minister of Agriculture, Fisheries and Food,
Ministry of Agriculture, Fisheries and Food,
Whitehall Place,
LONDON, SW1A 2HH.

November 1986



Dear Michael:

FRENCH ACTIONS DISRUPTING UK LAMB TRADE

Thank you for your letter of 18 November.

I feel sure you are right in supposing that a strong practical retaliation would concentrate the minds of the French Government, and far more promptly than any other measure. My letter had to make clear to you, however, the dangerous consequences to our own interests that I foresaw ensuing from the course you told me you had in mind.

The trouble is that in this country's legal system someone aggrieved by Governmental action has a remedy very readily available to him. The same may not be true in France. Nevertheless, the Strasbourg case I mentioned is encouraging. I am therefore glad you see merit in my suggestion that you stand financially behind a UK lamb exporter suing in a French court, and that you are having this idea worked up by officials. It could be run in tandem with recourse to the Commission and the European Court of Justice, a procedure which I agree would be more protracted. An announcement of both initiatives would show our industry that you are fighting for them. You would need, however, to be assured that supporting an action in the French courts is a practical proposition and, for example, that our support would not disqualify a UK lamb exporter from obtaining a remedy under French law.

/Cont'd.....2

J

SOLICITOR GENERAL

I am of course very willing to advise at once from the Law Officers' standpoint on any other course that may attract you.

I am sending copies of this letter to the recipients of yours.

Yours ever,

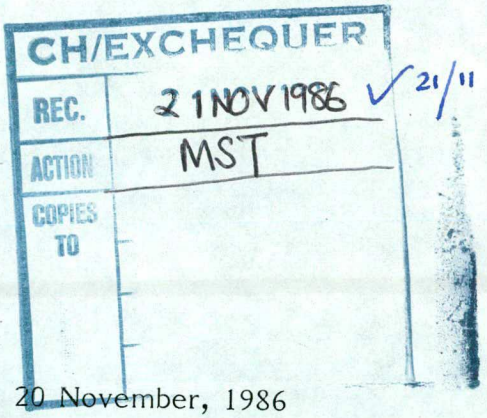
Peter

J

SOLICITOR GENERAL

01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL



The Rt.Hon.Kenneth Clarke MP. QC.
Paymaster General
Department of Employment
Caxton House
Tothill Street
London SW1

20 November, 1986

Dear Kenneth.

EC EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

You copied to the Law Officers your letter of 14 November to Geoffrey Howe.

I am in no doubt that the Commission should be told that Section 51 is to be repealed so far as it applies to matters covered by the Equal Treatment Directive but the terms of the reply will need to be carefully worked out. We do not want to give the Commission the impression that we will be retaining the protection of Section 51 in a wide category of unspecified cases. Moreover I doubt whether the Commission will in fact settle these proceedings until they are satisfied about the extent of the repeal and the justification for those exceptions which are being made to it. This points to further work being done urgently on the areas identified in the Annex to your letter, and any others which may justify protection, so that the initial response to the Commission can be followed as soon as possible by more concrete proposals.

I should add that I think further work also needs to be done on the precise mechanism to be used for the repeal of Section 51 and on whether it will, as your letter suggests, be possible to use Section 2(2) of the European Communities Act for this purpose.

SOLICITOR GENERAL

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

Yours ever,

Patrick

CONFIDENTIAL

Foreign and Commonwealth Office

London SW1A 2AH

21 November 1986

Dear Charles,

Message from the Prime Minister of Portugal

I enclose a message from the Prime Minister of Portugal delivered by the Portuguese Ambassador on 17 November, together with a draft reply. The translation of Professor Cavaco Silva's letter was made by the Portuguese Embassy.

The Portuguese are disappointed by the Commission's reaction to the "Programme for the Development of Portuguese Industry" which they submitted in February this year. The Commission, who responded in October with a Communication to the Council:

a) accepted that a coordinated programme of action was required to restructure Portuguese industry in the period up to 1992 (when Portugal's transitional regime with the Community ends) but

b) noted that existing or proposed EC measures should be sufficient to provide the Community contribution to the plan that has been requested. (Portugal is seeking Community financing of some 1 billion ecu (about £700 million) for a 1.5 becu programme.

The Portuguese do not consider that these proposals fulfil the commitments made by member states in the accession, negotiations, notably Protocol 21 and a Declaration by the EEC on the modernisation of the Portuguese economy. Protocol 21 notes Portugal's industralization plans and recognises the common interest in seeing those plans realised.

The Portuguese Prime Minister has written in similar terms to M. Delors, who has replied announcing that the Commission will shortly send an evaluation mission to Portugal.

Portugal is already benefitting from the Regional and Social Funds and must continue to look to these programmes and to normal Community loan instruments for assistance. Most member states will take a similar view. Our main immediate aim is to keep the issue off the European Council agenda where it would lead to an unwelcome discussion of 'cohesion.' The Foreign Secretary therefore recommends a

short, friendly reply referring to the impending visit by the Commission. The Prime Minister's reply could be delivered by our Ambassador in Lisbon who will anyway be calling on the Portuguese Prime Minister next week. We should aim to send the reply no later than Monday morning, 24 November if possible.

I am copying this letter to PS/Chancellor of the Exchequer, PS/Secretary of State for Trade and Industry, PS/Sir Robert Armstrong.

Yours ever,

Colin Budd

(C R Budd)
Private Secretary

C D Powell Esq
10 Downing Street

OUT TELEGRAM

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AND TO

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TO IMMEDIATE LISBON
TELNO
OF 201730Z NOVEMBER 86
INFO PRIORITY UKREP BRUSSELS, OTHER EC POSTS

YOUR TELNO 345 (NOT REPEATED): CALL ON PORTUGUESE PRIME MINISTER

1. When you call on Professor Cavaco Silva grateful if you would deliver to him the message from the Prime Minister in MIFT.

2. Please also draw on the following points:

(i) The Prime Minister looks forward to welcoming Professor Cavaco Silva to London for the European Council. She hopes that the early despatch of a Commission team to Portugal is a demonstration that the Community stands by the commitments made during the Accession negotiations.

(ii) The Prime Minister will be writing round shortly to describe how she plans to handle the European Council and we shall be circulating short background papers. We envisage the discussion in the opening plenary session on the afternoon of Friday 5 December as concentrating on:

a) Employment Growth ie the ideas under discussion by Employment Ministers to help both young people and adults into employment, help the long-term unemployed into jobs, promote the creation of self-employment and small and medium-sized firms, and improve workings of the labour market. We are grateful for Portugal's

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		Catchword: /support	
File number S18AAM	Dept ECD(I)	Drafted by (Block capitals) J S Wall	Telephone no 233 5612
Authorised for despatch by:	Initials	Date/time	
For COD use only	Comcen reference	Telegram number	Processed by

OUT TELEGRAM (CONT)

	Classification	Caveat	Precedence
	CONFIDENTIAL		IMMEDIATE

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support for our initiative.

b) measures to help small businesses on the lines proposed by the Commission and to reduce unnecesary burdens on business.

c) progress on the internal market. We hope that the Portuguese Prime Minister will support our initiative (the Prime Minister's letter in my telno 414 to Athens).

(iii). We envisage discussion over dinner focussing on the problems of terrorism, immigration, drugs and frontier controls as in the political declaration annexed to the SEA. We shall be circulating a paper which will highlight areas in which cooperation needs to be intensified as progress is made towards freedom of movement in the Community.

(iv). Heads of Government will also wish to discuss over dinner important developments in East/West relations. The Prime Minister will be ready to give her own impressions after her recent meetings with President Reagan.

3. If the Portuguese Prime Minister raises Community finance and agriculture you should say that the Prime Minister ~~hopes that~~ MAY ASK the President of the Commission ~~will be able~~ to give Heads of Government an account over dinner of the Commission's plans and timetable for bringing forward their review ~~of Community finance~~. It would not be appropriate for the European Council to anticipate that or to seek to undertake the work of Agriculture Ministers. But Heads of Government will wish to underline the need for the Agriculture Council to take decisions in the milk and beef sectors.

4. If Professor Cavaco Silva says that he may wish to raise Portuguese industrial problems at the European Council you should say that, while any issue can be raised, the important thing for Portugal is the commitment already given by the Commission to send a team to assess Portuguese needs. The next substantive step must be for that team to visit Portugal and to make recommendations.

For distribution order see Page Catchword: /HOWE

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OUT TELEGRAM (CONT)

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TO IMMEDIATE LISBON
TELNO
OF 201800Z NOVEMBER 86
INFO PRIORITY UKREP BRUSSELS, OTHER EC POSTS

MIPT: CALL ON PORTUGUESE PRIME MINISTER

1. Following is text of the Prime Minister's message to Professor Cavaco Silva.

BEGINS

Thank you for your letter of 14 November about difficulties facing Portuguese industry.

I understand that you have also written to M Delors. I was very pleased to learn that he has offered to send a Commission team to Portugal in the near future to assess your needs.

It goes without saying that the UK stands by the commitments made to Portugal during the accession negotiations.

I shall be writing shortly about our plans for the European Council. I am looking forward to welcoming you to London then.

With best wishes

Yours sincerely

///
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/

Margaret Thatcher

ENDS

2. Portuguese message to the Prime Minister and other EC Heads

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		Catchword: /of	
File number S18AAN	Dept ECD(I)	Drafted by (Block capitals) J S Wall	Telephone no 233 5612
Authorised for despatch by:	Initials	Date/time	
For COD use only	Comcen reference	Telegram number	Processed by

XY 48 (REV)

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

23 November 1986

Dear Colin.

MESSAGE FROM THE PRIME MINISTER OF PORTUGAL

Thank you for your letter of 21 November, enclosing a draft reply from the Prime Minister to the message from the Prime Minister of Portugal. This may issue.

I am copying this letter to the Private Secretaries to the Chancellor of the Exchequer and the Secretary of State for Trade and Industry and to Sir Robert Armstrong.

yours sincerely

C. D. POWELL

C. R. Budd, Esq.,
Foreign and Commonwealth Office

NA

DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH
TELEPHONE 01-934 9000

FROM THE SECRETARY OF STATE

The Rt Hon Kenneth Clarke QC MP
Paymaster General
Department of Employment
Caxton House
Tothill Street
London SW1H 9NF

24 November 1986

Dear Ken

EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

I am content with your proposed response to the Commission as outlined in your letter of 14 November to Geoffrey Howe, on the understanding that one of the exceptions permitted by the Equal Treatment Directive is the appointment of certain staff at schools serving the needs of religious communities. This line is consistent with what my officials accepted at the EQO(L) meeting on 4 November. We shall of course be seeking continued protection for the single-sex colleges of Oxford and Cambridge.

I am sending copies of this letter to members of H and OD(E) committees and to the Lord Advocate and Sir Robert Armstrong.

Yours

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon Kenneth Clarke QC MP
Paymaster General
Department of Employment
Caxton House
Tothill Street
LONDON
SW1

CH/EXCHEQUER
REC. 24 NOV 1986
ACTION MST 24/11
COPIES TO

24 November 1986

Dear Kenneth

EC EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

I agree with the line of approach set out in your letter of 14 November to Geoffrey Howe.

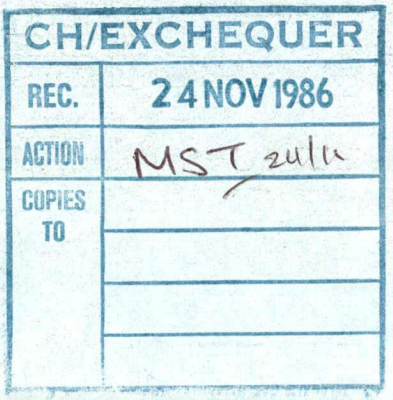
My officials have not as yet identified any areas of legislation sponsored by my Department for which it would be desirable to retain the protection afforded by section 51 of the Sex Discrimination Act 1975. Certainly there are no major cases. However, the officials have not yet completed their review and I have therefore asked them to get in touch directly with your Department if they subsequently identify any legislation for which the continued protection of section 51 might be needed.

I am sending copies of this letter to Sir Geoffrey Howe, the members of ODE and H Committees, and Sir Robert Armstrong.

Yours ever

Nicholas

NICHOLAS RIDLEY



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PAYMASTER GENERAL

EC EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

1. Thank you for your letter of 14 November about the Commission's reasoned opinion alleging that the UK is in breach of the Equal Treatment Directive. I agree with the approach set out in the eighth paragraph of your letter, that we should accept in principle the case for a general repeal of Section 51 while retaining protection for the areas you mention.

2. You will no doubt wish to consider the points raised by the Lord Advocate in his letter of 19 November. In my view, however, it will not be necessary for us to identify the areas we wish to protect in our reply. If, of course, the Commission were to write again seeking

clarification, we should need to reply more fully. But we would have gained more time to prepare our defence. This will be especially important in the case of redundancy payments and Oxbridge women's colleges.

3. I understand that Oxbridge women's colleges may anyway be exempt under Article 2(4) of the Equal Treatment Directive. We should try to persuade the Commission of this. If we cannot, then we shall need to aim for an agreement of the kind you envisage.

I am sending copies of this minute to Douglas Hurd, Kenneth Baker, members of OD(E), the Lord Advocate and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign & Commonwealth Office
21 November 1986

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215)
(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

CONFIDENTIAL

24 November 1986

The Rt Hon Kenneth Clarke MP
Paymaster General
Department of Employment
Caxton House
Tothill Street
London SW1H 9NS

Dear Kenneth,

EC EQUAL TREATMENT DIRECTIVE: RECENT OPINION FROM EUROPEAN COMMISSION

Thank you for copying to me your letter of 14 November to Geoffrey Howe on this subject.

The main substantive problem raised by the Commission's recent Opinion is, as you say, the future of Section 51 of the Sex Discrimination Act 1975. In the light of the Law Officers' Opinion of our prospects of success were the matter to be taken to the European Court, I am sure you are right in proposing that the main line of our response should be to accept in principle the case for a general repeal of Section 51 so far as it applies to matters covered by the Equal Treatment Directive. I agree also that it would be sensible to indicate that we will be retaining protection for (unspecified) existing legislative provisions covering matters within the scope of exceptions permitted by the Directive for other Community law. In effect, this will reserve our position on the legislation in question until we have had a proper opportunity to consider whether and to what extent it is still necessary.

Of the provisions identified in Annex A to your letter, this Department has an interest in the first (the age at which entitlement to statutory redundancy payments should cease - on which, as you say, we have already concluded against setting a common age for men and women); the fourth (protective legislation covering women at work); and the fifth (other restrictions on women's and girls' employment).

JG5AEG

On the last of these, you will recall that Leon Brittan pressed last year for an early amendment to legislation which is not only discriminatory but also imposes a burden on a number of employers - particularly the Post Office. I would be grateful if your officials could keep mine in touch with the progress of the reviews you have set in hand on these issues, and more generally with developments on the other legislation currently protected by Section 51.

I am copying this to Geoffrey Howe, Douglas Hurd and other members of ODE, to the Lord Advocate and to Sir Robert Armstrong.

PAUL CHANNON

JG5AEG

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Kenneth Clarke QC MP
Paymaster-General
Department of Employment
Caxton House
Tothill Street
LONDON
SW1 9NT

25th November 1986

Dear Paymaster-General,

EC EQUAL TREATMENT DIRECTIVE: REASONED OPINION FROM EUROPEAN COMMISSION

I have seen your letter of 14 November to Geoffrey Howe seeking views on a possible response to the Commission's Reasoned Opinion of 13 October 1986.

There are no uniquely Northern Ireland considerations which would warrant any departure from the substance of your proposed line of response to the Commission and I am content, therefore, to proceed as you suggest.

You will wish to note, however, that a draft Sex Discrimination (NI) Order to replicate the provisions of the Sex Discrimination Act 1986 (including the amendment of the NI equivalent of section 11 of the 1975 Act) is in course of preparation, with a target date for publication of March 1987 and laying in June 1987. This raises the possibility of using the proposed Order as a vehicle for amending the NI equivalent of section 51 of the 1975 Act and I have asked my officials to liaise with yours on the appropriateness or otherwise of this possible course of action.

NI Departments have not been able to identify any further legislative area where we should endeavour to mount a defence.

I am copying this reply to Douglas Hurd and other members of OD(E), to the Lord Advocate and to Sir Robert Armstrong.

Yours Sincerely
N Ward
(Private Secretary)
for TK

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

EC5/4

Ch
Letter at Flag D to issue?
ND 25/11
AJK 25/11

FROM: P N HAYDEN
DATE: 25 November 1986

1. MR DONNELLY
2. CHANCELLOR

cc Minister of State
Mr Lavelle
Mr Edwards
Mr Crabbie
Mr Mortimer
Mrs Meason

LETTER FROM SENHOR MIGUEL CADILHE

Senhor Miguel Cadilhe (the Portuguese Finance Minister) wrote to you on 17 November (Flag A) drawing your attention to the difficulties which face Portuguese industry now that Portugal has become a member of the European Community. The Minister's main concern is that there should be provision in the Community Budget for the modernisation of Portugal's industry. This would, in part, fulfill the commitment made by the Community under protocol 21 of the Treaty of Accession. (Protocol 21 is cast in general terms and speaks of using 'all the means and procedures laid down by the Treaty particularly by making adequate use of the Community resources ....' There is however, no mention of specific sums of money or any explicit mention of Community Budget aid). The Portuguese Prime Minister has also written to Mrs Thatcher in similar terms (flag B). Attached at Flag C is her reply and a supporting briefing telegram for the Embassy in Lisbon. The reply is couched in sympathetic and friendly terms but stops short of guaranteeing any specific amount of aid.

I attach a short draft reply (flag D) reaffirming that the UK will stand by the commitments given by the Community to Portugal in the accession arrangements and undertaking (as requested) to draw Senhor Cadilhe's letter to the attention of Mr Brooke and Mr Channon. I also attach (flag E) a draft Private Secretary letter to Mr Channon to give effect to this last point.

Peter Hayden.

P N HAYDEN

EC5/4

DRAFT LETTER TO PS/SECRETARY OF STATE FOR TRADE AND INDUSTRY

FROM PS/CHANCELLOR

Letter from Senhor Miguel Cadilhe.

Senhor Miguel Cadilhe wrote to the Chancellor of the Exchequer on 17 November about the difficulties facing the Portuguese industry now that Portugal is a member of the European Community. I enclose that letter and the Chancellor's reply which undertakes to draw this issue to the attention of the President of the Industry Council.

I am copying this letter to PS/Foreign Secretary, PS/Sir Robert Armstrong and Mr Powell (No.10), Colin Budd (FCO) and Trevor Wooley (Cabinet Office).

EC5/4

DRAFT LETTER FROM CHANCELLOR OF THE EXCHEQUER

TO SENHOR MIGUEL CADILHE

Thank you for your letter of 17 November about the integration of Portugal into the European Community and the special difficulties facing Portuguese industry.

I understand that the Commission intends to send a team of officials to Portugal to explore ways in which your industrial needs might be best met. I also understand that these issues will shortly be brought before the Industry Council. I would not want to prejudge the decisions which that Council might take but I can assure you that the UK will look as sympathetically as possible on any Commission proposals.

It is the firm view of

~~I should stress too, the United Kingdom's firm view~~ that the Community must stand by the commitments given to Portugal during the accession negotiations. I am drawing your letter to the attention of the Presidents of the Budget Council (Peter Brooke) and the Industry Council (Paul Channon).

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

26 November 1986

PRIME MINISTER'S MEETING WITH THE PRESIDENT OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

The Prime Minister saw the President of the Commission of the European Communities this morning to discuss the forthcoming European Council. M. Delors was accompanied by M. Lamy. Sir David Hannay was also present.

European Council

Economics and Social Situation

The Prime Minister said that she hoped to avoid a discussion of the economic situation in each member state. She would be grateful if M. Delors would make a brief introductory statement, focussing in particular on employment, and the need to stimulate more small business and enterprise. She would steer the Council towards positive conclusions on the employment initiative. She was disappointed by the lack of progress on the internal market and, depending on what happened at the Internal Market Council on 1 December, might need to extract a commitment from the European Council to agree the outstanding measures by the end of the year. There might have to be a special Council to deal with this. She was also disappointed at the lack of progress on access to cheaper air fares and intended to raise this issue. It would be helpful if the Commission could speak in support.

M. Delors said that he would certainly be prepared to introduce the discussion. He would have circulated his papers in advance and would need to comment only briefly. He agreed with the aim of avoiding a general palaver on the world economy and focussing discussion as tightly as possible on employment. He had a number of ideas which he might mention for radical changes in the use of the Social Fund to deal with unemployment. M. Delors noted that the German economy had room for expansion, which if used would benefit the Community as a whole. But it was difficult to raise this with Chancellor Kohl before the elections in Germany.

The Prime Minister said that she always found Commission papers on the economic situation in the Community very instructive. She was also grateful to the Commission for some of the positive steps which they had taken to help small businesses, for instance by increasing the VAT threshold for them. The Prime Minister commented that she remained very concerned about Japan's failure to take effective action to correct its massive trade surplus. It might be helpful if the European Council's conclusions contained a clear hint of likely further Community action against Japan, unless there was a satisfactory response to the GATT complaint on alcoholic drinks. M. Delors thought that this would be useful, although there might be difficulties in securing German acquiescence.

Sir David Hannay referred to the likelihood that the Southern-tier Member States might try to link progress on the internal market with cohesion. The Prime Minister observed that they viewed the European Community as a mechanism for redistributing income. Life was not like that and she would say so.

Terrorism, immigration, drugs

The Prime Minister said that she would also aim to discuss the issues of terrorism, immigration and drugs on the first afternoon. It seemed that there was still scope for closer co-operation against terrorism, although there were constraints about sharing intelligence with some Member States. She had been very satisfied with the united front shown by the Twelve over Syria. Her aim would be to achieve very firm conclusions from the Council on terrorism. On the question of internal barriers, a balance had to be found between freer movement within the Community and the need to protect our societies against terrorism and drugs. Chancellor Kohl wished to raise his problem over asylum seekers. She also intended to deal, in this session, with co-operation over AIDS; and would propose agreement to a European Cancer Information Year.

M. Delors spoke with appreciation of the two meetings organised by the Home Secretary to deal with terrorism. On cancer and AIDS, the problem was to break the wall of silence.

The Prime Minister handed over to M. Delors a copy of the message which she will be sending to heads of government, together with copies of the Presidency's discussion papers.

Discussion over Dinner

The Prime Minister said that she intended that the main theme for Heads of Government over dinner should be East/West relations and arms control. It was important to keep the Community together on these issues. She would report on her visit to Washington. Other political co-operation subjects would be dealt with by Foreign Ministers. She understood that one or two Heads of Governments might want to raise South Africa. This would put Chancellor Kohl in an embarrassing

position and she would not co-operate with that. She did not envisage any conclusions on South Africa.

The Prime Minister continued that she would be grateful if M. Delors would give Heads of Government a short account of the Commission's intentions in relation to the ex novo review of Community finances over drinks before dinner. This would ensure that any discussion was time limited. M. Delors agreed to do so. He would describe the main lines of the papers which the Commission would table on financial perspectives, the structural funds and agricultural policy. The Prime Minister stressed the need to tackle these problems radically. The Community had taken a considerable step forward on financial discipline and equity at Fontainebleau and subsequently towards completing the internal market. But there had been some slippage, particularly over financial discipline and in the failure to tackle agricultural surpluses. Unless steps were taken to bring agricultural spending under effective control, there would be no money to spend on more desirable objectives like research and development. M. Delors confirmed that the Commission's proposals would deal with these issues. It was important, in particular, that the European Parliament should be fully involved in budgetary discipline. They could not be left outside the procedure, with discretion to propose increases in spending.

The Prime Minister said that she might mention informally over dinner the problems posed for European Governments by ever heavier social security spending. This was an issue which affected all Member States. It might be less difficult to tackle the problems collectively. But she did not envisage a discussion on this occasion.

CAP

The Prime Minister said that the European Council should urge Agriculture Ministers to reach conclusions rapidly on the Commission's proposals for reform of the milk and beef régimes. She did not envisage a detailed discussion. But the Community was going to have to look very seriously at the CAP over the next two years, even though there would be difficulties in agreeing radical reforms until elections in the main Community countries were out of the way. The present system simply could not carry on unchanged. There was no question of providing additional funds. Indeed, strict cash limits might be the only way to achieve reform. There had to be radical changes to the intervention system, and steps to dispose of existing surplus stocks, possibly putting the onus for financing disposal on the individual member States holding the stocks. Other sectors of Europe's economy, such as steel and coal had been forced into radical restructuring. Agriculture could not be exempt.

M. Delors said that the Commission had made tough proposals for reducing dairy and beef surpluses. The problem lay with Agriculture Ministers who were unwilling to face up to difficult decisions. He agreed that it would be helpful

for the European Council to give a strong steer. If the immediate problems were not solved, there would be an explosion in costs next year. The Commission would be proposing a radical re-orientation of the CAP, in the papers which they would present at the end of the year, including a weakening of the intervention system.

Structural Funds

The Prime Minister referred to problems which the United Kingdom had experienced over the ERDF. We wanted our full allocation but must be able to have a say in which projects should be financed. She was very concerned generally about the amount which we had to pay to Europe across the exchanges, both for the Community and for our forces in Germany. M. Delors said that the Commission would be proposing reforms in the Structural Funds.

Sex Discrimination

The Prime Minister mentioned the difficulties for women's colleges at Oxford which would arise if the Commission pursued infraction proceedings against the United Kingdom over the Equal Treatment Directive. Although the Commission's objective might be laudable, their action would have the perverse effect of making it harder to find posts for women. Our purpose was to protect the interests of women. She would fight the Commission hard on this.

It was agreed that Sir David Hannay would let M. Delors have a note, which he undertook to study.

I am copying this letter to the Private Secretaries to the Chancellor of the Exchequer, Secretary of State for Trade and Industry, Paymaster General, Home Secretary, Minister of Agriculture and Sir Robert Armstrong.

CHARLES POWELL

Colin Budd, Esq.,
Foreign and Commonwealth Office.

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CONFIDENTIAL

FM UKREP BRUSSELS
TO PRIORITY FCO
TELNO 4702
OF 231700Z DECEMBER 86
INFO ROUTINE EUROPEAN COMMUNITY POSTS

FRAME GENERAL
YOUR TELEGRAM NO. 597 : EX NOVO REVIEW

1. I HAVE SPOKEN TO KOLTE (CHRISTOPHERSEN CABINET) WHO IS THE ONLY PERSON CLOSELY IN TOUCH WITH THE EX NOVO REVIEW STILL LEFT IN BRUSSELS.

2. KOLTE SAID THAT THE PAPER TO BE PUT TO THE COMMISSION ON 8 JANUARY AND THEREAFTER ALMOST CERTAINLY CIRCULATED TO THE MEMBER STATES AS A BACKGROUND DOCUMENT FOR DELORS' TOUR OF CAPITALS WAS LIKELY TO BE EVEN MORE GENERAL AND ANALYTICAL THAN THE THREE DOCUMENTS CIRCULATED FOR CONSIDERATION BY THE COMMISSION ON 21-22 DECEMBER. IT WOULD CONTAIN NO PROPOSALS AS SUCH. REFERENCES TO THE UK ABATEMENT WOULD BE KEPT TO THE MINIMUM. BUT HE TOOK THE POINT THAT, IF ALL SUCH REFERENCES WERE CARPING, THERE WAS A RISK OF PUBLIC COMMENT THAT THE COMMISSION WAS OUT TO ABOLISH THE ABATEMENT OR TO REPLACE IT WITH SOMETHING LESS SATISFACTORY FOR THE UK. SUCH COMMENT IN ITS TURN WOULD LEAD TO A POLARISATION OF THE DEBATE WHICH WAS NEITHER IN THE COMMISSION'S NOR THE UK'S INTEREST. KOLTE SAID HE WOULD FOLLOW THIS POINT UP WITH CHRISTOPHERSEN. WHILE THERE WERE INDEED TECHNICAL ASPECTS OF THE FONTAINEBLEAU MECHANISM WHICH COULD BE IMPROVED AND WHILE BOTH THE GENERALISATION OF ABATEMENT OR THEIR ABOLITION WERE LIKELY TO BE RAISED AT SOME STAGE IN THE NEGOTIATIONS. IT WAS NO PART OF THE COMMISSION'S INTENTION TO GET ONTO THIS GROUND PREMATURELY. THE CALCULATIONS IN CHRISTOPHERSEN'S RECENT PAPER ENVISAGED VERY SUBSTANTIAL FONTAINEBLEAU ABATEMENTS IN 1992.

3. I HAVE ALSO SPOKEN TO FORTESCUE (COCKFIELD CABINET) AND HE HAS UNDERTAKEN TO BRIEF LORD COCKFIELD TO BE VIGILANT ON THIS ASPECT ON 8 JANUARY.

HANNAY

FRAME GENERAL
ADDITIONAL
RENWICK FCO
WALL FCO
WILLIAMSON CAB
JAY CAB
HADLEY MAFF
LAVELLE TSY

UCLNAN 6158
FRAME GENERAL
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TELNO 4698
OF 230956Z DECEMBER 86
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FRAME GENERAL

DELORS' TOUR OF CAPITALS.

1. I SPOKE TO DELORS' CHEF DE CABINET ON 23 DECEMBER. LAMY SAID THAT DELORS WAS THINKING OF VISITING LONDON IN THE FIRST WEEK OF FEBRUARY. I SAID THIS MET OUR TENTATIVE PREFERENCE FOR A SLOT TOWARDS THE END OF THE TOUR. WE THEN HAD SOME DISCUSSION OF DATES, LAMY HAVING IDENTIFIED 5 FEBRUARY. I POINTED OUT THAT CABINET MET THAT DAY OF THE WEEK AND THAT THERE WOULD ALSO BE THE COMPLICATION OF PRIME MINISTER'S QUESTIONS. HE THEN OFFERED 6 FEBRUARY AS AN ALTERNATIVE. WE CAN HAVE EITHER, BUT WILL NEED TO REVERT QUICKLY IF WE HAVE A CLEAR PREFERENCE.

2. LAMY REACTED VERY POSITIVELY TO THE POSSIBILITY OF A ROUND TABLE DISCUSSION WITH THE MINISTERS PRINCIPALLY INTERESTED, IN ADDITION TO MEETINGS WITH THE PRIME MINISTER AND YOURSELF. WE AGREED TO BE IN TOUCH ABOUT THE PROGRAMME AFTER THE HOLIDAYS. GRATEFUL FOR INSTRUCTIONS.

HANNAY

YYYY
ADVANCE:
PS FCO
PS/MRS CHALKER FCO
BRAITHWAITE FCO
RENWICK FCO
WALL FCO
FORD FCO
WILLIAMSON CAB
JAY CAB
ANDREWS MAFF
LAVELLE TSY
MAIN:
FRAME GENERAL

UCLNAN 6148
FRAME GENERAL.

ECPC(1)

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ADVANCE ADDRESSEES

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