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PRIME MINISTER

EEC CONTRIBUTION

As I was able to attend only a part of your meeting on Thursday last on our EEC contribution, I thought it might be helpful to send you a note of my views on some of the points discussed; and also to record some of the factual matters about which you asked.

2. We have to face the real possibility that what is on offer on our contribution at Dublin will fall far short of an acceptable solution. You might have to tell the other Heads of Government that this situation threatened a crisis in the Community. Your case remained as stated and there was no possibility of a settlement on or near the basis proposed. But in the hope of avoiding a crisis you were prepared to attend a further meeting at an early date devoted exclusively to this topic. It would be better still if the proposal for another meeting came from someone else. A proposal that the subject be placed on the agenda for the next regular European Council would not do, but we might have to accept a meeting in, say, January.

3. If such a meeting were agreed I think it would be essential to make it clear in advance of the meeting that if it did not produce an acceptable settlement, you would not thereafter be able to facilitate the operation of the Community. If there is to be a second meeting you need to strengthen your



hand for it, or there may be an expectation that you can be bought off with some minor additional concession. I think this is in line with earlier OD conclusions.

4. We expect to hear a proposal in Dublin that the present Financial Mechanism be improved to yield us about £350m. We could not accept that as a full solution, and under present machinery there would be no great hurry to do so anyway, since the refund would not come until the spring and summer of 1981. But it might be possible, without prejudicing our position, to let officials work out the details of the amendments to the Mechanism, even if they could not be legislated until a full settlement was reached.

5. Another point we need to consider is whether you should say at Dublin that we expect a refund worth perhaps £170m in respect of 1980 under the Mechanism as it stands. The Commission's "Solutions" paper of 31st October states that "under present conditions, the net payment to the UK from the Mechanism in respect of 1980 would be no more than 250 meua if there were to be a balance of payments deficit, and nothing if there were a surplus". So the "new money" on offer from an improved Mechanism is only half of £350m, and the additional burden on the others correspondingly modest. An alert domestic observer could readily spot this. But the £175m refund would bring our net contribution burden for 1980/81 down to a bit less than £900m instead of £1,050m (Commission figures on an "importer pays" treatment of MCAs).

6. If Dublin is to be followed by a further special meeting, the main line of our reply to public questioning about next steps would, I imagine, be to refer to that. If however there is to be no such meeting, I suggest your immediate



reaction might be to seek an interval for reflection by saying you would now want to consider the situation with your colleagues.

7. I gave some information at your meeting about the mechanics of our contribution to the Community and you also asked some questions about the legal position. I attach a note which sets out the facts about how our contribution is made. It refers also to what is being done to follow up the advice given by the Attorney General about a possible case under Article 175 of the Treaty of Rome for relief of our contribution position.

8. If we concluded, following an impasse in the negotiations, that such a case was worth pursuing, we could say publicly that in our view the Community instructions (in this case mainly the Council of Ministers) were failing to comply with the Treaty. We would be arguing that the law as expressed in the Treaty was on our side, not theirs. We would have to consider at what point it was wise to take such a case to the European Court, and take account of the risks of failure before the Court.

9. The arguments for going to the Court in this way could be considered on their own merits. But if we were reverting to the possibility of withholding, the better course might be to take the initiative and lodge our case first. This might be preferable to awaiting Commission proceedings against our withholding and then using our case under the Treaty as a defence.



10. I am copying this minute to the Foreign and Commonwealth Secretary, the Lord President, the Lord Privy Seal, the Attorney General and Sir Robert Armstrong.

(G.H.)

21 November 1979

S E C R E T

I. THE PAYMENT OF THE COMMUNITY'S OWN RESOURCES

1. The EEC's "own resources" consist of

- i) Customs duties
- ii) Levies on agricultural imports
- iii) A tranche of VAT.

2. Subject to a 1% ceiling, the third item is used to "top up" the amount required for the Community's budget after the first two items have been used in full.

3. The following are the main steps in the payment of the "own resources":-

- i) Amounts due are "established" (eg the Customs "establish" the duty payable on a consignment of imports).
- ii) The amounts established are paid into the UK Consolidated Fund.
- iii) From the Consolidated Fund the amounts of levies and duties established are paid into the EEC's Account with the Paymaster General by the 20th day of the second month following establishment ie on 20 November 1979 a payment will be made to the EEC's Account in respect of levies and duties established in September.

The VAT tranche is paid into the EEC's Account with the Paymaster General on the first day of each month.

Any delay in making these payments into the Community's account attracts a penalty rate of interest on a rising scale, currently starting at 17% and rising at $\frac{1}{4}\%$ per month, the rate applicable at the end of the delay being applied retrospectively to the whole of the delay.

- iv) The Commission draws on its Account with the Paymaster General to meet its obligations either (a) in the UK, or (b) in other member states. In the latter case the Commission transfers sums in the Account with the Paymaster General to an account at the Bank of England, for transmission elsewhere within the Community. So far this year about £700_m has been transferred to other member states through the Bank of England Account.

The Community Regulations require that the orders and instructions sent by the Commission to HM Treasury relating to payments out of the Account with the Paymaster General shall be "carried out as soon as possible". No express penalty for non-compliance is provided for in the Regulations, but the normal practice is to comply within 24 hours. It is usual for the Commission to give at least one instruction per month to make a payment out of the Community's Account with the Paymaster General.

4. It is difficult to estimate for how long the Commission could continue to meet its commitments if the UK contribution was cut off. It depends on the incidence of contributions and payments throughout the Community. At present we estimate that the Commission probably has a sufficient balance in its Accounts throughout the Community to maintain its obligations in full for between 3 and 6 months, if the UK contribution were cut off.

II. ARTICLE 175

5. In his letter of 15 October to the Treasury Solicitor (Annex A to OD(79)35), Mr Steel recorded the Attorney General's view that we might have a reasonable argument for contending that the present budgetary arrangements were incompatible with the basic provisions of the EEC Treaty. We would have to pursue such a case under Article 175 of the Treaty. That Article provides that if the Council or Commission fail to "reach conclusions" in accordance with the

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Treaty, proceedings against them may be instituted in the European Court provided that the Council or Commission is given a 2-month period in which to act after being formally called on to do so.

6. It might be possible to claim that the Council or Commission had failed in their obligations under the basic provisions of the Treaty in allowing the budgetary arrangements to develop in the way they have. For example, under Article 235 the Council has the power, and arguably the duty, to take measures to ensure that action is taken by the Community which is necessary to achieve the objectives of the Community but for which the Treaty has not provided the necessary powers. It was this power that was used to set up the 1975 Financial Mechanism.

7. A second draft of a paper which could support a possible case under Article 175 is in preparation in the Treasury. The Attorney General is not able to express a definite view at this stage on the UK's chances of getting a favourable decision from the Court in proceedings under Article 175, but, on the information he has so far, he is doubtful about the prospect.

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