



Foreign and Commonwealth Office

28 January 1982

Dear Prime Minister,

1982 COMMUNITY BUDGET

As I mentioned in Cabinet this morning, a dispute has arisen between the Council of Ministers and the European Parliament about the 1982 Community Budget, the Parliament having adopted a larger Budget than the one the Council approved and having done so without the Council's agreement. In our view the Parliament's action is illegal. The first payment towards the 1982 Budget is due next week and we have to decide whether to pay on the basis that the Council agreed or on the basis chosen by the Parliament. Despite the doubts about the legality of the Parliament's action, the Commission have decided to implement the Budget on the basis adopted by the Parliament and will take any Member State to court if it does not pay in full. The amount in dispute so far as the United Kingdom is concerned is about £2 1/2 million a month.

Our contention that parts of the budget and the Commission's demand for full payment is illegal is shared by a number of other Member States, but not by all. However, in Brussels this week the Belgian Presidency has proposed a compromise which if agreed would enable the Council to act as one. The components of this compromise are:-

- (i) the Council would jointly take the matter to the European Court to test the legality of the budget as established by the Parliament and the Commission's demand;
- (ii) in the meantime, all Member States would pay in full whether they thought the demands were legal or not, those who thought it illegal formally reserving their rights. (They would, of course, get their money back if the Court decided that the Commission's demands were illegal.);
- (iii) the Council would, at the same time, open discussions to reach a political settlement which, if achieved, would cause the Court actions to lapse.

Prime Minister
10 Downing Street
London SW1

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We are now required to state our position on this proposal by noon tomorrow. Our information is that most and possibly all other Member States will support the Presidency and the United Kingdom's position could well therefore be decisive.

We have to choose whether to go along with the Presidency compromise and pay in full or whether to pay only that part of the Commission's demands which reflect the Budget agreed by the Council and which we consider to be legal.

Option 1: Paying in Full

We cannot pay in full in the usual way. The European Communities Act only permits us to pay out of the Consolidated Fund if there is a Community obligation. We do not consider that, so long as there is legal doubt about a part of the budget, *such an obligation exists, and* therefore such a charge to the Consolidated Fund would not be justified. Therefore in order to be able to pay in full as proposed by the Presidency, we should have to follow an exceptional procedure. This would require:-

- (i) the presentation of a supplementary estimate for 1981/82 and a main estimate for 1982/83 to permit the £2.5m a month to be charged to Votes;
- (ii) while these estimates are being considered by the House, a prior payment out of the Contingency Fund;
- (iii) an oral statement to the House next week explaining why this exceptional procedure was necessary.

The charge to Votes would only be temporary. Once the legal issue had been resolved, we would either get our money back from the Commission or ^{it} would be established that there was a Community obligation in which case the payment would be a proper charge to the Consolidated Fund.

The argument in favour of this course is that it could be decisive in persuading the doubtful Member States to go along with a unanimous court action - indeed we would make it a condition of paying in full that all Member States should associate themselves with this action and that furthermore the action would be taken not only against the Parliament but also against the Commission on the grounds that they had made a demand which was not legally justified. As the European Court is a rather Political body, it is thought more likely that they would find in favour of our point of view if the Council brought the action as one than if we brought an action on our own or in the company of only a few of the other Member States.

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The argument against this course is, obviously, that it would give critics of the Community in the House an opportunity to criticise the Government.

Option II: Abating our Payment

If we decided only to pay that part of the Commission's demand that we considered lawful and a proper charge to the Consolidated Fund, the Commission would almost certainly take us to court and charge us interest on the delayed payment. In order to be able to defend ourselves against the Commission's action in the Court we would need ourselves to institute proceedings against the Commission asserting the invalidity of the Commission's demand for payment. The subsequent court action would cover two separate questions: first whether the Budget as implemented by the Commission was wholly lawful; and second whether the United Kingdom was right to withhold part of its contribution before the Court had given a ruling on the legality of the Commission's demand.

The argument in favour of this course of action is that although other Member States whose attitude to the Parliament's actions is the same as ours have decided not to abate, this course does clearly reflect our view that the request for payment is ill-founded. It would avoid the need for any submission to the House of Commons and would no doubt be regarded as appropriately robust by critics of the Community in this country. We should also be able to control the way in which the case against the Commission was presented to the European Court.

There are two arguments against: the first is that, as mentioned above, although the Attorney General is of the opinion that a case brought by the UK alone would have a fair chance of success, he agrees that there is reason to believe that the Court would be more likely to decide in our favour if we acted in concert with all the other Member States and we see no prospect of securing such unanimity unless we go along with all parts of the Presidency compromise. The second argument is that we would be considered to have prevented a concerted move by the Council to contest the Parliament's attempt to extend its budgetary authority. This could, to some extent at least, influence attitudes in connection with the crucial negotiations now in train and the solution to our Budget problem.

Recommendation

I have discussed this matter at length with the Attorney-General and the Financial Secretary. My conclusion, having examined the arguments is that it would be preferable to pay in full on condition

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that the others agree to co-operate in a joint Council action against both the Parliament and the Commission. I should be grateful for your agreement that I should inform the Presidency of such a decision by noon tomorrow; and that a statement should be made in the House next week of our intention to implement Option I if our conditions have by then been met.

I am sending copies of this minute to the Chancellor of the Exchequer, Leader of the House, Attorney-General, Financial Secretary and Chief Whip.

Yours ever

Humphrey Atkins