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Foreign and Commonwealth Office

London SW1A 2AH

1 November 1982

John Kerr

EC Budget: Mr Tugendhat

It was agreed at the Ministerial meeting on 20 October that the Prime Minister would speak to Mr Tugendhat about the Commission's role in the budget negotiations. We hope that this may be possible during this week. It would certainly be helpful if the interview took place before the Foreign and Commonwealth Secretary sees President Thorn on 11 November - ie just before the Commission meet on 13/14 November to discuss their budget proposals. We were asked to supply briefing and an explanation of the terms of the British Commissioners' appointments and period of office. The latter is covered in the enclosed note.

Some of Tugendhat's own thinking was reported in the letter of 19 October from John Kerr. The meeting agreed that it was suspect. In particular, we doubt very much that Tugendhat would in fact be able to persuade his Commission colleagues not to take legal action if we were to withhold in the context of the Council's failure to agree on a solution for 1983 and later. He would be even less likely to achieve this if we had not made, and been seen to make, every effort to achieve our objectives by negotiation. It is of course conceivable that our partners might 'not take it too tragically' if we withheld; it would have little financial impact on them for a year or more. But we consider it a great deal more likely that they would not take it quietly. They would see it as a chance to isolate us on a point where we would be on weak ground legally, and they would hope to reduce the pressure on them to take the politically unwelcome step of agreeing to further refunds.

When she speaks to Tugendhat, the Prime Minister will wish to urge him to make every effort to ensure that the Commission puts forward satisfactory proposals in mid-November which fulfil the Community's past undertakings and meet the real needs of the situation. She will wish to explain the need for a budget solution which will last until such time as a more fundamental reform of Community finances is made as a result of enlargement or any other change in circumstances. Tugendhat may reply that such a solution is not on offer, and that the Prime Minister will need to convince him that he should not give up too easily.

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A particular objective for us will be to discredit the idea of degressivity. The Prime Minister could say how valuable it would be if Tugendhat could ensure that the Commission proposals reiterated the points made in its report of June last year, namely that the British problem was not one of transition or a failure on our part to adapt but derived from the structure of the Community budget and the relatively small size of our agricultural sector (I enclose a copy of the relevant section). She could encourage him to argue in the Commission that having accepted this, there was absolutely no basis to call for degressivity; if it was wrong in 1980-82 for Britain to be paying so much, then that would continue to be wrong for as long as the problem lasted.

If Tugendhat talks about the nature of the solution, the Prime Minister may wish to suggest that, since the 'objective indicator' solution recommended by the Commission in its June 1981 report did not find favour, the best way forward might be a refund arrangement 'within the same framework as in 1980-82'. (It would be best not to use a phrase like 'on the lines of the 30 May agreement' because the new French government has sharply criticised the 30 May agreement). If the Commission could persuade the November Foreign Affairs Council, or the Copenhagen Summit, to endorse a formula of that sort, that would lay the basis for a subsequent negotiation in which we could pursue our agreed objectives.

Tugendhat may raise the 'overpayments' issue. As Budget Commissioner he authorised the payment of the full refunds for 1980 and 1981, but he sometimes says things which imply that he has doubts about the validity of what he did. The Prime Minister will therefore wish to say that the payment of our 1980 and 1981 refunds was legally correct and in accordance with the 30 May agreement. She could urge Tugendhat to try to get the Commission to include that point in their report to the Council and to say that it is impossible to find any clear basis on which to calculate the amount of 'overpayment' so that it is a political and not a legal issue which must be settled in the context of a general solution. At the very least the Commission report should not suggest any tendentious interpretation of how to work out the size of the 'overpayment' and should not imply that it could be settled in advance of agreement on the arrangements for 1983 and later.

If Tugendhat asks about our own strategy, the Prime Minister might say that we intend to make every effort to secure our objectives by negotiation. If we were driven to withhold our contributions by the intransigence of the French, we would look to Tugendhat to hold off legal or retaliatory action by the Commission for as long as possible.

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If Tugendhat explains Commission thinking on a review, the Prime Minister will wish to say that she is not convinced of the need to review own resources and that our attitude will be determined by the purpose and nature of the review and the proposed terms of reference. Clearly there could be no prior commitment to any increase in own resources and one of the objectives would have to be to find a lasting solution to our problem.

Finally, we do not advise that the Prime Minister should seek to speak to Mr Richard on this subject. The Chief Whip has recently pointed out that he would be unlikely to be responsive to advice from HMG and might even welcome the chance to show his colleagues in the Labour Party that he was defying such advice. Sir M Butler will be able in the ordinary course of business to ensure that Mr Richard is aware of our views and will do his best to enlist his support.

I am copying this letter to John Kerr, Robert Lowson (MAFF) and Richard Hatfield (Cabinet Office).

Yours sincerely,
R B Bone

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CONSTITUTIONAL POSITION OF COMMISSIONERS

The constitutional position of Commissioners is defined in the 1967 Treaty Establishing a Single Council and a Single Commission of the European Communities. Article 10.2 says that:

'The Members of the Commission shall, in the general interests of the Communities, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks'.

Practice in Brussels does not in fact live up to this ideal, at least in respect of seeking to influence Commissioners. But the principle that they are under an obligation not to take instructions from governments and that governments of member states are under an obligation not to seek to give them instructions, remains valid. It is therefore important that any such efforts should remain confidential and disavowable.

Article II says that:

'The members of the Commission shall be appointed by common accord of the Governments of the Member States.

Their term of office shall be four years. It shall be renewable.'

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Mr Tugendhat is about to complete the second year of his present four year term.

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