

RESTRICTED

CABINET OFFICE

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committee series

CG7G/2 PT 2

FILE TITLE

SUB-COMMITTEE ON EUROPEAN
QUESTIONS

BRIEFS

FILE BEGINS 6.12.95

ENDS 12.6.96

FILE No. CG7G/2 PT 2

INDEX HEADINGS

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CAB 165 / 1213

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16 A2906 missing

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LABOUR ADMINISTRATION

Sw Robin
18/6

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FROM: BRIAN BENDER
DATE: 12 June 1996FOLIO
17

PS/FOREIGN SECRETARY

cc Mr Lever, FCO
Mr Wall, UKRep
Ms Polley, COOPD(E), 13 JUNE
WORKING TIME DIRECTIVE

- A
1. I attach briefing for this meeting. I thought, however, I would take the liberty of covering it with some personal thoughts.
 2. To state the obvious, tomorrow's OPD(E) meeting (like the one on 16 May) will be a difficult one:
 - if the ECJ upholds the Advocate General's Opinion, the Government will be faced with an obligation to implement a Directive it finds deeply unpalatable, on political as well as economic grounds. (Though it should be noted that, when the measure was adopted, the UK did not vote against, still less did it invoke the Luxembourg compromise - decisions endorsed collectively in order to protect important gains made in the negotiations on derogations etc mitigating the effect of the Directive; DTI estimate that the annual costs to employers if maximum use is made of derogations and transitional arrangements come to some £1.75 billion, compared with £2.99 billion in the absence of the derogations etc). Ministers have therefore raised the question - for the first time in our relations with the EU - of whether the UK should refuse to implement a Directive. Such a decision would be "in clear and indefensible breach of our obligations under the Treaty" (Attorney's letter of 11 June) and would have political and financial implications, set out in the OPD(E) material;
 - at the same time, an ECJ ruling based on the Advocate General's Opinion would erode the scope of the Maastricht social opt-out.

The latter can be dealt with via Treaty amendments in the IGC, as the Prime Minister has already stated (though we should not delude ourselves about the resistance others will put up). As the Foreign Secretary pointed out himself at the time of the last OPD(E) meeting, we can also seek a Treaty amendment in the IGC which would provide an explicit exemption from the Working Time Directive (unprecedented, but legally possible). But the

obligation to implement the Directive (once upheld by the ECJ) would remain until any such Treaty amendment had been ratified. Officials cannot advise other than that the UK should comply with the law. And there would be costs to the taxpayer and obligations on the Government as employer that would arise from 23 November in the event of non-implementation.

3. While some colleagues in OPD(E) are likely to continue to hanker after a magic solution to this problem via a challenge in the UK courts, the present view of the Law Officers is that this would not provide a fruitful route. While, therefore, the Foreign Secretary will wish to confirm that further work will continue on this idea (and be brought back to OPD(E) next month in the context of a more general discussion on judicial activism), I am sure that he should discourage OPD(E) pinning unrealistic hopes on to it. Similarly, while the wheeze of seeking clarification of the judgment via Article 40 of the ECJ Statute could have (short term) presentational advantages, it would not resolve the underlying problem that, from 23 November, the UK would have an obligation to implement the Directive (and liabilities that would accrue if we do not do so).

4. Against this background, it seems to me that the conclusions of OPD(E) might be on the following lines:

- i. further work to continue on possible challenge in the UK courts, but the working assumption should be that this will not provide a solution;
- ii. if the judgment is as we expect/fear, the UK should confirm its intention of seeking corrective action in the IGC;
- iii. it would be unwise to state publicly that the Government has no intention of complying with its EC obligations meanwhile. The least unpalatable option for Ministers may be option (3) of Annex C of the OPD(E) paper, ie start consultations but do not introduce legislation until after the election.



B G BENDER
European Secretariat
Room 322, 70W
270 0044

OPD(E), 13 JUNE: CHAIRMAN'S BRIEF
WORKING TIME DIRECTIVE

REFERENCES

- A: Note by the Secretaries on the further work commissioned by OPD(E) on 16 May (OPD(E) 96 (12))
- B: Letter from the Attorney General, 11 June, giving Law Officers' views
- C: Minute from the Chancellor, 20 May, on the need for a detailed costs analysis
- D: Letter to the Chancellor from the Secretary of State for Environment, 6 June, on the need to consider enforcement options
- E: Letter from the Northern Ireland Secretary to the President of the Board of Trade, 5 June, on the options for implementation
- F: Mr Lang's letter of 15 May, commenting on options for the IGC
- G: Mrs Shephard's letter of 25 April, on the implications for UK policy at the IGC of the Advocate General's Opinion on the Working Time Directive

OBJECTIVES

To consider the further work done by officials and (on the assumption that the ECJ confirms the Advocate General's opinion) to reach a view on:

- (i) whether or not to implement the Directive;

- (i) whether the option of going back to the ECJ, for clarification of the judgement under Article 40 of the Court's Statute, should be kept open;
- (iii) at the IGC, whether to pursue more radical options to correct undermining of the social opt-out than those considered by OPD(E) in October last year aimed at narrowing the scope of Article 118a; and, whether additionally to pursue an amendment to provide an explicit opt-out from the Working Time Directive;
- (iv) what guidance OPD(E) needs to give on the broad thrust of the line the Government should take in parliament and with the media.

HANDLING

1. OPD(E) on 16 May was inconclusive and remitted further work to officials. The Note by the Secretaries (**Flag A** - OPD(E) (96) 12) covers contributions from Departments on:
 - the costs of implementing the Directive and the potential liabilities for non-implementation
 - the scope for further action in the ECJ;
 - the IGC options - for protecting the UK's opt-out from social legislation and for providing for explicit exemption from the Working Time Directive
2. The meeting is scheduled to last an hour, starting at 9.30am. You may wish to divide the discussion into two parts: a table round for colleagues to give their views on issues (i), (ii) and (iii) at paragraph 11 of the Note by the Secretaries; and a short discussion at the end on the press and parliamentary line to take (issue (iv)).
3. The Attorney General, in his letter of 11 June (**Flag B**), has

Let out Law Officers' views on the option not to implement the Directive, the question of challenging the vires of an ECJ judgment that followed the Advocate General's opinion, and on the option of seeking clarification under Article 40 of the ECJ's Statute.

4. You might open the discussion drawing on the points below:

- the meeting is intended to take forward the discussion on what to do about implementation of the Working Time Directive, in the event that the ECJ follows the Advocate General's opinion and gives an adverse judgement, dismissing the UK's challenge.
- the latest time, before the summer break, when the Court could publish the judgment, would be the week beginning 8 July. However, there is also a chance that it might do so during a special "judgments week" at the end of July or beginning of August. Failing that, the judgement would be delayed to September or possibly later. The working assumption, at this stage, must be that the judgement will issue before the summer break;
- the work on the Home Secretary's ideas on action in the UK courts, to challenge an adverse judgment, or in Parliament, to amend the European Communities Act, is not yet complete. The Attorney General's letter of 11 June refers to the Law Officers' preliminary views; the Attorney may wish to elaborate on that orally.
- this work is intended to be brought to OPD(E), with other ideas on countering judicial activism, next month.

5. You will want to steer discussion towards those issues covered by the papers and on which the work has been completed. You might ask Mr Lang to:

a) elaborate on the analysis produced by his department, and to give his view as to the preferred course of action on the Directive;

(b) express a view on which of the IGC options he favours.

The Attorney General might then be asked to elaborate on the views set out in his 11 June letter, following which, you would invite colleagues to give their views, focusing in their interventions in issues (i) - (iii) in paragraph 11 of the officials' paper.

(i) WHETHER OR NOT TO IMPLEMENT THE DIRECTIVE: ISSUES

6. The Chancellor's minute of 20 May (**Flag C**) set out the sort of cost analysis the Treasury wanted, in order to be able to reach financially informed decisions. Mr Gummer's letter of 6 June (**Flag D**) requested that the analysis also take account of enforcement options. The assessment is summarised at Annex A and set out in full at Annex B of the Note by the Secretaries (at **Flag A**). The enforcement element is not explicitly identified, and is generally considered to be quite small by comparison to the other costs.

7. The costs of the non-implementation option inevitably involve a considerable degree of speculation about what companies and the courts will do. Non-implementation would not mean that the provisions of the Directive would not be complied with. The clear message from the figures is the non-implementation will be the more costly option by about £2bn to the year 2000.

8. Since the 16 May OPD(E), the Northern Ireland Secretary has written to Mr Lang (**Flag E**) favouring options (2) or (3) of Annex C (at **Flag A**) (option (2) = start consultation on implementation and legislate asap; option (3) + start consultations but do not legislate until after the election). Mr Lang too may press for option (3). In discussion two main strands of argument are likely to emerge:

the costings analysis points firmly to implementation as the preferred option; a consultation exercise with industry may well refine the costs or identify ways in which the Directive can be implemented to reduce them further. Refusing to implement would be a clear breach of Treaty obligations and knowingly involve committing significant sums of taxpayers' money;

- without the legal analysis on what action can be taken in UK courts or in Parliament it is not possible to reject the non-implementation option at this stage; in any case the political case against the Directive remains and it should not be necessary for the UK to bear, or have any of these costs imposed, on it.

(ii) FURTHER CHALLENGE IN THE ECJ: ISSUES

9. There is no scope in the short term for putting again to the ECJ the UK arguments on the interpretation of Article 118a. But there might be some scope for going back to the Court (under Article 40 of its Statute) to seek clarification, in case of an adverse judgement. This could buy some time, but would run the risk of possibly giving a less favourable interpretation still. A good deal would depend on the terms in which the judgement was couched: lawyers at official level consider that the judgement would be unlikely to leave any room for doubt; and that in such circumstances a request for clarification under Article 40 would be seen by the Court as a political move and abuse of procedure. The Attorney General is likely to reinforce this point. But the option remains, and a final decision could not be taken until the terms of the judgement are known.

(iii) IGC OPTIONS: ISSUES

10. There was no time for detailed consideration of options for preserving the UK's opt-out at OPD(E) on 16 May. However, the overwhelming mood of the meeting was that this issue should be firmly on the IGC agenda. In addition, the Foreign Secretary

himself suggested that thought should be given to an amendment to disapply the Working Time Directive to the UK.

11. The key questions OPD(E) needs to consider are:

- (a) whether to pursue any of the more stringent options for preserving the UK's opt-out from the Social Agreement (listed in paragraph 3 of Annex D), despite the evident difficulty of negotiability, in preference to the earlier options considered by OPD(E) last year, which officials consider would not be sufficient to guarantee complete protection of the UK's opt-out (summarised in paragraph 1 of Annex D). OPD(E) could also decide to pursue amendments to a number of other Treaty articles, including Article 100a, which also contain potential loopholes for circumventing the UK's opt-out (paragraph 5 of Annex D).
- (b) whether additionally to pursue a Treaty amendment to secure an exemption from the Working Time Directive for the UK (options are listed in paragraph 6 of Annex D). While all three options would set a new precedent and be difficult to negotiate, the first option would be less of a blunt instrument, in that it specifically targets the problem of the Working Time Directive. Option (iii) would overturn OPD(E)'s conclusion last year not to pursue a major campaign to repatriate competences at the IGC, which would almost certainly fail.

12. In a letter commenting before the 16 May meeting (**Flag F**), Mr Lang indicated a preference for the proposal to revert to unanimity in Article 118a as the most effective, logical and presentationally attractive (option (i) in paragraph 3). This time, he may argue on reflection in favour of deleting Article 118a (option (ii)).

13. Most Ministers are likely to argue in favour of the stronger options for preserving the UK's opt-out, even if they cannot agree on which particular one to pursue. Mrs Shephard may also express concern about the implications of the Advocate General's

inion for Article 100a, which might also be used to circumvent the UK's opt-out, about which she wrote on 25 April (Flag G). Further work is needed to identify whether further amendments to Article 100a are necessary.

Issues (i) - (iii) : CONCLUSIONS

14. Depending on the discussion, you may be able to conclude that:

(i) whether or not to implement the Directive

- the UK's interests would not be served by unequivocally saying, in response to the ECJ judgment, that the UK had no intention of implementing the Directive;
- option (3) of Annex C, combined with an IGC objective to secure the opt-out and disapply the Directive, represent the best short term response to an adverse judgment.

Alternatively, if no clear view emerges, you may need to sum up that OPD(E) will need to return to the issue, once the work on judicial activism has been completed.

(ii) making use of Article 40 of the ECJ Statute to seek clarification

- this is not an option that offered a long term solution, but it might be expedient, when the terms of the judgment have been studied, to seek clarification from the Court. It should, therefore, be kept in reserve.

(iii) IGC options

- the UK should pursue the most radical options at the IGC to preserve its opt-out, without being put off by doubts about negotiability, if necessary making clear that it will not agree to the outcome of the IGC if it does not achieve this objective. (If necessary): Ministers should comment in

- writing on which of the four radical options listed in paragraph 3 of Annex D they favour;
- the UK should also pursue amendments to the other articles where there is a potential loophole. Officials should work up appropriate draft Treaty language; and
 - additionally, the UK should pursue an amendment to the Treaty to disapply the Working Time Directive. (If necessary): Ministers should comment in writing on which option in paragraph 6 they favour.

(iv) LINE TO TAKE IN PARLIAMENT AND THE MEDIA

15. There is, as yet, no agreed line.

16. You might ask Mr Lang to say what approach his Department would prefer to take.

17. You may be able to conclude that the President of the Board of Trade should circulate to colleagues, the following week, a proposed line taking account of the discussion and conclusions of the meeting. The line, in the event of an adverse judgment, would draw on the following elements:

- the judgment is unsatisfactory and disappointing. Government will study it carefully.
- Government is not opposed to better terms and conditions for employees, where these are freely negotiated between firms and their workers, and justified by productivity. It is opposed to their imposition by bureaucratic and unnecessary measures. The Directive will impose substantial burdens on employers without providing genuine health and safety benefits.
- The Court's verdict has implications that extend beyond the Working Time Directive. The Government will seek changes

to the Treaty in the IGC that will address our fundamental concerns. We are not prepared to have previous agreements undermined.

18. You will wish to report the outcome of OPD(E) to the Prime Minister.

Cabinet Office

12 June 1996

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RESTRICTED - POLICY

Sir Robin
RAB



dl74

FROM: BRIAN BENDER
DATE: 15 February 1996

PS/FOREIGN SECRETARY

cc PS/Mr Davis
Sir John Coles
Mr Lever
Mr Wright
Mr Stagg
Mr Cary
Mr Sheinwald
Planners
Political Adviser
Ms Polley CO *w/o encs*
Mr Wall UKRep



OPD(E): 22 FEBRUARY

Issue

1. The papers, agenda and cast list for the OPD(E) meeting fixed for 09.00 on 22 February.

Recommendations

2. I recommend that the Foreign Secretary:

- a. agrees that we should issue the following agenda for the 22 February OPD(E) meeting: (i) IGC: environment issues; (ii) IGC White Paper (as necessary); (iii) flexibility (variable geometry);
- A** b. approves the attached paper on flexibility, for circulation to OPD(E).
- c. considers whether - in the light of comments made in the correspondence on the draft IGC White Paper - OPD(E) should be opened up to all members of Cabinet who wish to attend (the Lord Chancellor, the Secretaries of State for Social Security, Health and National Heritage and the Chancellor of the Duchy of Lancaster are not members of OPD(E)).

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Paul Lever and Stephen Wall agree.

Timing

3. In time for us to take action on Monday 19 February.

Background

4. We had been planning to use next week's OPD(E) slot to pick up discussion of enlargement-related issues following the OPD(E) debate on 2 November. The Foreign Secretary will recall that that earlier discussion left two main loose ends: how to secure policy reform (a significant body of opinion in OPD(E) believed that the UK should make such reform a pre-condition of enlargement); and Mr Howard's ideas on flexibility in an enlarged EU.

5. With the cancellation of today's OPD(E), priority will need to be given to the note on possible UK ideas on the environment - not least so that whatever is agreed can be incorporated (as appropriate) in the IGC White Paper.

6. As regards the White Paper itself, it should become apparent by the weekend - in the light of responses to the Foreign Secretary's minute of 9 February circulating the draft to OPD(E) - how straightforward it is going to be to secure collective agreement. If there seems to be any risk of discussion in Cabinet being messy or turning into a succession of drafting points, it would be prudent to use part of the 22 February OPD(E) slot for collective discussion of any points left unresolved in the correspondence. The basis for any OPD(E) discussion could range from a revised draft of the White Paper (amended in the light of comments), through a minute from the Foreign Secretary confirming the changes he is making and highlighting issues requiring discussion, to simply leaving it that the question will be raised orally (as necessary). When the issue goes to Cabinet, good housekeeping would require the latest version of the text to be circulated as a Cabinet document 48 hours beforehand (this could be done on a Cabinet Ministers only (CMO) basis to minimise the risk of leaks). If the Foreign Secretary still plans to secure Cabinet approval on 22 February, the same document could of course double up as a basis for any discussion at OPD(E) beforehand - and the Foreign Secretary could report orally as necessary to Cabinet.

7. Barring difficulties on the White Paper, there ought also to be time at OPD(E) next week to discuss flexibility. The paper at Flag A records existing UK policy on flexible development of the EU; considers how it might arise in the IGC and what the UK's objectives should be; and explores the pros and cons of Mr Howard's idea of using enlargement to secure a Union where new member states do not participate in all EU policies, creating an opportunity for the UK to opt out of some.

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B 8. We will need to arrange a separate OPD(E) slot to discuss the other enlargement related issue. The Foreign Secretary might nonetheless like to see the attached paper which we have prepared; it examines each of the major negotiations over the period 1996 - 2000, identifies the UK's and others' likely objectives, and considers possible opportunities, linkages and pressure points for the UK.



B G BENDER
European Secretariat
Room 322, 70W
270 0044

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FROM: BRIAN BENDER
DATE: 14 FEBRUARY 1996

FOLIO
14

PS/FOREIGN SECRETARY

CABINET OFFICE
A 2464
14 FEB 1996
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FILE No. C676/2

cc: Ms Polley
Mr Lever

OPD(E), 15 FEBRUARY: CHAIRMAN'S BRIEF

--- 1. I attach a Chairman's brief for tomorrow's OPD(E). It covers the only subject on the agenda, environmental proposals for the IGC (carried over from the meeting on 25 January); but it includes a line to take for use if (despite your letter clarifying the Foreign Secretary's handling plans) any Ministers raise the draft White Paper.

2. The Environment Secretary will not attend because he will be representing the Government at the funeral of Archbishop Worlock in Liverpool. He will be represented by Earl Ferrers, the Minister for the Environment; Mr Gummer's office has confirmed expressly that he will have his Secretary of State's authority to agree a collective view at this meeting. Other absentees are the Deputy Prime Minister (who will be represented by the Chancellor of the Duchy of Lancaster) the President of the Board of Trade (who will be represented by Mr Nelson) and the Secretary of State for Education and Employment. Mr Wall will not be able to attend because of COREPER business in Brussels: but his views are set out in a letter at flag C.

BB

B G BENDER
European Secretariat
Room 322, 70W
270 0044

~~Sir Robin~~
Mr Bender has sought advice on how papers on the IGC White Paper should be circulated in advance of the Cabinet discussion. There is great anxiety about leaks. He sees his options as very late circulation; limited circulation to members only and (?) basing the discussion on the paper which has already gone to OPD(E) members (and presumably the PM).
May I have a word with Mr. Bender in the margin of Dep Sec? BB
15.2.
Grateful for your views.

Jan 14/2

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OPD(E), 15 FEBRUARY 1996: CHAIRMAN'S BRIEF

PREPARATION FOR 1996 INTERGOVERNMENTAL CONFERENCE: ENVIRONMENTAL PROPOSALS

References

A	:	Note by the Secretaries on proposals for a UK initiative on the environment (OPD(E) (96)3)
B	:	Ministerial correspondence on environmental articles
C	:	Stephen Wall's letter of 22 January
D	:	Dominick Chilcott's letter of 13 February.

OBJECTIVE

- To decide whether to pursue a package of proposals on the environment at the IGC or, if not, what the UK's position should be if other member states advance such proposals.

HANDLING

1. Dominick Chilcott's letter of 13 February (Ref D) made clear that Mr Gummer's environmental proposals are the only item on the agenda. If Ministers seek nevertheless to broaden the discussion to cover the draft White Paper generally, you might simply confirm that you will take a view on whether there is a need for collective discussion of the White Paper at OPD(E) at the end of the week, once you have had a chance to consider colleagues' written comments on the draft you circulated on 9 February.

ENVIRONMENTAL PROPOSALS

2. Mr Gummer wrote twice to OPD(E), in March and in October 1995, to propose a package of measures on the environment for the UK to pursue at the IGC. A number of reservations were expressed

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in correspondence by Mr Lang and Mr Hogg (Ref B). It was agreed at OPD(E) on 2 November that officials should do further work on the options with a view to Ministerial decision at a later date. The attached paper by officials (OPD(E)(96)3 - Ref A) fulfils that remit.

3. There are three options for OPD(E) to consider:

- a) amend Article 2 to secure a better reference to sustainable development;
- b) amend Article 130r.2 to strengthen the integration of environmental protection policies into other Community policies; and
- c) insert a new Article 130t bis to require the Commission to report on progress towards integration.

The decision is essentially a political and tactical one.

4. You might start by inviting Lord Ferrers to introduce the subject. He is likely to argue that proposals in this area will be put forward by other member states at the IGC anyway, and that a positive approach by the UK will be popular domestically and strengthen the UK's environmental credentials. It might also fend off pressure for an extension of QMV on the environment. You might then suggest that OPD(E) considers each of the three options in turn. You might also ask in each case whether, if it is decided not to pursue the option ourselves, the UK should support them if they are put forward by other member states (the approach favoured by Mr Wall (his letter of 22 January - Ref C), given the risks of proposing Treaty change for limited practical advantage).

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(a) Amend Article 2 to secure a better reference to sustainable development (paragraphs 5-6 of the officials' paper). The Department of Environment argue that the current reference to sustainable growth in the Treaty is open to different interpretations in different languages, and that there is a better definition of "sustainable development" which has been agreed by all member states at the Rio summit since Maastricht. Mr Hogg and Mr Nelson are likely to argue that "sustainable development" is equally ambiguous, and that Article 2 should not be opened up for marginal practical benefit, lest it encourage other member states to put forward amendments (to other parts of it) which we would oppose. The Chancellor may also take this line. Lord Ferrers will argue that Article 2 is likely to be opened up by other member states anyway (the Danes, for example, have publicly stated their intention to propose amending Article 2 to refer to "sustainable development"). **If there is significant resistance in OPD(E) to a UK initiative on this point, you might see whether colleagues can agree to the UK supporting an initiative by others, while resisting other changes to Article 2.** If even that goes too far for OPD(E), you might propose that the Committee should take stock later, during the IGC itself.

(b) Amend Article 130r.2 to strengthen the integration of environmental protection policies into other Community policies (paragraphs 7-9). The Chancellor and Mr Nelson may express concern that this option could prompt expensive new initiatives on the environment, imposing costs on economic operators, thereby diminishing the proposal's overall attractiveness. Mr Hogg may argue that the existing wording of the Treaty already requires the integration of environmental

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policies into other Community policies, and that further Treaty change is unnecessary. As with option (a), you may wish to see whether OPD(E) could agree to the UK supporting this proposal if it is advocated by others.

- (c) Insert a new Article 130t bis to require the Commission to report on progress towards integration (paragraphs 10-11). Several Ministers may argue that negotiating capital should not be used up on an objective which can be achieved without Treaty change. You could suggest that the UK proposes an appropriate resolution at the Environment Council, which would gain the UK credit with environmental groups, without using up negotiating capital at the IGC itself. If this is easily agreed in the Council, then a case could be made for entrenching it in the Treaty at the IGC. If it is not agreed in the Council, then it would probably not be agreed at the IGC either, and should not be pursued.

5. You will wish to note that OPD(E)'s conclusions will be incorporated into the draft White Paper.

Cabinet Office
14 February 1996

dl79.att

RESTRICTED - POLICY

Sir Robin

1887

FROM: BRIAN BENDER
DATE: 24 JANUARY 1996

13

PS/FOREIGN SECRETARY

cc: Ms Polley
Mr Lever

CABINET OFFICE
A 1163
24 JAN 1996
FILING INSTRUCTIONS
FILE No C6761 2

OPD(E), 25 JANUARY 1996: CHAIRMAN'S BRIEF

I attach the Chairman's brief for tomorrow's OPD(E), covering:

- 1996 IGC: Progress report;
- preparation for 1996 IGC: Animal Welfare;
- preparation for 1996 IGC: Environmental proposals.

2. All members of OPD(E) are expected to attend except:

- Mrs Shephard, who will be represented by Mr Forth;
- Stephen Wall (because of Coreper commitments). He has written to you with some comments on the papers on Animal Welfare and Environmental proposals (Ref F in the brief).

BF

OPD(E) 1
OPD(E) 2 Removed
OPD(E) 3.

B G BENDER
European Secretariat
Room 322, 70W
270 0044

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OPD(E), 25 JANUARY 1996: CHAIRMAN'S BRIEF

PREPARATION FOR 1996 INTERGOVERNMENTAL CONFERENCE

<u>References</u>	A	:	Progress report on the IGC by David Davis (OPD(E) (96)1)
	B	:	Note by the Secretaries on the proposal for a UK initiative on animal welfare (OPD(E) (96)2)
	C	:	Ministerial correspondence on animal welfare
	D	:	Note by the Secretaries on proposals for a UK initiative on the environment (OPD(E) (96)3)
	E	:	Ministerial correspondence on environmental articles
	F	:	Stephen Wall's letter of 22 January

OBJECTIVES

- To take stock of preparations for the 1996 IGC;
- to decide whether to pursue an initiative on animal welfare at the IGC;
- to decide whether to pursue a package of proposals on the environment at the IGC or, if not, what the UK's position should be if other member states advance such proposals.

HANDLING

1. The meeting is scheduled to last one hour (before Cabinet at 10.30). You might aim to spend no more than 10 minutes on the IGC stocktake, to ensure that the meeting has sufficient time to

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consider the papers on animal welfare and the environment, both of which have proved contentious.

ISSUES

I: IGC stocktake

2. Mr Davis's memorandum (OPD(E)(96)1 - Ref A) is primarily intended for information; it ought not to call for detailed discussion. You might like to introduce the item in those terms. You might then invite Mr Davis to make some introductory remarks, before asking whether any Ministers wish to comment.

3. Depending on the discussion, you may be able to conclude that between now and Turin, UK objectives should be to ensure that the agenda for the IGC is neutral and non-prejudicial; to block any role for the EP involving their presence in the room during the IGC negotiations; and ideally to persuade other member states to designate senior officials as their representatives at the IGC.

II: Animal Welfare

4. The proposal for a UK initiative on animal welfare at the IGC was made by Mr Waldegrave when he was Minister of Agriculture, and picked up by Mr Hogg in September, who wished to announce it at the Conservative Party Conference. Despite general recognition of the political attractions of the proposal, reservations were expressed by several Ministers (Ref C). The main concerns were that it might: sit uncomfortably with UK opposition to any extension of Community competence (Mr Davis, the Chancellor, Mr Lang and Mr Howard); be difficult to reconcile with subsidiarity (Mr Davis, the Chancellor and Mr Forth); pave the way for unwelcome proposals outside farm animal welfare, eg under Article 235 (the Attorney General, Mr Lang and Mr Gummer);

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be inconsistent with the UK's position on employment (Mr Forth); and be hard to negotiate (Mr Davis and the Chancellor). Mr Hague supported the proposal.

5. You concluded in your letter of 20 October to OPD(E) (**Ref C**) that officials should do further work on the proposal with a view to Ministerial decision at a later date. The attached paper by officials (OPD(E)(96)2 - **Ref B**) sets out the arguments for and against MAFF's proposal, and presents two further options: i) attaching a protocol to the Treaty modelled on Maastricht Declaration 24, which would have binding legal force, or ii) strengthening Declaration 24. Ultimately, the decision is a political and tactical one, whether to use up negotiating capital for an option whose benefit is essentially presentational, and how such an initiative would sit with our overall IGC stance.

6. You might start by inviting Mr Hogg to explain his proposal and comment on the two alternatives. He is likely to argue that the proposal fulfils a Conservative Party manifesto commitment that negotiation of Maastricht Declaration 24 on animal welfare was only a first step towards eventual amendment of the Treaty; that MAFF lawyers do not agree with the view of Whitehall lawyers that the proposal could lead to an extension of Community competence outside the four specified areas; and that, in practice, it will not allow the Community to do anything which it cannot do already under existing powers. The aim is to make it more likely the Community will take animal welfare measures, by creating a specific decision taking power in the Treaty. He may also argue that the alternative option of a protocol is less than ideal, but would be worth pursuing if MAFF's own amendment is not agreed; but that the second (strengthening Declaration 24) is unacceptable.

7. You might then invite other Ministers to comment on the three options. The Chancellor, Mr Lang, the Home Secretary, Mr Forth and Mr Gummer are likely to have continuing reservations

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about MAFF's proposal for the same reasons as before. They may have less objection to the option for a protocol, but may oppose the reference to "sentient beings" in the draft text (Part II of Annex B). Mr Davis may also intervene against the proposal for a Treaty article. (And Mr Wall has set out some additional difficulties he sees - his letter of 22 January - Ref F).

8. Depending on the discussion, you may be able to conclude that:

- there is not sufficient support in OPD(E) for a UK initiative to insert an article on animal welfare in the Treaty along the lines suggested by MAFF;

- [if the discussion allows] the UK should instead pursue the idea of a protocol to the Treaty along the lines proposed in Part II of Annex B of the paper by officials. The reference to "sentient beings" should be retained for now, but could be dropped in the course of negotiations;

- the third option, to strengthen Declaration 24, should be rejected.

III: Environmental Proposals

9. Mr Gummer wrote twice to OPD(E), in March and in October 1995, to propose a package of measures on the environment for the UK to pursue at the IGC. A number of reservations were expressed in correspondence by Mr Lang and Mr Hogg (Ref E). It was agreed at OPD(E) on 2 November that officials should do further work on the options with a view to Ministerial decision at a later date. The attached paper by officials (OPD(E) (96)3 - Ref D) fulfils that remit.

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10. There are three options for OPD(E) to consider:
- a) amend Article 2 to secure a better reference to sustainable development;
 - b) amend Article 130r.2 to strengthen the integration of environmental protection policies into other Community policies; and
 - c) insert a new Article 130t bis to require the Commission to report on progress towards integration.

As for animal welfare, the decision is essentially a political and tactical one.

11. You might invite Mr Gummer to introduce the subject. He is likely to argue that proposals in this area will be put forward by other member states at the IGC anyway, and that a positive approach by the UK will be popular domestically and strengthen the UK's environmental credentials. It might also fend off pressure for an extension of QMV on the environment. You might then suggest OPD(E) considers each of the three options in turn. You might also ask in each case whether, if it is decided not to pursue the option ourselves, the UK should support them if they are put forward by other member states (the approach favoured by Mr Wall (his letter of 22 January - Ref F), given the risks of proposing Treaty change for limited practical advantage).

(a) Amend Article 2 to secure a better reference to sustainable development (paragraphs 5-6 of the officials' paper). The Department of Environment argue that the current reference to sustainable growth in the Treaty is open to different interpretations in different languages, and that there is a better definition of "sustainable development" which has been agreed by all member states at the Rio summit, since Maastricht. Mr Hogg and Mr Lang are

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likely to argue that "sustainable development" is equally ambiguous, and that Article 2 should not be opened up for marginal practical benefit, lest it encourage other member states to put forward amendments (to other parts of it) which we would oppose. The Chancellor may also take this line. Mr Gummer will argue that Article 2 is likely to be opened up by other member states anyway. You might point out that the risk of opening up Article 2 will only become clear in the course of negotiations themselves, when we will have a better idea of what amendments other member states wish to propose. If OPD(E) cannot agree to the UK taking the initiative at this stage, or responding positively if others make the proposal, perhaps it should take stock later, in the IGC itself. The UK should not, however, use up negotiating capital on an option whose benefit appears essentially presentational.

(b) Amend Article 130r.2 to strengthen the integration of environmental protection policies into other Community policies (paragraphs 7-9). The Chancellor and Mr Lang may express concern that this option could prompt expensive new initiatives on the environment, imposing costs on economic operators, thereby diminishing the proposal's overall attractiveness. Mr Hogg may argue that the existing wording of the Treaty already requires the integration of environmental protection policies into other Community policies, and that further Treaty change is unnecessary. They may, for the same reasons, oppose supporting the idea if it is brought forward by other member states.

(c) Insert a new Article 130t bis to require the Commission to report on progress towards integration (paragraphs 10-11). Several Ministers may argue that negotiating capital should not be used up on an objective which can be achieved without Treaty change. You could

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suggest that the UK proposes an appropriate resolution at the Environment Council, which would gain the UK credit with environmental groups, without using up negotiating capital at the IGC itself. If this is easily agreed in the Council, then a case could be made for entrenching it in the Treaty at the IGC. If it is not agreed in the Council, then it would probably not be agreed at the IGC either, and should not be pursued.

12. Depending on the discussion, you may be able to conclude that:

- there is not sufficient support in OPD(E) for the UK itself to pursue option a) at the IGC nor, at this stage, to support it if other member states put forward the idea. OPD(E) should, however, review its line later on in the IGC itself, if the proposal is brought forward by another member state, with the final decision depending on what other amendments to Article 2 are being proposed, and the extent of support from other member states;

- there is insufficient support in OPD(E) to pursue option b), or to support it if it is advanced by other member states, given that the wording was strengthened the last time round;

- the UK should propose an appropriate resolution in the Environment Council to require the Commission to report on progress towards integration in the first instance. If this is easily agreed, the UK could propose writing it into the Treaty at the IGC.

Cabinet Office
24 January 1996

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MINISTRY OF AGRICULTURE FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

Miss A
Hall Hall

0074

Cab Office

LICY

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
London
SW1A 2AL

pa ministerial letters file

Your letter of 14/9 refers,
Mr Gordon - Thank you.

cc PS/Minister of State

re Mr Bawling

PS/Mr Baswell

PS/Secretary

Mr Osborne

Mr Hadley

Mr Woolman

Mr Hadden

MS Graham

Mr Ryder

Mr Mitchell

Damen Stretton
Cabinet Secy
20/9

20 September 1995

Dear Malcolm

My officials have suggested in the Cabinet Office group on the IGC that we might work for new provisions in the Treaty on animal welfare. I am writing to seek colleagues' agreement to our doing so.

There is some history behind this. In the last IGC we pressed for a text on animal welfare in the form of a Conference declaration. We had some support from Germany but the Spanish opposed vigorously, in the mistaken belief that we were attacking bull-fighting. We had to settle in the end for a declaration with less substance than we wanted.

We won some public credit for this but the outcome was seen, and was presented in our 1994 policy document ("Animal Welfare - The Conservative Record"), as a first step towards eventual amendment of the Treaty itself, to make protection of animals one of the recognised objectives of the EU.

Public concern over animal welfare is running at least as strongly now as at the time of the last IGC. It is clear that the welfare organisations are looking to us to return to the charge and bid for new provisions in the Treaty, and they will be able to command widespread public support for that aim.

I do not see that on its own as a reason for our pursuing the matter. Bidding for new provisions on animal welfare would not sit very comfortably with our overall approach to this IGC, and supporting the idea that the Community should make more legislation on animal welfare has never been easy to reconcile with subsidiarity.

1 SEP 1995

28

But it is also clear that we shall be under continuing public pressure to act on animal welfare. This is an issue on which it is not easy to take action on a national basis. There are legal obstacles, as recent events have shown very clearly, because Community legislation "occupies the field". In any case it is not in the interest of our farmers that they should be subject to rules and restrictions that do not apply to their competitors. I firmly believe that we are right to seek agreements at Community level wherever possible, as we have been doing.

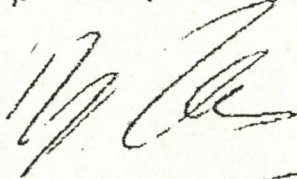
I do therefore see virtue in strengthening the basis for Community action on animal welfare. New Treaty provisions on the lines that have been suggested would help, and if we could achieve them I think we could present it to public opinion as an important step forward for animal welfare. I do not, however, think we should volunteer any extension of the influence of the European Parliament. Enclosed with this letter is a revised legal text which differs on that point from the one circulated earlier by my officials. (We must, all the same, realise that on this as on other issues there will be others working in the negotiation to enlarge the EP's influence.)

The main effects of this text would be to include the protection of animal welfare among the stated activities of the Community and a new Title and Article on animal welfare laying down general principles and establishing a specific decision-making power for the Council. This would relate to the specific areas of agriculture, transport, internal market and research, where the Community already has competence. I see no question of any read-across into such activities as hunting or bull-fighting.

It would clearly be helpful to have support from other member states for our cause. The line-up on animal welfare has improved with the accession of Sweden, Finland and Austria. If we proceed as I am suggesting, I envisage that we should try to construct a group of like-minded member states to run this idea with us.

If colleagues can agree to this approach, I would include an announcement, in general terms, of our intention to seek new Treaty provisions on animal welfare in my speech to the Party Conference on 10 October. I would therefore be grateful for agreement by 29 September.

I am copying this letter to the Prime Minister, members of OPD(E) and to Sir Robin Butler.

A. Hogg


Douglas Hogg

SUGGESTED NEW TREATY PROVISIONS ON ANIMAL WELFARE

Draft Provisions

I In Article 3:

- the following point shall be inserted as one of the activities of the Community:

(-) measures to ensure respect for the welfare of animals.

II The following Title and Article shall be inserted:

TITLE [-]
ANIMAL WELFARE
Article [-]

1. Community policy on agriculture, transport, the internal market and research shall pay full regard to the welfare requirements of animals.
2. Live animals, although included in the terms "goods" or "products" in this Treaty, shall be considered as sentient beings and be treated accordingly in Community legislation.
3. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the necessary measures in order to ensure respect for the welfare of animals in the sectors referred to in paragraph 1 of this Article.
4. Community measures adopted pursuant to paragraph 3 of this Article shall not prevent any Member State from maintaining or introducing more stringent measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.

Notes

Follows the precedent established in earlier JGCs when the introduction of new Community competences was accompanied by additions to the Community's activities.

Modelled on existing "integration" clauses, eg Article 129(1). Largely reproduces Declaration No. 24 on the protection of animals annexed to the Final Act of the Treaty on European Union.

Largely declaratory: could marginally constrain content of legislation adopted under paragraph 3.

Creates a new decision-making power for the Council. The final phrase would explicitly restrict the scope for Community measures to the policy areas referred to in paragraph 1.

Modelled on existing similar provisions, eg Articles 129a(3), and 130f.

September 1995

The Rt Hon Douglas Hogg QC MP
Minister of Agriculture, Fisheries
and Food
MAFF
Whitehall Place
London SW1A 2HH

TREATY AMENDMENT ON ANIMAL WELFARE

You wrote to Malcolm Rifkind on 20 September to propose a new Treaty provision on animal welfare.

I well understand why you are keen to run this. It would certainly be popular. No-one can doubt the extent of public concern and anger over veal crates and so on.

Yet I have grave doubts. At the IGC Britain will oppose any extension of competences, and may even seek to repatriate some. We are also opposing any extension of majority voting. It would surely damage our credibility if we were to launch a UK initiative which not only sought to create a new Community competence, but also to make it subject to majority voting. As you concede, a new Treaty provision in this area would also be difficult to reconcile with subsidiarity. We would be open to the charge that we want to be left free to take national decisions on welfare protection for people, while imposing Community rules on welfare protection of animals. Nor do I share your confidence that there would be no read-across into such activities as hunting, the protection of wild birds,

domestic legislation on dangerous dogs, and so on. Once the principle of animals as "sentient beings" is given Treaty force, as you propose, (which would, incidentally, be open to theological objection in some Member States, and therefore almost certainly unnegotiable) I can well imagine that this could have wide implications. A new Treaty competence relating to the transport of animals might even bear upon our system of quarantine. Finally, I note that you propose that the European Parliament should be relegated to a consultative role. I wonder whether that would be sustainable. The EP would certainly demand co-decision, and I suspect that a majority would wish to accommodate them.

By all means let us ask officials to look into all this. A more modest proposal might perhaps get round a number of the potential problems I foresee. It could be helpful, in any case, to have a worked-up proposal in our back pocket at a later stage in the negotiation.

But I would be against an announcement at the Party Conference in the terms you propose ("new Treaty provisions"). Could you perhaps say something about the success we have already achieved on improving conditions of animal transport, and comment in general terms on our determination to build on this?

I am copying this letter to the Prime Minister, to members of OPD(E) and to Sir Robin Butler.

David Davis

9



0171-828 1884

9 BUCKINGHAM GATE
LONDON SW1E 6JP

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FILE NO.

25 September 1995

The Rt Hon Douglas Hogg QC MP
Minister of Agriculture Fisheries and Food
Whitehall Place
London
SW1

92/9

Dear Douglas,
① CC MLG OR
+ me
② AC ③ LATH 3a
④ DN
cc: Ministerial file
ii) 2nd order ideas file
Mr Bence

IGC : ANIMAL WELFARE

You copied to me your letter of 20 September to the Foreign Secretary.

I recognise the political attractions of the steps you propose if, as you say, they can be achieved without an unwelcome extension of competence to the Community. However, although the text you have circulated goes to great pains to minimise any extension of Community competence by seeking to confine the new decision-making power of the Council to only named sectors which are already subject to a Community regime, we need to think carefully whether we can be confident that this will work. Insertion of "measures to ensure respect for the welfare of animals" in the list of activities of the Community in Article 3 of the Treaty might well allow legislation under Article 235 outside the sectors you have defined. It may also be worth considering whether the amendment to Article 3 would have any implications for qualified majority voting in sensitive areas in the context of Article 130s.

I am copying this letter to the Prime Minister, other members of OPD(E) and to Sir Robin Butler.

Handwritten notes and signatures



From the Minister

cc MCG dr
per IGC Policy UK initiatives
+ ministerial letters to AMM.
MINISTRY OF AGRICULTURE FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

133012

Mr Cany EU(11)

RESTRICTED - POLICY

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Foreign & Commonwealth Affairs
Foreign & Commonwealth Office
Downing Street
London
SW1A 2AL

PS
PS/m Davis
m Jay
m Shrigley
m Evans
m...

Grateful for advice

Rt Hon Gray

28 September 1995

289 ix

Dear Mr Cany

IGC: ANIMAL WELFARE

David Davis has replied to my letter to you of 20 September in which I propose a new Treaty provision on animal welfare.

As I made clear in my letter, I understand that the new Treaty provision would not sit very comfortably with our overall approach to the IGC. However, my predecessors and I have long made the point that animal welfare is an area of policy which is best dealt with at a European level. Our case against unilateral restrictions on the transport of live animals has been centred on this argument. A new treaty provision would enshrine the British Government's established position in European law.

I do not believe that the draft article would increase Community competence so far as farm animals are concerned. The Community's right to adopt legislation, on the basis of the agricultural chapter, concerning the welfare of farm animals is well established and has not been challenged. The new article is explicitly restricted to Community policy on agriculture, transport, the internal market and research, so I do not believe there is a danger of read-across into such activities as hunting, bull fighting etc. I can assure you that if there were I would not pursue the point.

There are very strong political reasons for proposing a Treaty amendment. Recent research shows that animal welfare is the single issue of greatest concern to people aged under 35. Leading animal welfare organisations have made it clear to me that they regard a Treaty amendment as a very high priority. They will be mounting a vigorous campaign on the issue throughout next year. We have, in the past, committed ourselves to the goal of a Treaty amendment ('Animal welfare - The Conservative Record'), and would find it very difficult to resist this campaign.

There is no doubt that our political opponents will take up the cause and receive a lot of popular support

I remain firmly attached to my plan to make an announcement at the Party Conference. If we do not take the lead in this campaign from an early stage, we will find ourselves under fierce political attack. If we propose an amendment at a later stage in the negotiations, then we will be seen to have caved in to pressure from the pressure groups and the Labour party and receive no political credit.

This is our chance to seize the initiative and earn some badly needed popular support in the process. I do not believe it is an opportunity we should turn down. Since time is of the essence, I would be grateful for agreement by Tuesday 3 October.

I am copying this letter to the Prime Minister, to members of OPD(E) and to Sir Robin Butler.

A ever

D Hogg
DOUGLAS HOGG

Y SWYDDFA GYMREIG
Tŷ GWYDIR
WHITEHALL LLUNDAIN SW1A 2ER

Ffôn: 0171-270 3000 (Switsfwrdd)
0171-270 0538 (Llinell Union)
Ffacs: 0171-270 0561

Oddi wrth Ysgrifennydd Gwladol Cymru



WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER

Tel: 0171-270 3000 (Switchboard)
0171-270 0538 (Direct Line)
Fax: 0171-270 0561

From The Secretary of State for Wales

The Rt Hon William Hague MP

RESTRICTED - POLICY

CT/20174/95

15301

30 September 1995

① AC ② DN ③ ATTEN

7/4

BF 4/10

McG dr

Dear Douglas,

Mr Bender

PROPOSED NEW EU TREATY PROVISIONS ON ANIMAL WELFARE

pa
to minister
misc ideas

Thank you for copying to me your letter to Malcolm Rifkind of 20 September about the proposal that the UK should work for new EU treaty provisions on animal welfare at the next IGC.

For some of the more extreme elements the measures proposed would still not go far enough; and despite our intentions, it may be difficult to avoid attempts to link these with areas such as hunting, field sports and bull fighting. Nevertheless, they would certainly help to defuse the very strong feeling of animal welfare groups that the Government is not doing enough in this field. The Community approach is one which has been accepted in relation to this subject for some time now, and the accession of more welfare-minded Member States means that there is more likelihood of success than previously. In view of this I would be content for you to announce these proposals at the Party Conference.

Copies of this go to the Prime Minister, members of OPD(E) and Sir Robin Butler.

for ever,

The Rt Hon Douglas Hogg MP
Minister of Agriculture, Fisheries and Food
Ministry of Agriculture, Fisheries and Food
Whitehall Place
LONDON
SW1A 2HH

Will



pa Ministerial letter
+ possible UK initiative
file. 13
135718

Treasury Chambers, Parliament Street, London, SW1P 3AG
0171-270 5000

DC
① cc AC
MLG o/r NB cc ASO
EH
+ me [DN has a copy.]

30 September 1995

EUD(I)

cc Mr Jay
Mrs Wright

② AttH
David Davis MP
Minister of State
Foreign & Commonwealth Office
LONDON
SW1A 2AH

EW 2/10

(The silence on Art 223 — an option in the paper
circulated by Mr Davis — is interesting).
ff 4/10

Dear David,

1996 IGC : UK PROPOSALS AT THE 1996 IGC

Thank you for your letter of 21 September. I agree that we ought to make the Study Group aware of any UK proposals sooner rather than later. The Study Group's Report to the Madrid Council will in large part shape the IGC negotiations, and we need to play a full part in shaping that agenda.

I hope that some of our ideas can be agreed in correspondence, leaving the remainder for discussion in OPD(E). I am content with some of your suggestions, but I do have difficulty with others. In essence I think we need clear objectives, which focus on those policies where we stand to make real progress. We should not waste negotiating capital on initiatives that are unlikely to get anywhere, even if, for tactical reasons, we see merit in putting them forward.

I have the following comments on your set of preferred proposals

Health and safety (option d)

I agree that we should aim to prevent the Commission abusing the AMV legal base to legislate on employment rights. I very much hope we can make progress. But we need to be realistic about what we are likely to achieve and avoid using too much negotiating capital.

Ancillary fiscal provisions (option f)

These proposals might strengthen our wider goal of unanimity in tax matters. But the benefits would be quite minor in the wider scheme of things. And it would be tricky to negotiate, raising the risk that others may look at tax and unanimity issues more



generally. On balance I agree that this is one to pursue. But we need to bear in mind that it is not a high priority and can be dropped if and when we need to gather our core arguments.

Resident and non-resident definitions for the tax regimes (option g)

This issue is very sensitive. It is currently being explored with the French, Germans and one or two others. You should not float it in the Study Group.

State aids (option j)

I see no harm in running this as a negotiating chip.

EC support for private sector projects (option k)

I agree that we should push hard for this. There is uncertainty over the question of Community funding for TENS projects involving private finance. The TENS Financial Regulation (TFR) opens the way for funding projects implemented by the private sector (and no member states resisted this interpretation during the negotiations of the TFR), but I am concerned that we risk legal challenges to funding a project without public financial involvement. A Treaty amendment making eligibility explicit is important.

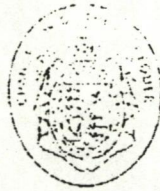
Economic and Social Committee (option n)

I agree that this is a largely redundant organisation.

European Court of Auditors (option o)

Giving the ECA a wider right of access to the ECJ than it enjoys at present is attractive on financial management grounds, but raises difficult issues. David Heathcoat-Amory may write to you about these shortly.

You also asked for my views on a range of other options.



There are many difficulties with amending article 119 on equal rights to introduce a small firms exemption (option c). Although the aim of reducing costs for small firms is very worthy, this may not be a sensible way to try to achieve it.

You also mention Douglas Hogg's letter of 20 September to Malcolm Rifkind, proposing that we press for new Treaty provisions on animal welfare, to be announced at the Party Conference. I take Douglas' point and I am conscious of the strong political pressures. But we need to bear in mind that there is a conflict between our well established policy and approach on subsidiarity, and these proposals. Our European partners will not be slow to pick us up on this. Moreover we need to ask whether it is worth using our negotiating capital to secure provisions on animal welfare. I am not clear that the Line up of Member States opposed to our earlier efforts has changed substantially. On balance I do not agree that this is a good area for a treaty amendment at the IGC.

Finally, the Swedes have as you know made some unhelpful proposals which include a new Treaty base for employment policy. I am pleased you have been resisting these in the IGC Study Group. I am sure that is absolutely right. It is vital that we maintain the fullest degree of responsibility for our own employment policies, not least because they are closely bound up with macroeconomic policy. We must not allow others, such as the Commission, to chip away at member states' responsibilities and either make expensive proposals for Community employment programmes or seek to impose unhelpful macro targets, such as a commitment to full employment. We must also take care not to agree anything that might put in jeopardy the UK's opt-out from the Social Policy Agreement.

I am copying this letter to members of OPD(E), Peter Lilley, Sir Robin Butler and Stephen Wall.

A handwritten signature in dark ink, appearing to be 'K.C.', is written above the typed name.

K.C.

pa ministerial file

(MME) 11/11 FAXED

RESTRICTED

16cl second

order when -

(i) cc AC
MLE c/R
AHH
+ me



The Rt Hon Ian Lang MP
President of the Board of Trade

The Rt Hon Douglas Hogg MP
Secretary of State for Agriculture
Fisheries and Food
Whitehall Place
London
SW1A 2HH

(2) DW
We should speak today

Secretary of State
Department of
Trade and Industry
1 Victoria Street
London SW1H 0ET

Direct line
0171-215 5430

DTI Enquiries
0171-215 5000

2 October 1995

CABINET OFFICE
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FILE No.

3/10

Dear Douglas,

Mr Bendie

On return from abroad I have seen your letters of 20 and 28 September to Malcolm Rifkind setting out your ideas on new Treaty provisions on animal welfare.

While I can see the political advantage to be gained in taking the steps you suggest, your proposal presents my Department with quite serious difficulties which need to be weighed against the practical and presentational advantages for animal welfare.

You acknowledge the general difficulty of reconciling your initiative with our general stance on the IGC. I have two specific concerns. First, new Treaty provisions such as those suggested would expose the UK to taunts, directed at us in the past, that we are anxious to do more for animal welfare at Community level than for the welfare of workers. Second, we would not wish to be compromised by putting forward proposals for new provisions on animal welfare when we want to resist calls, as made at Maastricht, for a separate Energy Chapter which would open up questions of competence in the energy sector.

I therefore believe there are thus both tactical and political considerations which merit collective discussion before we make any early announcement.

I am copying this letter to the Prime Minister, members of CPD(E) and to Sir Robin Butler.

Yours ever,
Ian





RESTRICTED - POLICY

2 MARSHAM STREET
LONDON SW1P 3EB
0171-276 3000

The Rt Hon Douglas Hogg MP
Minister of Agriculture, Fisheries and
Food
Whitehall Place
LONDON SW1A 2AH

My ref:

Your ref:

- 1. AC 4/0
- 2. DW
- 3. LAHH 07R

4/6/10/4



3 October 1995

MLK
rpa

misc ideas
(ministerial file)

(As seen by fax)

bfc 3/10

in Bender

IGC: ANIMAL WELFARE

Thank you sending me a copy of your letter of 20 September to Malcolm Rifkind proposing that the UK should seek new Treaty provisions on animal welfare, and that you should announce this at the Party Conference on 10 October. I have also seen responses from the Attorney General, David Davis and Ian Lang, together with your further letter of 28 September to Malcolm.

I share your desire to improve animal welfare standards and recognise that your proposals have several political attractions. Some aspects of animal welfare, such as live animal transport and trapping methods, are already the subject of Community rules. Colleagues will need to know which further areas you would identify for priority action by the Community. This may take some time to agree amongst all Departments concerned.

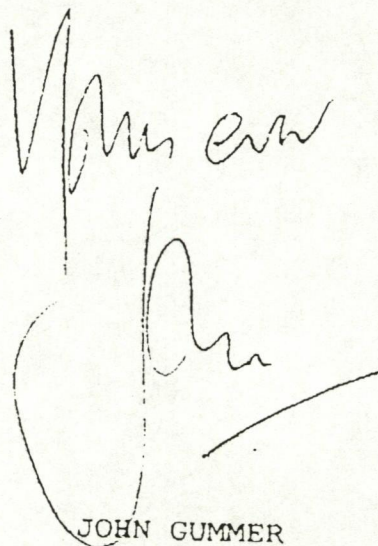
I am concerned that if we commit ourselves to an amendment of the Treaty at this stage, we could find that the final version gives the Community excessive powers to interfere in areas such as the management of zoos, pets and circuses where we already have sound internal legislation which we would not wish to change or complicate to meet an over-centralist approach. We could also find that a change in the Treaty leads to a stream of new legislation on wildlife based solely on welfare grounds. I think it would be difficult to be sure that there would be no implications for country sports such as hunting and shooting. We would weaken our arguments for resisting the Zoos Directive, often cited by the Government as a model case for applying the principles of subsidiarity. We would in general find it much harder to maintain the existing distinctions between the conservation of wild animals - where the EC have considerable competence - and cruelty issues involving wild animals where nation states usually have the last word. This would have a particular impact on my Department's responsibilities - and those of the Home Office - in the longer term.



I would like to explore whether we can find a way of signalling greater concern for animal welfare in a way which does not attract unnecessary proposals from the Commission for regulation. At the last IGC we achieved this through a Declaration, which was, as you say, watered down to meet concerns from Spain and others. I wonder if you might be attracted to a much stronger form of declaration, one which might enable the Community to make recommendations in key areas whilst avoiding binding EU legislation?

It might then be possible for you to announce at the Party Conference that the UK would seek a much stronger commitment towards animal welfare in next year's IGC negotiations (perhaps presented as a European Charter).

I am copying this letter to the Prime Minister, other members of OPD(E) and Sir Robin Butler.



JOHN GUMMER



452/13

D

FCS/95/247

MINISTER FOR AGRICULTURE, FISHERIES AND FOOD

*pa ministerial letter
+ UKI Article UK initiative*

*Ux 5/10 AC
MLG-GR
tme*

ELAHH

(DN has a copy)

BG 4/10

Treaty Amendment on Animal Welfare

1. Thank you for your letters of 20 and 28 September, in which you set out your idea of a new Treaty provision on animal welfare.

2. You will have seen that a number of colleagues have doubts about the idea. Although, as you have pointed out, the draft article would not itself seek to extend competence, it might open the way to unwelcome proposals (outside the area of farm animal welfare) under Article 235. It would also undoubtedly be exploited by others in the Community as being inconsistent with our overall approach to the IGC - and indeed our approach to the EU more widely, where we have taken the lead in resisting the flow of new regulation from Brussels. Colleagues have also expressed doubts about whether such a proposal would be consistent with our approach on subsidiarity; and about its negotiability.

3. Against this background, I think it would be a mistake to announce a proposal on Treaty change at the Party Conference. Like others, however, I share your view that we should not turn down the opportunity to seize the initiative in this area. As you point out in your letter of 28 September, the Community's right to adopt legislation on the welfare of farm animals is well established, and has not been challenged. We accept that many areas of farm animal welfare (eg animal transport) are best dealt with at European level. But what is clear is that the Community has not used these existing powers sufficiently effectively.



4. It would be an entirely legitimate UK initiative - which would avoid most of the problems identified above - to press for the existing powers in the Treaty on farm animal welfare to be used more effectively. UK pressure might best take the form of some specific measures on which we could press for progress in the coming months. We might add focus and impetus to this by saying that we shall also seek at the IGC a strengthening of the existing Declaration No 24 annexed to the Treaty. Our answer to those who press for Treaty amendment would be that the existing powers are adequate. We are rightly focusing our fire on ensuring more effective use of those powers.

5. I believe this approach will provide the basis for a positive announcement at the Party Conference. If, however, you feel the issue requires further consideration, I suggest we take it up at one of the forthcoming meetings of OPD(E), at which we will be taking forward our work on the IGC.

6. I am copying this minute to the Prime Minister, OPD(E) colleagues, and to Sir Robin Butler and Stephen Wall.

A handwritten signature in black ink, appearing to be 'M Rifkind'.

(MALCOLM RIFKIND)

Foreign and Commonwealth Office
04 Oct 1995



- ① AC 15/10
- ② DJ
- ③ AHH
- ④ MLG OR

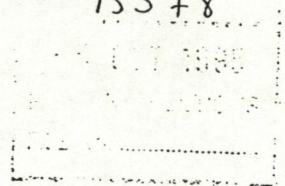
+ IGC Misc ideas.

QUEEN ANNE'S GATE LONDON SW1H 9AT

23 OCT 1995

15378

Den Douglas ^{Bf} S/10



Mr Bender

P 6/18/4

Thank you for copying to me your letter of 20 September to Malcolm Rifkind seeking agreement to the proposal to work within the IGC for new provisions in the Treaty on animal welfare.

I understand the arguments for working within Europe to secure change, but like Nick Lyell, I think that we must be satisfied that it can be achieved without any extension of competence. And I do of course recognise the difficulties of reconciling your proposals with our general stance on the IGC, to which Ian Lang has drawn attention.

I see two particular dangers in the proposal to include a reference to research. The first is that it may entail a small extension in Community competence: the stated objective of the present Directive on animal experimentation is to avoid "disparities which may affect the functioning of the common market", and this appears to exclude pure research undertaken in universities. This has not been an issue in the past, since our domestic law (which gives effect to the Directive) extends to all uses of laboratory animals. But we should need a clear view on the matter if we were to go down the path you suggest.

Secondly, and perhaps more seriously, I am afraid that highlighting research in this way could increase the pressures from the anti-vivisectionists, both in this country and (more particularly) in the European Parliament. There are already signs of EP interest in this area, and of the European Commission's timidity in the face of EP pressure. What is needed is better enforcement of the Directive amongst those member states with a poor record in this respect, not an excuse for the Commission to seek to impose greater controls over those countries (like the UK) who already have tough legislation in place.

I am copying this letter to the recipients of yours.

Michael

MICHAEL HOWARD

The Rt Hon Douglas Hogg MP
 Ministry of Agriculture, Fisheries and Food
 Whitehall Place
 London SW1A 2HH



pa. IGC / Ministers' correspondence
+ misc. ideas 13

JL39.5

DEPARTMENT FOR EDUCATION AND EMPLOYMENT

SANCTUARY BUILDINGS, GREAT SMITH STREET,
WESTMINSTER, LONDON SW1P 3BT
TELEPHONE: 0171 925 5000

ERIC FORTH ESQ. MP
Minister of State

Mr Cary, EUD (I)
M. Pathany
6/10

RESTRICTED - POLICY

David Davis Esq MP
Minister of State
Foreign and Commonwealth Office
LONDON
SW1A 2AH

cc. PS
Mr Jany
Mr S Wright
ESED
Special Adviser
Mr Bende, Cabinet
Office

cc AC
MLG
DN
+ me

cc ATTHT
G/O

- 6 OCT 1995

UK PROPOSALS AT THE 1996 IGC

Your letter of 21 September to the Chancellor of the Exchequer set out a number of possible Treaty amendments which the UK might pursue at the 1996 IGC.

This Department has a particular interest in three of the seven proposals which you recommend we should pursue: seeking to limit the scope for the abuse of Article 118a; amending Article 100a to exclude ancillary provisions affecting employment law; and the abolition of the Economic and Social Committee.

There is a strong case for seeking to restrict the use of Article 118a. This Article has been abused by the Commission in order to bring forward directives, such as that on Working Time, on a qualified majority base. As a result it will widely (if mistakenly) perceived as undermining the UK's social opt out. I agree therefore that the possibility of amending this Article (and Article 100a) should be floated in the study group. Amendments of the kind we want may be hard to secure but proposing them will underline our determination not to give ground in the IGC in the area of employment and social affairs.

The abolition of the Economic and Social Committee is an attractive proposition and I see no reason why we should not suggest it, using the argument that there are now far too many consultative bodies in Europe. However, I have no doubt that we will encounter strong resistance. Other Member States will see

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abolition as an attack on the concept of a social partnership and may therefore prove difficult to progress.

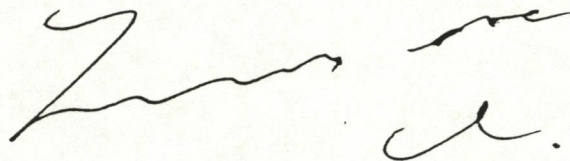
The same considerations probably apply to the possibility of trying to limit the application of Article 119.

As you say in your letter, OPD(E) will need to consider the proposals on the environment and animal welfare which have been proposed by John Gummer and Douglas Hogg. Any new initiative on enforcement in the environment field could set a dangerous precedent for Commission interference elsewhere. We have considerable reservations about extending the European Commission's role in enforcement.

On animal welfare, there is a risk that what Douglas Hogg proposes would be seen as inconsistent with our position on European employment rights and would make it harder for us to argue in future for the strict application of the principle of subsidiarity. ||

With regard to option (o) - is it prudent to support ECA access to the ECJ, at a time when questions are being raised about the role and powers of the ECJ itself? ||

I am sending copies of this letter to other members of OPD(E), Peter Lilley, Sir Robin Butler and Stephen Wall.



ERIC FORTH

15 1113

RESTRICTED - POLICY



FCS/95/257

CHANCELLOR OF THE EXCHEQUER

10/23/10

17240

① cc AC + me

② M/G O/R

(AHH had a copy)

bf 20/10

De
1. a MIS
2. p.

224/110

UK proposals at the 1996 IGC

C: Mr Bender

1. I am grateful to you and other OPD(E) colleagues for your responses to the proposals set out under cover of David Davis's letter of 21 September on possible UK initiatives at the IGC. These revealed general support for the following recommendations in his letter:

- tighten up Article 118a on Health and Safety;
- amend Articles 100a and 130s to exclude ancillary fiscal and employment provisions, thus preserving unanimity in areas of tax, employee rights and free movement of people;
- amend Article 42 so that state aid provisions apply across the board to agriculture;
- amend Article 129(c) to make clear that private sector projects are eligible for Community support under the TENS financial regulations;
- abolish the Economic and Social Committee;
- amend the Treaty to safeguard the principle of tax regimes distinguishing between residents and non-residents of a member state.

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2. I therefore suggest that officials should work up these options (except the last, which is being discussed separately with France and Germany) for David Davis to register, as appropriate, at the IGC Study Group.

3. In the light of the correspondence, I have asked officials to do further work on the following three options, with a view to Ministerial decision at a later date:

- a new Treaty article on animal welfare;
- amend article 223 to liberalise defence procurement;
- the role of the European Court of Auditors (ECA).

4. This leaves a number of options which, in my view, need ministerial discussion:

- a declaration tightening up the Rules of Procedure so that a proposal cannot be discussed before a formal text has been submitted in all community languages;
- removal of article 119 from the Treaty and repeal of related directives, or a proposal to amend the article to introduce a small firms exemption;
- restrict the ability of the Community to introduce "Social Clauses" into international agreements;
- John Gummer's proposals for strengthening and clarifying the environmental provisions in the Treaty;
- a new single market provision to allow member states freedom to act contrary to the letter of directives provided such action did not in practice significantly impede cross-border trade or investment.

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5. I suggest that we discuss these last five ideas at our meeting on 26 October, when we shall also be discussing a paper on repatriation of competences (which is relevant to some of the proposals). The Cabinet Office will circulate separately a revised paper on these outstanding options.

6. I am copying this minute to the Prime Minister, members of OPD(E), the Secretary of State for Social Security, and to Sir Robin Butler and Stephen Wall.

A handwritten signature in dark ink, appearing to read 'M Rifkind'.

(MALCOLM RIFKIND)

Foreign and Commonwealth Office
20 Oct 1995

RESTRICTED - POLICY

The Rt Hon Ian Lang MP
President of the Board of Trade



13

*of David
papers working on 119 pages
AAM*

16662

David Davis Esq MP
Minister of State
Foreign & Commonwealth Office
Downing Street West
London
SW1A 2AH

Secretary of State
Department of
Trade and Industry

1 Victoria Street
London SW1H 0ET

Direct line
0171-215 5430

DTI Enquiries
0171-215 5000

10 October 1995

*for ministerial Do
+ misc ideas file.*

*(C. M. Butler)
GVA/10*

Dear David,

*① CC AC
MLG*

UK PROPOSALS AT THE 1996 IGC

*② AHH Some of the material here
shd be incorporated into
final version of the
reparation paper.*

Your letter of 21 September to Ken Clarke, asked for views on a list of possible UK initiatives for the IGC.

I generally agree with your selection of items for floating in the IGC Study Group. My department has a strong interest in tightening up Article 118A and 100A (options d and f) to reduce the scope for further damaging EU legislation on employment rights.

sfz 11/10

On Article 118A where my Department shares the lead with DoE, I am sure we should not rely on a successful outcome to our challenge to the Working Time Directive to deter future abuses of the QMV legal base. In this area, as on Article 119, my officials will be glad to assist in considering possible options. An additional possibility, for example, might be to write into the Article a requirement to prepare a risk assessment demonstrating that any proposed measure is substantially justified by evidence of risks to the safety or health of workers.

We also, of course, favour amendment of Article 129c to bring private sector projects into Trans European Networks projects (option k). We proposed this because the eligibility of private sector projects was called into question, not by Member States, but by the wording in Article 129c. The proposal ought to be uncontroversial.

On the other options on which you seek preliminary views:

Article 119 (options b and c): The possible options for amendment or repeal of sex equality provisions are also highly relevant to us in view of the damaging impact legal interpretation has had on our pursuit of deregulatory

dti

Department of Trade and Industry

10/10



objectives. Option b would seem however to have no realistic prospect of success. I believe efforts can best be focussed on exploring all workable options to ameliorate the impact of the provisions on business.

A small firms exemption from Article 119 may not in fact be the most promising option since - quite apart from the foreseeable strong opposition of other member States - this would deal with only part of the problem. It would not have prevented last year's unhelpful House of Lords finding that hours thresholds for unfair dismissal rights are incompatible with the Equal Treatment Directive; nor does it address the problem (in that case and the Appeal Court judgement in *Smith and Perez*) of the court's readiness to find national provisions indirectly discriminatory, but refusal to accept any but the most concrete demonstration of objective justification. Might we explore the feasibility of a Treaty amendment designed to substantially ease the burden of proof on Member States to justify legitimate national measures?

worth including in epatration RP (after EES)?

which a.m.?

Article 223 (option 1): We shall of course look at any ideas for liberalisation of defence procurement; but industry has considerable concerns about approaching this through amendment of Article 223. We should not encourage any renegotiation of the Article which might jeopardise our right to act unilaterally to protect our essential national security interests. For example, Article 223 has been used by the UK in the merger control area. A cautious approach is needed.

Environmental provisions (option h): John Gummer's proposals and their potential benefits and disbenefits to the UK will need careful consideration. They may encourage not only expensive initiatives, but also further unwelcome intervention in economic activity. I am inclined to think that there is insufficient of a consensus on the meaning of sustainable development for such a concept to serve as a practical framework for European policy making.

Animal Welfare (option i): I am replying separately to Douglas Hogg's letter of 20 September.

I am copying the letter to members of OPD(E), Peter Lilley, Sir Robin Butler and Stephen Wall.

Yours sincerely,
Jim

JW10054

dti

the department for Enterprise

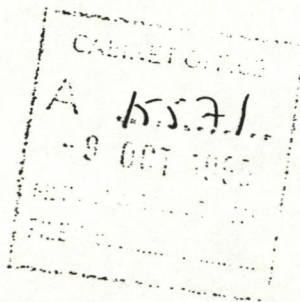


MINISTRY OF AGRICULTURE FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

RESTRICTED - POLICY

David Davis Esq MP
Minister of State
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH



pa IGC/Misc ideas
of ministerial letter

9 October 1995

① jcc AC
MLG
DN
+ me

② LATH NB need for
official follow-up
ide on X-4. ✓ M Bendu
Rf 10/10

David Davis

UK PROPOSALS AT THE 1996 IGC

Your letter of 21 September to Ken Clark invited comments on possible UK initiatives in the Inter-Governmental Conference.

One of the items listed in the annex - a specific Treaty provision on animal welfare - has been the subject of recent correspondence. The replies noticeably fail to comment on the fact that we have in the past publicly committed ourselves to such an amendment. You, and some others, have predicted various dire consequences. Some of these are, I believe, misplaced; others apply equally to the Declaration that we secured in the Maastricht negotiation; and others could be met by redrafting the proposed text. I suggest that officials should continue to examine the matter. Even if we hold the idea in reserve for now, we should consider deploying it, to domestic political advantage, at some stage in the IGC.

X |

|| neither
in case of
letter

I am glad that you recommend option (j), an amendment of Article 42. I would not propose opening up any of the main articles of the Agriculture Chapter, since the present drafting is perfectly compatible with the sort of reform of the CAP that we want and there is a danger of inciting others to put forward damaging amendments. But it is pretty clear that Article 42 was originally intended as a transitional provision, simply allowing the original member states to retain their national farm support systems during the period in which the CAP was being negotiated and introduced, and it is inappropriate that, all these years later, the state aid provisions of the Treaty should not apply automatically to agriculture. There is a good logical argument for amending the Article, particularly as the companion Article (Article 46), which requires countervailing charges at internal frontiers when national support arrangements cause distortion of competition, can no longer be applied due to the creation of the single market.

Disingenuous: Mr Davis' letter called for further work on this.

Like you, I feel that option (h) should not be pursued. My predecessor set out the reasons in his letter of 18 April to John Gummer, and I agree with what he said. It would be very dangerous to open up Article 2 of the Treaty without very good cause and I see nothing wrong with the words ("sustainable growth respecting the environment") inserted into the Article at our request last time: a suggestion from the DOE at official level that they could be interpreted as "continuous growth" seems very far fetched. The requirement in Article 130r to incorporate environmental considerations into other Community policies was also strengthened last time. Inserting similar words into specific policy chapters would cast doubt on the general applicability of the Article 130r requirement and I would in any case oppose opening up the Agriculture Chapter for the reasons already mentioned.

I agree with the other recommendations in your letter. I note that more work is being done on option (c) and (l). I imagine it would be exceptionally difficult to secure any amendment to Article 119: the liberalisation of defence procurement sounds an excellent aim if the risks mentioned in the annex to your letter can be avoided.

You asked for views on the Audit Court (ECA). In practice the ECA already examines value for money. We would like them to do more, so I support the idea of it being formally included in their duties. But the basic problem is that the other institutions do not pay sufficient attention to ECA reports. Their relationship with the Council and Commission remains unsatisfactory. I suggest that officials could usefully consider whether changes in procedures, or in the Treaty itself, could be secured to improve the situation.

You asked for comments on whether the ECA should have a right of access to the European Court. The ECA was turned into a Community Institution by the Maastricht Treaty: as a result it acquired the right under Article 175 to take the other Institutions before the ECJ for failure to act; it also required the right, under Article 37 of the ECJ statute, to intervene in any case before the Court. I am not aware that it has yet exercised either of these rights.

I have no problem in principle with the ECA acquiring the right to bring actions for annulment under Article 173. We would, however, need to consider whether the rules, contained in or adopted under the Treaty, about the financial aspects of the Community acts are sufficiently precise to enable the ECA to make practical use of this right. For example, even if we created a requirement for all Community spending measures to pursue value for money, is it realistic to imagine the ECJ annulling an adopted measure on these grounds as a result of an action brought by the ECA? We should also consider whether their right should be restricted in some way, if only to prevent the European Parliament making this a reason for demanding the removal of the existing restriction on their own right of action.

The right to bring infraction proceedings under Article 169 should remain with the Commission. We do not, I suggest, want to lay ourselves open to action from two sources. The ECA could, in any event, exercise its right to intervene in a case relating to the misuse of Community funds.

I am copying this letter to the Prime Minister, members of OPD(E), Peter Lilley, Sir Robin Butler and Stephen Wall.

As ever

A handwritten signature in black ink, appearing to read 'D. Hogg', written in a cursive style.

DOUGLAS HOGG



2 MARSHAM STREET
LONDON SW1P 3EB
0171-276 3000

RESTRICTED - POLICY

My ref: D25/10
Your ref:

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
12 Downing Street
LONDON
SW1

*pa IGCL/mix iden
+ minister
Guba*

17509
AC
MLG
AB
+me
② CAHH
25 October 1995

Dear Foreign Secretary

C. de Perdu

1996 INTERGOVERNMENTAL CONFERENCE: POSSIBLE UK INITIATIVES

At tomorrow's meeting of OPD(E) we are due to discuss the ideas I put forward in my letter of 31 March about ways of strengthening the environmental elements of the Treaty.

As background to that I thought it would be helpful to let you know that at the Informal Environment Council last weekend all member states spoke of their support for the sort of ideas which I outlined (which are already set out in the interim report from the Chairman of the Study Group). In particular there were calls all round for the strengthening of references to sustainable development in article 2 and for the integration of environmental references into other chapters. A good many went further and called for the incorporation of citizens' right to a healthy environment. There was also much talk of the need to extend the co-decision procedure in some simplified way and of course for QMV to apply across the board. There were also calls for clarification of article 100a (4) which many of my colleagues thought still prevented them from operating national higher standards.

I recognise some colleagues have already indicated their concerns and I would certainly not want to go as far as some of my Council colleagues - on citizens rights for example. But it is clear that a good many member states will be pressing for the environmental provisions in the Treaty to be strengthened. The Westendorp already provides the peg for this. We must also remember the very extensive popular support for Community action on the environment. I do not wish to pre-empt Thursday's discussion but against this background I hope colleagues will agree that whilst we should not necessarily endorse all these ideas there are [considerable?] benefits in not setting our face against all of them. In particular I think we should give serious consideration to ideas for strengthening the references to sustainable development in Article 2 of the Treaty, and to integrating the environment into the objectives of other relevant Titles; and to use this degree of responsiveness to environmental concerns to resist other less welcome ideas such as the extension of QMV in the environment area.



RESTRICTED - POLICY

I am copying this to the Prime Minister, members of OPD(E), the Secretaries of State for Social Security, Health and National Heritage and to Sir Robin Butler and Stephen Wall.

Yours sincerely

Att. Dan

for

JOHN GUMMER

*Approved by the Secretary of State
and signed in his absence*



pa IGC/mix ideas
cc + ministerial file
5929

atrs.

2 MARSHAM STREET
LONDON SW1P 3EB
071-276 3000

The Rt Hon Douglas Hurd CBE MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
12 Downing Street
LONDON
SW1

My ref:
Your ref:

8/1/22

31 March 1995

glu
① GC AC
MLG
AB
+me

Mr. Sender

[Handwritten signature]

② DN

pl ensure that the Foreign Sec's
reply picks up X, - foresees OPD(E)
discussion in one case, -

1996 IGC: UK PREPARATIONS

I have been reflecting whether there is anything that we can offer to the preparation of the UK position for the IGC from the environmental side. *BFB 4/4* *no not OPD discussion in May.*

The environment is a genuinely international subject since some of the problems (pollution etc.) flow freely across frontiers, and since many of the solutions (targets, products or process standards, some types of measure) are best conceived on a trans-national basis because of single market considerations. The UK need have no difficulty in principle therefore with a reasonably active European environmental policy, and much to gain from its effective implementation and enforcement throughout Europe.

In recent years, although we have had the occasional difficulty with excessively high standards proposed by the Commission with insufficient regard for costs and benefits, we have tended to be at the centre or even somewhat ahead of the centre of the pack on environmental policy-making in Europe, and have been an effective and respected contributor to European debate and the formation of new policies. Our underlying objective must to strengthen and build on this position of influence, at the same time as protecting ourselves from having excessively tight targets or standards imposed on us with insufficient regard for costs and benefits.

In terms of the Treaty, and opportunities for the UK arising in the IGC, I see three main areas which might be worth consideration by our officials as possibilities for inclusion in our negotiating brief. First, there is the question of giving adequate emphasis to sustainable development and environmental considerations in the general parts of the Treaty, and where relevant in the different subject titles. In the Maastricht Treaty, Article 2 has already been amended to give the Union something of a sustainable development objective, but the present formulation is not altogether felicitous, and I would think we could improve it and give it a sharper focus. We could also consider reflecting this in more specific objectives to incorporate sustainable development thinking in the different subject titles. This would build on and reinforce the strong position which the UK has taken in



international discussions of the follow-up to Rio, and the high regard in which our own sustainable development strategy is held among our partners. We would thereby be signalling that we want Europe to develop an equally effective and broad-ranging strategy for its operations, and for those of our fellow member states.

Secondly, we could look at the environmental title itself. The main issue there is to keep the provisions which require unanimity in respect of certain particularly sensitive issues, including above all the use of economic instruments or taxation for environmental purposes. I think all of the present exceptions to QMV in this title are well worth defending, and we are preparing briefing material accordingly. I do not think however it would be realistic to seek to extend unanimity in the environmental area by adding to this list of exceptions to QMV.

It would not even be desirable to so. We need a Europe that can work, not one that is so paralysed by checks and balances that nothing can happen at all. In practical terms, for day to day business in the Environment Council (as in other Councils), we need QMV in order to carry the business forward; and we are more often the beneficiaries of QMV in the Environment Council as part of the majority needing to bring a recalcitrant minority of others into line than we are disadvantaged by being in the reluctant minority. If anything can be done to strengthen the position of the larger countries such as the UK in the operation of QMV, whether as part of the majority or as part of the minority, that would clearly be to our advantage. But for my part I certainly would not wish to see us attempt to roll back QMV itself in most areas of day to day business, since this is a necessary condition of keeping business moving forward. The important thing is to hang on to the few essential areas of unanimity where really important national interests may at stake such as on fiscal matters.

The third area in which we are beginning to gain some allies in the environmental field is the importance of better implementation and enforcement throughout the Union. The new Commissioner is talking helpfully in this sense and several other member states who previously had shown little interest are now becoming much more concerned. The new Commissioner has been talking with interest recently of the possibility of reviving the Inspectorate of Inspectorates proposal first launched by Michael Heseltine with Jacques Delors. There may be other possibilities for strengthening the network of Inspectorates in the environmental field, or for reinforcing the monitoring role of the European Environment Agency. I would like to see all these ideas analysed more thoroughly by officials to see which might work best, either as environmental initiatives, or more broadly as part of a general UK thrust on implementation and enforcement. Some of the actions needed will no doubt lie outside the IGC process, but it seems to me possible that we might get some general mandate in this direction into the Treaty itself, which could be a useful spur for more specific action in particular areas.

I appreciate that some of the above thoughts may lie a little outside the main thrust of the preparations for the IGC as you have so far envisaged them. But it seems to me that tactically it might be useful for the UK to have a popular environmental package of the kind I have outlined to put forward at the IGC by way of a

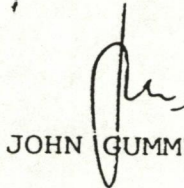
sweetener to the necessarily tough UK line you are developing on some of the central issues.

Looking more broadly it may also assist us in relation to possible expansion of the Union. The three new accession states, who are natural allies with us on several issues, have a strong environmental agenda, and would be useful partners in putting forward the kind of environmental package I have suggested, which might help to head them off less welcome environmental initiatives. It could also be useful as we approach the expansion of the Union to the East, since the unsatisfactory state of the Eastern European environment and the drive to achieve more sustainable patterns of development in the future may be an important element in bringing them closer to the West.

X | If you and colleagues think that proposals on these lines could be useful, perhaps our officials could begin to put some flesh on these bones for consideration at OPD in May.

I am copying this letter to the Prime Minister, OPD(E) colleagues, Sir Robin Butler and Sir John Kerr.

John Gummer



JOHN GUMMER

RESTRICTED

140197



①

The Permanent Representative

United Kingdom
Permanent Representation
To the European Communities

22 January 1996

Dominick Chilcott Esq
PS Secretary of State
FCO

- 1) a: PS
- PS/Mr Davis
- PS/PUS
- Mr Jay/Mr LMR
- Mr S Wright
- Mr RHO
- Special Advisers
- Mr Adams, European Secretariat, Leg. Att.

Grand-pont Robert Schuman 1
1040 Brussels
Telephone (02) 287 8211
Telex: 24312
Facsimile (02) 287 8398
DID: (02) 287 8200

2) Mr Cory, OAD(1)

Dear Dominick,

D. Chilcott
211

OPD(E): THURSDAY 25 JANUARY

1. Thursday's OPD(E) coincides with COREPER. Since COREPER will be preparing the following week's General Affairs Council I think I ought not to miss it.
2. May I offer a couple of comments on the substance of the two papers for consideration by OPD(E).

Animal Welfare

3. There are two arguments against a Treaty amendment on animal welfare which are not brought out in the Cabinet Office paper. The paper says (paragraph 5a) that proposing an amendment on animal welfare could cut across our objective of opposing extensions of Community competence in areas including tourism and energy. I think the point should be a bit stronger than that. The argument that MAFF use (that we are not extending Community competence in animal welfare, simply codifying it) is exactly the argument which the Commission use to justify the new Treaty provisions which they want on tourism and energy, and that we oppose.

4. The paper also assumes that there would be allied, domestic political benefit from this proposal. That is probably true from the point of view of animal welfare groups. Would it be true from the perspective of critics of the European Union? They might see this as opening the door to interference by Brussels in medical research and our rabies law. Those charges would be answerable. But I think we could find ourselves on the defensive.

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Environmental Proposals

5. I think option (b) (that the UK should support Treaty amendment on the environment if proposals are advanced by other Member States at the IGC) is the better option. The paper brings out well the risks of proposing Treaty change compared with the pretty limited advantages.

Jan. etc.
JS Wall
J S Wall

cc: Michael Tatham Esq, FCO

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Sir Robin

[Handwritten signature]

d11210

FROM: BRIAN BENDER
DATE: 6 December 1995

PS/FOREIGN SECRETARY

cc ~~Ms Polley~~
Mr Jay
Mr Lever

CABINET OFFICE
A 20375
- 7 DEC 1995
FILING INSTRUCTIONS
FILE No. C676/2

FOLO
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OPD(E), 7 DECEMBER 1995: CHAIRMAN'S BRIEF

1. I attach the Chairman's brief for tomorrow's OPD(E) covering Prospects for the Madrid European Council, 15/16 December.
2. All members of OPD(E) are expected to attend, except the Secretaries of State for the Environment (who will be represented by Mr Curry) and Transport (who will be represented by Mr Norris).
3. We are at the Foreign Secretary's disposal if he wishes to discuss the brief before OPD(E).

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B G BENDER
European Secretariat
Room 322, 70W
270 0044

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OPD(E), 7 DECEMBER 1995: CHAIRMAN'S BRIEF
PROSPECTS FOR THE MADRID EUROPEAN COUNCIL, 15/16 DECEMBER

- References:
- A: Your memorandum of 6 December on prospects for Madrid (OPD(E) (95)23);
 - B: The Chancellor's minute to the Prime Minister of 1 December on EMU strategy;
 - C: Mr Davis's note to OPD(E) on the outcome of the IGC Study Group (OPD(E) (95)24);
 - D: Your minute of 1 December on a White Paper and replies from the Chancellor, Mr Lang and Mrs Shephard; and PS/No.10's minute of 5 December;
 - E: Your minute of 4 November on enlargement and policy reform, summing up the 2 November OPD(E) discussion.

OBJECTIVES

- To agree the key UK objectives for Madrid;
- To discuss a presentation strategy.

HANDLING

1. The meeting is scheduled for one hour. It might best serve as a clarification exercise, in preparation for OPD (fixed for Wednesday 13 December). In particular, you will not want OPD(E) to tie the Prime Minister's hands unnecessarily.
2. You will wish to allow time at the end for the sub-Committee to consider the UK's presentation strategy, including your proposal for a White Paper on the IGC.

ISSUES

A: Objectives for Madrid

3. The issues for Madrid are set out in your memorandum of 6 December (Ref A). You might start the discussion with some opening remarks setting the scene:

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- OPD will finalise UK objectives and strategy on 13 December. But useful to have preliminary discussion today, to allow colleagues to express their views;
- my memorandum of 6 December sets out the issues. The Prime Minister's discussion with Gonzalez on Tuesday suggests that Gonzalez is looking for a smooth end to his presidency;
- but likely to be several tricky items for the UK, particularly on EMU and IGC, both of which will attract substantial media attention. They will also be the focus of this afternoon's Europe Debate in the House;
- other potentially difficult items include Europol, and racism and xenophobia;
- but should also be scope for progress on several key UK themes, including enlargement, competitiveness, subsidiarity and deregulation, and fraud;

3. You might then suggest that the meeting runs through the agenda items in turn, inviting the lead Minister to introduce his or her item in each case, and invite OPD(E) to agree the relevant recommendation in paragraph 36 of the paper. The issues most likely to generate debate are EMU (i), the IGC (vii) and enlargement (viii).

(i) **EMU (paras 4-6):** You might ask the Chancellor to set out his strategy on EMU in the run up to Madrid (which was detailed in his minute to the Prime Minister of 1 December (Ref B) - not copied to OPD(E)). Some Ministers might argue that the Chancellor's approach is too sanguine. But you will want to preserve maximum room for manoeuvre for the Prime Minister (though, if necessary, you might say that you will reflect colleagues' views to him);

(ii) **Fraud (para 7):** The Chancellor is the lead Minister. You might say that officials are working up a paper on

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fraud in the context of the IGC, although the Santer Commission's more determined efforts in the field of financial management and fraud may mean that Treaty change is unnecessary.

(iii) **Employment (para 8)**: You might invite Mrs Shepherd to comment. This is an area which the Presidency had seemed keen to highlight at Madrid, but Gonzalez did not raise it at his meeting with the Prime Minister; and the main employment report has been cleared by ECOFIN and the Social Affairs Council.

(iv) **Deregulation and Subsidiarity (paras 9-11)**: Mr Freeman has recently toured capitals (but is unable to attend OPD(E)). This is an area where our views are making some progress. OPD(E) has agreed that a decision on whether to pursue a treaty amendment on deregulation should be taken in the light of Madrid. UK officials are working up our ideas for a subsidiarity protocol with the French and Germans;

(v) **Competitiveness and Related Issues (paras 12-14)**: Mr Lang may wish to comment on the Ciampi report on competitiveness, and the Commission paper on SMEs, neither of which is expected to cause problems at Madrid. TENs is also expected to be uncontroversial, although we shall need to be vigilant against any last minute Commission bid for extra funding. Mr Norris may wish to comment.

(vi) **Biotechnology (para 15)**: No need to discuss. Mr Lang is in the lead.

(vii) **IGC (paras 16-18)**: OPD(E) will have received a short note from Mr Davis (Ref C) summarising the final Study Group report, which satisfactorily reflects UK views. You might invite Mr Davis to elaborate. If the issue of a White Paper is raised at this point, you should say that you want to return to it under the discussion of presentation.

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There may be questions about a possible Franco-German ambush on the IGC emerging from the Baden Baden summit on 7 December. We expect to receive an advance copy of the joint Franco-German letter before OPD(E); the indications are that the two sides have only been able to agree on generalities.

(viii) Enlargement (paras 19-22): You might aim to limit discussion on this topic by reminding OPD(E) that at its meeting on 2 November (Ref E) to discuss policy reform and enlargement, it was agreed that the UK's objectives for Madrid should be to:

- secure recognition of the need for reform of the CAP and Structural Funds, and avoid any attempt by others to secure language prejudicial to UK interests, particularly on the continuation of SCF payments to the Cohesion Four;
- to maintain progress on agreeing objective criteria for judging CEE readiness for membership;

You might comment that you see no reason to change these recommendations, which are reflected in your minute. The Chancellor might, however, argue that the UK should not agree to a commitment at Madrid to open negotiations with any of the CEEs (like we have for Cyprus and Malta) unless it is also agreed that enlargement will be preceded by further CAP reform. If necessary, you might suggest discussing this issue again in OPD, when it will be clearer what Spanish and Franco-German intentions are.

(ix) Justice and Home Affairs (paras 23-24): The main risks are that the Spanish will attempt to push through agreement on Europol and racism and xenophobia. The Home Secretary will wish to explain the position on these two items.

(x) Caribbean Drugs Initiative (para 27): this provides scope for a good news story, although we are still waiting

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for President Chirac to sign his copy of the joint letter to Santer and the Presidency. Again, the Home Secretary may wish to comment;

(xi) **External Issues and CFSP (paras 29-32):** The main UK objective will be to secure effective follow-up to the EU/US Action Plan. The other items, on the Barcelona Euro-Med Conference and Turkey, should be relatively straightforward, although an EP rejection of the Customs Union with Turkey will complicate matters. None of the CFSP items (Russia, Bosnia, and Middle East Peace Process) are expected to be problematic;

4. Depending on the discussion, you may be able to conclude that:

- OPD(E) broadly endorses the recommendations in paragraph 36 of OPD(E) (95)23 on the main UK objectives for Madrid;
- you will minute the Prime Minister on the outcome of the meeting in advance of OPD on 13 December.

B: Presentation

5. There are two issues:

(a) You might wish to inform OPD(E) of the line you plan to take in the Europe debate, in particular on an IGC White Paper. You set out the arguments in favour in your minute of 1 December to the Prime Minister (Ref D). He has specifically asked for OPD(E)'s view. Mrs Shephard and Mr Lang have so far supported (and the Business managers are likely to also); the Chancellor is, however, opposed.

- Depending on the discussion you might be able to conclude that there is a clear majority in favour of a relatively bland White Paper to be published in January. But if the sub-Committee is evenly split, you may wish to talk further to the Prime Minister

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before the debate.

(b) You might ask the Deputy Prime Minister to comment on presentation of the Madrid Council. For EMU and the IGC, this will probably be largely a damage limitation exercise. The trick will be to try to generate some positive stories on enlargement, subsidiarity, fraud etc.

- You may be able to conclude that OPD(E) endorses the strategy set out in paras 33-35 of OPD(E) (95)23.

Cabinet Office
6 December 1995