PREM 49/2523/2

Part 2 of 2

European Policy: General: Part 2

Annex A - Visit to Brussels. 31 October, Briefing

niceday by Guilbert

RESTRICTED - POLICY

From: Mark Sweeney
Date: 30 October 2001

MARTIN DONNELLY
ROGER LIDDLE

cc	Stephen Wall	Michael Roberts
	Rachel Green	Tim Figures
	Jonathan Sharrock	Richard Crabtree

VISIT TO BRUSSELS, 31 OCTOBER

<u>Documents</u>

A Programme
B Barcelona headline goals
C Wall-O'Sullivan synthesis report letter, 11 October

Internal market

D DTI brief on SGEI
E DTI brief on Community patent
F CO note on telecoms package
G CO note on telecoms data protection directive
H DTI briefing/papers on takeovers
I DTI brief on biotech
J DTI brief/papers on e-Europe
K DTI brief on e-commerce, including of country of origin principle
L DTI brief on services liberalisation
M SBS brief on small firms
N RIU brief on regulation

Social issues

O CO brief on social issues
P UK bootleg translation of Cion's restructuring proposals
Q Letter from Robin Young to Odile Quintin on agency workers, 23 October 2001

Financial services

R Background papers on financial services

Other issues

S UK non paper on indicators (never handed over) and Donnelly-Peters letter
T Brief and paper on sustainable development
U Brief on emissions trading/bubble
V Sweeney e-mail on A226 letter on duty free tobacco imports

Background

Self contained briefing, plus background papers, on a range of subjects from Departments or Desk Officers is attached. This cover note brings out key points that we are aware of.

Key points

Barcelona - you will want to follow up on the Wall-O'Sullivan letter. Shan Morgan will be able to give you the latest on the Synthesis Report preparations.

Internal market

SGEI – DTI brief at **Flag D.** You know the position.

Community patent – brief attached at **Flag E**. Basic message is we're doing what we can to be flexible, in particular on role of national offices. What more do the Commission think we could (reasonably) do to help?

Telecoms package – CO note at **Flag F**. Liikanen Cabinet may lobby on Cion having a bigger regulatory role.

Telecoms data protection directive – CO note at **Flag G**. The big issues here are whether or not member states should have the option to legislate for individuals to have to opt-in to or out of receiving "spam" (unsolicited commercial e-mail), and allowing Governments to require certain types of data retention post-September 11.

Takeovers – background papers from DTI on what we want to see from the Directive Mk II at **Flag H**. The Bolkstein Wise Men are working away, but we won't see a proposal until after Barcelona on current projections. You might say we are talking to the Germans on this to bottom out their problems and bring them on board. **Worth floating** the idea of Barcelona giving a firm steer on parameters/a deadline for a new Directive: does John Mogg think this would help, or does it risk giving member states suspicious of the measure a chance to set obstacles in its path?

[For your own background, on the point Roger made last week at our Kanzleramt briefng meeting about the reasons for German companies' lower market capitalisation, DTI think the answer is that they have traditionally relied more on debt finance than equity finance, but that this is changing. They also suspect the Rhineland model of capitalism has deterred overseas investors, esp. US and UK institutional investors, and this has helped keep share prices down, which in turn reduces market cap. If they abandoned things like poison pills this would make German companies more attractive to foreign investors and so help push up their share prices – but presumably in the interim make them more vulnerable to being swallowed. BE Berlin/DTI are doing further research on this.]

Biotechnology - DTI brief at **Flag I**. We are still working up the UK's response to the Cion's consultation on its action plan. The background to the DTI speaking points sets out what we're after in broad terms.

e-Europe – DTI brief and papers attached at **Flag J** for use with Liikanen Cabinet on where next after e-Europe Action Plan is delivered. One thing DTI brief on E-Europe doesn't mention is the idea of targets for broadband, where we are still hamstrung by our domestic situation. But you might float informally, no-commitment basis etc. with them the idea of targets for take up, content provision etc. If there is enthusiasm we might use as a spur to DTI....

e-commerce – DTI brief attached at **Flag K** for use with Mogg if necessary on country of origin principle. The background to this is that we basically support the DG Markt approach to regulation of commerce when it comes to consumer redress – that it should be under the law of the home state of the firm whom goods or services were brought from, giving business legal certainty. We are scratching our heads about

domestic implementation of the e-commerce directive in practice. (DTI are consulting.) Some parts of the Cion are more "consumer-focused" than DG Markt, so this consumer vs. producer convenience debate is being re-run over the Consumer Green Paper ("duty to trade fairly") and the Rome II regulation (to harmonise law applicable to non-contractual law obligations e.g. personal injury, fraud). DTI fear the legal picture could become complicated again by these initiatives. We are waiting for a paper from DTI on all this before having a Whitehall meeting. DTI material sets all this out in more detail. Up to you whether you want to wade into this minefield.

Services liberalisation - DTI brief at **Flag L**.

Small firms charter – a good SBS brief on small firms charter at **Flag M**.

Regulation – brief from RIU at **Flag N.** In brief, the Commission is due to adopt an action plan on Better Regulation at Laeken which, inter alia, should institutionalise impact assessment within the Commission at the "design" stage for legislation. The Mandlekern group has been helping to keep up the pressure on this. This would be a significant prize. **We should encourage this.** Meanwhile, we have been thinking internally about what "eye-catching" initiatives (e.g. on exemptions for SMEs, and scrapping some regulations as a visible sign of our commitment to make regulation less burdensome) we could come up with for Barcelona. As we discussed, there is still some way to go on this in Whitehall (there is concern that SME exemptions in particular are too politically difficult and unworkable, and that by pursuing this we would harm the chances of getting our objectives on the Commission Action Plan). And we are not sure how this will play in other capitals, some of whom have been reluctant even to come this far. So suggest you **ask for their reactions** to the idea in the Wall-O'Sullivan letter **of a High Level group of business people** to review categories of regulations and suggest repeal or rationalisation.

Procurement – Martin took a meeting on this on Monday. We should say that we are keen to see a satisfactory resolution on the directives, but one that provides for innovative solutions – PFI/PPP, e-procurement – to be followed by countries such as UK who are ahead of the game. Worth flagging too that we do not view EP attempts to mandate

social/environmental criteria for contracts in the directive as helpful.

Social issues

Three things here: Cion proposals on **corporate restructuring; agency workers** and **information and consultation**. Briefing and background from Tim at **Flags O-Q**.

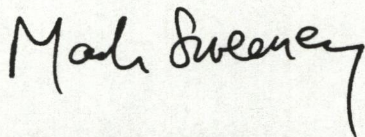
Financial services

An opportunity to run **John Mogg** through our priorities in this area for Barcelona, to check progress in Cion/EP negotiations on implementing **Lamfalussy**, to lobby on **Supplementary Pensions** and **Prospectus Directives** and check latest Cion thinking on a mid-term review for the **FSAP**. You might also raise two issues relevant to the (often poor) quality of legislation emanating from the Cion on financial services: the need for full and early **consultation** with stakeholders and whether UK can do more to help with increasing technical expertise in DG Markt. Stephen Wall saw John on Friday so they may have covered some of this ground already. Assorted background papers at **Flag R**.

Others

I also attach flagged briefing and papers on other issues Martin has mentioned to me: use of **indicators**; **sustainable development**; **emissions trading.**

Plus one more: cigarette/tobacco imports – conceivable that Mogg might raise the infractions letter on its way over Customs' alleged treatment of people bringing back more than their 800 cigarettes. You know our line (combating smuggling, not enforcing this as a limit etc.). My e-mail attached as aide-memoire at **Flag V**. [Does Mogg have a feel for Bolkestein's motivation....?]



MARK SWEENEY

Programme for Roger Liddle, Tony Blair's Chief European Political Adviser (30/31 October) and Martin Donnelly, Deputy Head, European Secretariat, Cabinet Office and Dr Mara Goldstein, Deputy Head, EUD(I), FCO, 31 October

Tuesday, 30 October

Roger Liddle only

Arrive: 2010 (car to collect from Gare du Midi and to take to Rue Ducale)

Overnight (no dinner required)

Wednesday, 31 October

Roger Liddle only (car to collect from Residence)

0800-0845: Philippe Kridelka (accompanied by Peter Drummond)
Chef de Cabinet Adjoint
Onkelinx Cabinet
Vice Prime Minister and Minister for Employment
Rue de Commerce 78-80
Bruxelles 1040
Tel no: 02 233 5124 or 02 233 5111

0900: Commissioner Neil Kinnock
Rue Montoyer 34
6th Floor
Tel no: 02 296 3220 or 02 295 6881

0937: **Martin Donnelly and Dr Mara Goldstein arrive Gare du Midi (car to collect)**

Roger Liddle, Martin Donnelly and Dr Mara Goldstein have following programme: (Shan Morgan to accompany on all visits apart from John Mogg and Philippe Jean and Mechthild Woersdoerfer (as indicated))

Car please for the whole day

1015: Odile Quintin
Director General
DG Employment and Social Affairs
Rue Joseph II - 27
7th Floor, Room 35
Tel no. 02 299 2277

1115: John Mogg, DG Internal Market, Directorate General
(Antony Vinall to accompany)
Av de Kortenburg 107
6th Floor, Office 76
Tel no: 02 295 0307.

1200: Philippe Jean and Mechthild Woersdoerfer
Deputy Head of Liikanen Cabinet
(Antony Vinall to accompany)
Rue de la Science 15
6th Floor, Room 126
Tel no 02 295 0539
02 295 9673
(Parking in minus 1 - parking spot 24)

1300: Lunch with Joanna Tachmintzis
Balthazar Restaurant
63 Rue Archimede
Tel no: 02 742 0600

1500: Jonathan Faull
Head of Service
Press and Communication Service
Breydel Building
Office 46
Tel no: 02 295 8658

1545: Stephen Quest
Sec Gen of the Commission
Breydel Building
11th Floor, Office 100
Tel no: (02) 296 5897

1650: David Coyne (20 minute meeting only)
Head of Unit Directorate A
European Social Fund (ESF)
Employment and Social Affairs DG
Rue Belliard 7
Tel no: 02 295 5741

Depart Eurostar: 1756

BARCELONA: HEADLINE GOALS

We should highlight core goals for Barcelona in terms which are:

- simple to understand and communicate;
- economically important for Europe;
- reflect the main concerns of business, and encourage European business leaders to lobby governments in the run up to Barcelona more effectively than before.

We also need to demonstrate that Barcelona is part of a continuing process by:

- highlighting the progress made since Lisbon across the broad range of the reform agenda;
- using the structural indicators to demonstrate clearly what this progress means for the EU economy, highlighting areas of progress and those where our relative position is a cause for concern.

We should also give remain positive about the development of the employment-based social dimension of the Lisbon strategy. Here the emphasis should be on the development of benchmarking and peer review ("the open process of coordination"), well established in employment, but now being extended to social inclusion, quality in work, and pensions. We must work hard to ensure that sensible indicators are chosen for these benchmarking exercises.

We also need to ensure a meaningful discussion on sustainable development, focussing on two or three of the most important issues within the EU sustainable development strategy.

Our headline goals might cover:

- **Opening of European networks**
  - Energy liberalisation (4% of GDP);
  - Developing broadband, 3rd generation mobile phones; wider internet access;

- Single sky and progress on slots;
- the development of better coordinated research networks across the EU, with a streamlined 6th R&D framework programme used to promote mobility among researchers and build European networks of excellence in frontier technologies.

- **Cutting the cost of investment capital**
  - financial services liberalisation, reducing the cost of capital for EU business;
  - pension reform encouraging more investment and portability;
  - more transparent takeovers market.

- **More open trade**
  - follow up to WTO Doha meeting;
  - promoting EU-US trade relations;
  - supporting Spanish plans to open up trade between EU and Mercusor countries.

- **More competition, lower prices, less red tape**
  - higher quality regulation, used only when necessary;
  - better environment for small firms/start ups, a major source of new jobs;
  - modernise state aids policy.

- **More jobs through labour mobility and labour market reforms**
  - remove national administrative barriers to easier mobility eg opening bank accounts. One stop shops, smartcards etc;
  - implement conclusions of Skills and Mobility Taskforce.
  - stronger steer for new Employment Guidelines to cover tax/benefit reforms to make work pay, and more active labour market policies;
- **Stimulus to innovation**
  - E-Europe;
  - Biotechnology;
  - renewable energy.

10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

11 October 2001

Dear David,

PREPARATIONS FOR BARCELONA:
PRIORITIES FOR THE SYNTHESIS REPORT

I wrote to you on 27 July with our key headline themes for Barcelona. I hope you will find what follows helpful as you come to write the Commission Synthesis Report.

Barcelona will be a crossroads for the Lisbon strategy. We have to show that we have made a realistic assessment of what has been achieved so far, and say clearly where we have fallen short and what we are going to do about it. A Synthesis Report which does this will help us to reaffirm concrete progress at Barcelona and beyond.

The Barcelona Summit will take place against the background of an economic climate that will have deteriorated sharply since Stockholm. So the central thesis of the Synthesis Report writes itself. Europe's economic situation makes the case for economic reform to increase employment more urgent, not less, if our target of twenty million new jobs by 2010 is to be achieved.

We therefore need a rigorous and frank critique by the Commission of Europe's current employment performance against the Lisbon goal. Although millions of jobs have been created in Europe in recent years through economic growth, and some EU member states are even close to full employment, overall unemployment remains unacceptably high.

Europe's labour markets are clearly not yet structured to deliver the jobs European citizens need. And the economic slowdown means that we can no longer rely on cyclical growth to fill the gap. The Commission's own Employment Report spells out the full scale of the challenge.

Against this background, the Report needs to be a political and not just a technical document. There is no better time to issue a **clarion call to Member States to adopt the necessary labour market and welfare reforms** to get the unemployed back to work and identify what **action at European level** can be supportive of our Lisbon goal of **more and better jobs.**

It is also the time to re-emphasise that Europe will not achieve more dynamic job creation unless we are more vigorous in **removing obstacles to enterprise and innovation**. The indicators are a new and powerful tool to help track our progress over the ten year Lisbon strategy. Their results should help focus Heads of Government on priorities for action. So the Synthesis Report should use the indicators not only to trumpet where we are succeeding, but also to **highlight the many areas where we must raise our game.**

We should ensure between now and the Barcelona Council that as progress is made across the range of Lisbon objectives - for example on innovation, telecoms, equal opportunities, our work against social exclusion - the results are "branded" publicly by the Commission and Council as a success for the strategy. This will help to reinforce the sense of a continuing programme of implementation. But we also have to set out clearly the extent of the challenge we still face. The Commission should then focus on what must be done, at both national and EU levels, if the challenge of full employment is to be properly addressed.

The points we hope the Report will draw out include:

- a re-affirmation of full employment as the central objective of the Lisbon strategy. There should be no pulling of punches on the scale of the labour market and welfare reforms Member States need to put in place if Europe is to better the 8% unemployment rate achieved at the peak of the recent cyclical recovery.

- a detailed road map of measures to secure progressive market opening in all the major areas where Europe is still far from creating a genuine Single Market, especially but not only in energy and financial services. We need interim milestones as well as final deadlines, sector by sector. Where progress is blocked, the Commission has a responsibility to identify where the obstacles are located. If there is a problem of vested interests blocking progress on particular dossiers, then the Commission should not hesitate to identify the laggards and apply political pressure. The Commission should

publish evidence on the positive employment impact of liberalisation in areas like telecoms and air transport, and demonstrate why and how liberalisation in electricity, gas, all the transport sector, communications including posts, and financial services has the potential for dynamic job creation.

- Progress in opening energy markets, worth some 4% of GDP, is critical to the Lisbon strategy. We are aware that there are political as well as technical difficulties to be overcome. But the Commission needs to keep up the political pressure, and make the arguments for progress. Cheaper energy will help create jobs by improving the competitiveness of European industries. At the very least we must focus on rapid market opening for business. The rights of consumers must be respected, and unifying Europe's still segmented electricity and gas markets is crucial. **If Lisbon is to remain credible we** must confront this issue at Barcelona and show clear progress.

- Opening up the financial services sector is critical to the health of Europe's wider economy. It is time to show that we can produce efficient unified capital markets which allow small and large European businesses to finance themselves effectively, and which open up the employment opportunities of this sector. Progress on an open-market Prospectus Directive is critical. Pensions liberalisation is also urgently needed.

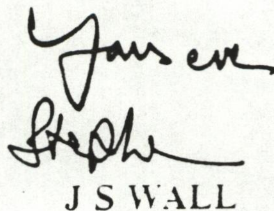
- Endorsement of the benefits to job creation of excluding small firms to the greatest possible extent from the impact of new and existing EU regulation. Essential minimum standards are needed. But over-regulation of SMEs must be rolled back. This should be part of a concerted drive to reduce the regulatory burden on business. The initiative should be led by a new High Level Group including business representatives, with a mandate to propose simplification and modification of the existing acquis directly to the Commission. It would be a powerful demonstration of the Commission's commitment to take forward urgently the ideas contained in your excellent Governance White Paper, as well as providing practical evidence that the Small Firms Charter is being implemented with vigour and seriousness.

- Support for fair and open competition with a modernised state aid policy and a level playing field for takeovers in EU policy. The present crisis in the airline industry will be a test of Europe's credibility in this area. We look to the Commission to continue to provide a strong lead.

- We need to reinforce the free trade commitment that we all hope to secure at Doha to a new WTO round, and accompany it by a complementary Transatlantic Trade Initiative to show that the US and the EU are determined to increase global prosperity through closer bilateral cooperation.

I attach an annex with other ideas which we think are worth pursuing whether or not they feature in the Synthesis Report text.

We look forward to discussing these ideas with you and Commission colleagues soon.



J S WALL

David O'Sullivan
Secretary General
European Commission

ANNEX

Synthesis Report: Additional Ideas

- The strengthening of network infrastructures across Europe through open and transparent interconnection between national networks, liberalisation to facilitate the emergence of cross-border service providers and a new drive to promote successful PPPs as part of the TENs programme.

- Measures to promote labour mobility, drawing on the recommendations of the Skills and Mobility Taskforce: removal of remaining barriers to mutual recognition of qualifications; development of European 'skills passports' and an accessible common database of job and training opportunities across the Union; and a Commission review of the success of Member State measures to promote lifelong learning.

- Development of Commission Action Plans to promote an innovative knowledge-based economy in areas such as broadband, biotechnology and renewable energy on the model of the successful E-Europe action plan.

- The social dimension of the Lisbon strategy must remain focused on employment. Jobs remain the essential foundation of social justice. The need to support older workers and maintain our drive for equal opportunities for all, including women and minority groups, are important both in themselves and to show that the Lisbon agenda commitment to an employment-based social policy and lifelong learning remains fully valid.

- Showing the progress made on fighting social exclusion on the basis of the national action plans is also important. Offering employment opportunities to all, while providing additional help targeted at the most vulnerable, must remain at the heart of the Lisbon strategy and the Nice Social Agenda.

- We should also show how our education systems are adapting to support this focus on labour markets. For instance, a target to link every secondary school in Europe through the Internet with at least one other similar school for joint working in language and other areas would be eye catching, and show that our full employment strategy includes the younger generation. We support an expansion of school and student exchanges and priority for language training.

October 2001

RESTRICTED

European Policy Directorate

Making the UK an effective partner in Europe

SERVICES OF GENERAL ECONOMIC INTEREST (SGEI)

Key point

- **The UK has two very important policy aims in this debate. First, to ensure that the regulatory framework in the EU encourages the delivery of high quality public services by member states. Second, to uphold the Single Market rules, and EU competition and state aid frameworks. Clearly, there are tensions between these two aims, and member states and the Commission need to work very closely together to exchange information and best practice, and to clarify the issues.**

Lines to take

- We welcome the measured approach taken in the Commission's 17 October communication. Not an issue the EU should rush at. Member states have such different structures for the delivery of public services that it will be difficult to find a solution which meets all circumstances. Important that member states should put resource into completion of the work programme set out by the Commission.

- The delivery of high quality public services is one of our top priorities in the UK. We have particular concerns about the treatment under EU law of public-private partnerships, which are the main source in the UK of innovative ideas for the delivery of public services.

- We are also committed to liberalisation, in keeping with the Lisbon economic reform agenda. Our experience is that the opening of public services to competition has delivered important benefits to the consumer, both in price and quality of service.

- Support the approach taken in the Commission's report to the state aids regime for SGEI. A community framework in 2002, followed by a block exemption in due course, is the right rhythm.

- However, the Commission seriously needs to review its interpretation of the CELF and FFSA cases. Not necessary to draw such far-reaching conclusions.

European Policy Directorate

Making the UK an effective partner in Europe

The effects of the judgments can be interpreted in a more restrictive way. If all cases where the state pays a company for the provision of services to the public have to be notified as state aids, this will have a quite unnecessary stifling effect on innovation in the delivery of public services. It is this interpretation which drives the French and Germans to seek dangerously wide block exemptions.

- Important that the Commission addresses the issue of special shares in this context. Need a proper debate on their legitimate use, rather than a string of ECJ cases.

- Support the Commission's proposals for an effective evaluation of SGEI.

Background

1. "Services of general economic interest" is EU jargon for public services delivered through the market. The EU Treaty recognises the special position of SGEI in Article 16, and the right of each member state to determine the scope of its own public services, and the means of delivering them. SGEI also receives special treatment under the state aid rules. A whole variety of services can fall into this category: energy, telecommunications, posts, transport, broadcasting, waste collection.

2. The Commission produced a Communication on SGEI in September 2000, which struck a balance between the need to maintain the Single Market, and the competition and state aid rules which underpin it, and the need to ensure legal security for providers of public services. The Nice Summit last December tasked the Commission to produce a further report to the Laeken Summit this November. This summer, the French and the Germans have both produced papers, both of them seeking a more definitive exclusion from the state aid disciplines for SGEI, and the French also proposing a horizontal framework directive for the duties and obligations of SGEI.

3. The Commission have now produced their communication, on 17 October. It recognises the difficulties member states face in reconciling the delivery of public services with the competition rules, and proposes a measured reaction:

- on state aids, the development of a Community framework for state aid granted for services of general economic interest, pointing towards a block exemption in due course. In addition, several measures of additional transparency surrounding state aids for SGEI;

- effective evaluation of services of general economic interest at Community level, including annual horizontal evaluation in the

framework of the Cardiff process and work on benchmarking with member states and other public authorities;

- consideration, without commitment, of the French proposal for a framework directive to consolidate and specify the principles on SGEI.

4. Depending on the results of Ministerial correspondence, a more detailed set of UK requests might be:

- Guidance from the Commission on the role of the private sector in the delivery of SGEI
- Better exchange of information and best practice between member states and the Commission
- The Commission to take a sensible view of what counts as state aid (to make clear that not all payments to companies to deliver services to the public have to be considered under the state aid rules.
- A tightly drawn block exemption on state aids for SGEI, for example that state aid for SGEI should only be notified if it has not been granted through a transparent tendering process
- An open dialogue between the Commission and the Council on the legitimate uses of special shares
- Modernised public procurement directives, allowing the "competitive dialogue" procedure needed for complex PPPs

5. The Commission's report is a reasonable match with our needs, though we shall have to press them on special shares, and on their interpretation of the scope of the state aid rules.

BRIEFING FOR MESSRS LIDDLE AND DONNELLY MEETING WITH JOHN MOGG

COMMUNITY PATENT

Lines to take

- Pleased that Belgian Presidency is making steady progress, no doubt with Commission assistance.

- We fully support the aim of the Presidency to reach agreement on a Common Approach in November. We would also like to press ahead with work on the Community Patent Regulation. Adoption of the Regulation will be seen by industry as a vital step in meeting the Lisbon target.

- We particularly want to ensure, as you do, that the Community patent will be a workable system which industry will use. Otherwise however politically elegant, it will have no real impact on innovation in Europe.

[If discussion develops]

- Priorities for decision in November are **national patent office participation** and **translation requirements**.

- We need early agreement on a **framework for national patent offices' participation**. This will have to be set up in the context of the European Patent Convention (EPC) – we will need to map into the agreed timetable for revising the EPC.

- Understand the European Patent Office (EPO) has a central role in the delivery and management of the Community Patent - but need to guard against inflexibilities to ensure that EPO involvement is consistent with making best use of <u>all</u> resources, and is responsive to users. **[If pressed:** have doubts about fixed

quotas for national offices which may not reflect levels of demand, and EPO control over allocation of work between national offices.]

- On **translations**, we have firm signals from UK and European industry that they can accept the Commission proposal. We hope the Commission will continue to defend it unless a practical alternative looks like gaining consensus. [**If raised:** prepared to look at a requirement for 1 extra translation (of patent claims ONLY) into a language of the applicant's choice if this will achieve consensus – but do not believe this adds value in practice, and could create uncertainties as to the validity and effect of the patent.]

- Although not a priority for agreement in November, we are keen to start work on the details of **Community jurisdiction for dealing with disputes**. When does the Commission intend to produce a proposal under the new Treaty Articles (225a and 229a)?

Background

Achieving a Community patent system is one of the earliest targets in the Economic Reform agenda agreed at the Lisbon European Summit, and will contribute to the realisation of a genuine European Research Area.

2. Issues to be resolved to reach agreement on the Community patent include:

- the relationship between the Community and the European Patent Office (EPO), which is not an EU body;
- financial arrangements including distribution of renewal fee income between MS;
- the role of national patent offices and how much of the processing of Community patent applications they should be allowed to do;
- the linguistic regime and how much translation of patents have into Community is required;
- jurisdictional arrangements for hearing disputes concerning Community patents - these will be based on new Treaty articles agreed at Nice, and we need a Commission proposal.

3. Although the Lisbon summit conclusions called for a Community patent to be available by end-2001, the number of steps involved mean that most states are looking for agreement by end-2001 with implementation to follow. The Presidency is aiming for agreement at the November IMC on agreement in principle on the main issues, building on a Common Approach agreed by the IMC of 31 May.

4. On languages the Commission's proposal envisages that the three working languages of the EPO (English, French and German) apply and that Community patents will not have to be translated into other languages to be valid. Any extension of this regime would be costly for users and industry may lose interest. The Commission has shown signs of back-tracking in the face of smaller States' pressure for more translations to be required, although recent indications indicate they are beginning to firm towards their proposal. The most practical alternative is English only, but probably not negotiable as France and Germany are unlikely to accept this, although several other States could.

5. The EPO will be the prime source of delivery of Community patents. Participation of national patent offices (NPOs) is closely linked with the translations issue offering a route for local language processing for patent applications at least through the initial stages. France in particular is anxious to minimise NPOs' role fearing diversity in quality and delivery standards, whereas Spain is content that their office should be allowed to do everything. The presidency and the Commission are working to bridge this gap. They have identified national quotas and case allocation and micro-control by the EPO as means. We are anxious to ensure the system is flexible so as to use all resouces in Europe to their full. We may be able to run with some of the Commission's ideas, although the devil will be in the detail.

6. A Diplomatic Conference is being arranged for June 2002 to revise the EPC. The role of national offices in delivery of the Community patent will need to be clear to map into this revision.

1999 Telecommunications Package (4 Directives)

Rapporteur: see below.
Committee: see below.

Regulatory Cttee.

Timetable

Common positions reached in Council on all four directives. Belgians trying to get a second reading deal with the EP which would enable them to meet Lisbon deadline of end 2001 for adoption. If we are to meet this, Belgian Presidency will need to do a second reading deal: conciliation would take us through to Spring 2002.

Background

There are four directives making up the package:

Framework - rapporteur: Pasolina, Finland; Industry Ctte.
Access - rapporteur: Brunetta, Italy; Industry Ctte.
Authorisation - rapporteur: ?; Industry Ctte.
Universal Service - rapporteur: van Velzen, Nl; Legal Affairs Ctte.

Key UK MEPs are Nick Clegg, Malcolm Harbour, Michael Cashman, Arlene McCarthy.

Member States including UK will need to be flexible if we are to get a deal without going to conciliation. The attached submission, agreed by Kim Howells and Douglas Alexander, sets out Whitehall views on where we can or can't be flexible. We are ahead of other member states in our thinking here.

You do not need to get into the detail. The big issue for the Cion (Liikanen made an appeal at the 15 October council) is the question of regulatory arrangements. Nick Clegg raised with Roger last week, and wrote to Peter Hain about it on 1 October.

In brief, the issue is whether regulatory decisions to enforce the telecoms single market across the EU should ultimately be taken by national

regulators or by the Commission. The **Council** common position provides for this to be carried out by national regulators with no right of appeal. The **EP** argue that single market legislation needs to be ultimately enforced by a single body to ensure consistency of application. MS argue (on practical, rather than subsidiarity grounds) that this is not on because:

a) the Commission has a handful of people available for this work, and would be swamped: national regulators have (and need) hundreds. Resultant delays would be bad for industry.
b) national regulators are best placed to judge the local market environment and deliver decisions that make sense "on the ground".

Cion may argue that, if we can't envisage boosting Cion resources to do the job, we should include a right of appeal on decisions of a particular magnitude (those which would set benchmarks for national regulators to follow). If he does, our response here should be to say on a no commitment basis that we are considering this issue at the moment; but that the UK is likely to be the most sympathetic member state, and if we cannot be persuaded then the prospects with the rest of the Council are very low. (Meanwhile - **please protect** - we and FCO are pressing DTI to come up with some imaginative solutions here. But there is no suggestion that we should depart from the basic position.)

Cabinet Office
29 October 2001

Communications Data Protection Directive

Rapporteur: Marco Cappato MEP
Committee: Committee on Citizens' Freedoms and Rights &JHA

Timetable

Currently at first reading stage. MEPs split at the first plenary session; the Committee on Citizens' Freedoms and Rights (&JHA) has been asked to submit a revised report for a vote to take place over the next two months (probably early November). Committee considered Cappato's report in w/c 22 October. Council Working Group considered 25 October.

Background

The directive would extend the data protection regime established under the Telecoms Data Protection Directive to e-mail/internet. It would also enable provision of value-added services based on location data subject to consent (e.g. advertising mobile phone services in a particular region) and place controls on unsolicited commercial e-mail (UCE, or "spam").

Two key issues for us. We do not need to raise them but they may come up:

i. at the 27 June IMC, but Member States were unable to agree on the treatment of unsolicited commercial e-mail. The issue is whether the *Directive* should provide that indivudals should have to opt-out of receiving it, which business would prefer; or whether MS should have a choice to provide for opting-out or opting-in (UK view, shared by Fr, Lux, Ire). No discussion of UCE at 15 October IMC. Cappato's report will offer MEPs two amendments on this subject: one would have the directive shield individuals from UCE unless they opted-in; the other would make it a "national choice". We want to get MEPs to vote for the second.

ii. UK was able to re-open the provisions on data retention by law enforcement agencies in the Directive at the 15 October IMC following the 11 September events. (**please protect:** data held by Communications Service Providers has been of central importance in investigating the 11

September events). We are therefore seeking changes that would give national Governments discretion to introduce data retention requirements (we will be introducing our own requirements as part of the Emergency Terrorism bill). The EP, on the other hand, wants to outlaw data retention except on an "exceptional" case by case basis. We argue this is tantamount to asking Member States to know who is going to commit a crime before they do so (all other data would have to be destroyed). We want general data retention to be allowed - access to that data can be on a case by case basis.

Cabinet Office
29 October 2001

THE TAKEOVERS DIRECTIVE - NOTE BY THE UK

Following the rejection by the European Parliament of the proposed takeovers Directive on 4 July, the Commission has recently indicated that it intends re-tabling the Directive in 2002. This note sets out the principal additional issues that the UK would like to see included in a revised Directive. It also sets out amendments to the previous Directive that the UK would like to see made.

Additional issues to be covered in re-tabled Directive

2 All of the additional issues that the UK considers should be covered in a re-tabled Directive concern barriers to takeovers (the "level playing field" issue) and are as follows:-

i) abolition of differential voting rights, ie requiring companies not to have different classes of shares with different voting rights. At present, some companies have share structures which provide that a few shareholders (of one type of share) will always be able to outvote the majority shareholders (of another type of share). However, the Directive would need to include exceptions on public policy grounds and to deal with shares conferring differential economic rights (eg preference shares);

ii) introduction of compulsory acquisition or "squeeze-out" powers. The Directive should include a power enabling a majority shareholder with a high proportion of the voting rights (eg 90 or 95%) to compulsorily purchase the shares of the remaining minority shareholders. Conversely, there should also be a power enabling the minority shareholder to require the majority shareholder to purchase his shares;

iii) introduction of a measure to ensure that board members may be appointed and/or dismissed by majority shareholders. The Directive should oblige Member States to prohibit any requirement for a super-majority (ie more than 50%) of the votes to appoint or dismiss directors.

Proposed amendments to the Directive

3 The principal changes that the UK would like to see made to the Directive are as follows:-

i) Article 4.2 - jurisdiction. Article 4.2 requires Member States to designate the competent authority for supervising takeover bids. In general, the competent authority would be that of the Member State in which the offeree (target) company has its registered office provided that the securities of that company are listed in that Member State. However, where this is not the case, ie where the offeree company is not listed in its country of incorporation, jurisdiction will be split between two competent authorities. Although, in present circumstances, this would happen only in a small number of takeovers (perhaps less than 1%), the

split jurisdiction provisions would be extremely difficult to implement in national legislation and to operate in practice within the very tight deadlines inherent in takeovers. Moreover, the incomplete and imprecise provisions in Article 4(2)(e) could give rise to disputes between competent authorities and litigation on the part of parties to a bid who dispute jurisdiction. The UK would strongly prefer that the competent authority responsible for supervising a bid was always the authority in which the offeree company was incorporated. This provides a clear and straightforward rule;

ii) Article 5.1 - protection of minority shareholders. Article 5.1 requires Member States' legislation to include a provision under which once a person has acquired a certain proportion of a company's shares, he is required to make a bid for the company (the mandatory bid provision). Article 5.1 requires the bid to be addressed to all holders of securities for all their holdings and to be at an "equitable price". During its consideration of the Directive, the European Parliament proposed a definition of the term "equitable price", namely that it is the highest price paid by the offeror for shares in the 12 months preceding the bid. The UK supports the inclusion of a more detailed definition of equitable price in the Directive, and a tightening of the circumstances in which the equitable price must be paid in cash;

iii) Article 9.2 - frustrating action. Article 9.2 provides that Member States may allow the offeree company to increase share capital during a takeover bid as long as prior authorisation has been received from shareholders not earlier than 18 months before the bid. Such a provision would allow Member States effectively to erect a barrier to takeover; it would not be permitted in the UK. Consistent with the wish to see a level playing field for takeovers in the EU, Article 9.2 should be omitted.

4 The Directives provides for employees of the offeree company to be informed of a bid and to receive appropriate information and documentation as soon as it is made public. The Directive also requires that the offer document be made available to employees of the offeror as soon as it is published. The UK supports these requirements. However, the UK would not support any extension which would require (as opposed to allow) consultation with employees before a bid was made, or which would give enforceable rights to employees that could be used in tactical litigation.

Department of Trade and Industry
25 October 2001

14 September 2001

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Philip Sack
CLI1
DTI

Dear Philip

RE: TAKEOVERS DIRECTIVE

Summary

The Commission has stated that it is planning to re-issue the Takeovers Directive in spring. Commissioner Bolkestein has told the European Parliament that they must work together to overcome their differences. He has outlined the three issues that the recently created High Level Group on Company Law will be reporting on by the end of this year. Lord Inglewood, a Tory MEP supporter of the Directive, has suggested a "cunning plan" to ensure that the Directive goes through. He would value our views.

Re-issue of the Takeovers Directive

The Commission have told us that they plan to re-issue the Takeovers Directive in the spring. They do not envisage significant changes to the Directive, particularly not to Article 9, although they will probably change its name from the 13th Directive...

However, as previously reported, to make it more likely to go through there will be a move towards the Parliament. This will probably include a definition of equitable price (the price paid to all shareholders in a bid), and mentions of previous Directives

concerning workers rights (although others may try to beef this up). In addition, this Directive will be accompanied by more work, probably another piece of legislation, on the level playing field. This might include one share, one vote provisions as originally proposed in the now defunct 5th Directive, as well as the requirement that a simple majority of voting rights should suffice to remove management, as well as other ideas.

Commissioner Bolkestein and the Parliament

Comissioner Bolkestein addressed the Committee for Legal Affairs and the Internal Market on 11/9/01 concerning the re-issue of the Directive (not attached). He re-stated that the Directive is both urgent and necessary for the European economy, and said that the Commission would present a revised proposal to the Parliament and the Council at the beginning of 2002.

The Commissioner referred to the creation of the High Level Group on Company Law, which had been created to advise on the Directive. The Group's first recommendations would be produced by the end of the year, on three specific points: the level playing field / equitable treatment of shareholders (eg golden shares); fixing of a fair price for the repurchase of minority shares; the right of majority shareholders to acquire minority parts ("squeeze out"). A fuller report is due in 2002.

The Commissioner also mentioned the question of the right of worker information. He remarked that Article 6 of the previous text provided for consultation of workers or their representatives as soon as an offer has been made, specifying that, "if this text is not appropriate, I am willing to meet the European Trade Union Confederation".

Lord Inglewood MEP

Lord Inglewood MEP, (UK PPE) who was very supportive of the Takeovers Directive, has come up with a "cunning plan" to ensure that the Directive goes through. It consists of calling the German bluff that the reason they sabotaged the last Directive was because it did not go far enough to achieve a level playing field. He suggests that the Parliament should go all out for big bang harmonisation in this area, so that the Germans cannot possibly complain that the new Directive does not go far enough; the Council will not be able to agree such an extreme text, and they will have to agree somewhere in the middle. He thinks that it will improve the internal market for takeovers, and will ensure that the Directive goes through. He does admit that it is a high risk strategy, particularly because of our defensive position on golden shares and performance shares (both of which he sees as subsidiary and solvable issues).

Comment

We would be grateful for any views on the above, particularly Lord Inglewood's ideas.

In addition, you are planning to visit Karel van Hulle of the Commission next week to discuss further work on the removal of barriers to takeover. It would be helpful if we could be armed with a positive list of areas where work could be achieved, and good reasons why work in other areas is not necessary, or would be detrimental (eg special shares). This is a good opportunity for us to set out our interpretation of how the internal market for takeovers should work.

Yours

Kirsten Siddall
Second Secretary (Industry)

Cc Andrew Land, HMT
Samantha Beckett, HMT
Robert Burns, DTI
Hugh Savill, DTI
Paul Herdman, CO
Neil Williams, FCO
John Fiennes, UKRep

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Dear Kirsten

TAKEOVERS DIRECTIVE/BARRIERS TO TAKEOVER IN EUROPE

1. Thank you for your letter of 14 September reporting on Commission plans and views within the Parliament in relation to the Directive.

2. You and I subsequently met Karel Van Hulle to probe Commission thinking in more detail. Their plan, in essence, is to await the report from the High Level Group of experts expected at the end of the year, then in light of that to work up a new proposal for the Directive and a separate proposal designed to create a level playing field for takeovers in the EU. These would be presented, presumably together, after Easter with a view to reaching agreement between the Council and Parliament at 1st Reading by the end of next year. At this stage it is quite difficult to predict the contents of the Commission proposals, let alone the end result after it has been marmalised in the co decision process. We know broadly what (they say) they would like to present, and it is encouraging from our perspective. But they may find it difficult to reach an agreement that achieve anything very substantial in terms of bringing down takeover barriers. We will need to press our case on a number of fronts, including the High Level Group, the Commission, other Member States and the Parliament.

3. The High Level Group has been asked to advise on the so-called "level playing field" issue amongst other things. This means different things to different people. To the German Government it seems to be confined to outlawing differential voting rights in listed companies, as they have done domestically. Differential voting rights are a classic means of preventing a company takeover. They are permitted in just about every other Member State, including the UK, though here they are now rare as a poison pill mechanism (I comment below on the UK position).

4. To us, a level playing field for takeovers means more than just dealing with differential voting rights, though this is a key element. The attached note which I have previously sent you identifies a range of barriers. It is probably impossible to tackle cultural barriers, and would be very difficult to abolish the structural and regulatory ones. Technical barriers though should be more susceptible to legislative action. The most important concern the appointment and dismissal of directors, the absence of "squeeze out" powers, and problems identifying beneficial shareholders. We discussed them last week with the Commission, who were very receptive. They have already talked about reviving provisions in the defunct 5th Company Law Directive which would have prohibited a requirement for super-majorities to appoint/dismiss directors and prohibited special shareholder rights to appoint a majority of directors. This is potentially very good news, though I imagine it will go down like a lead balloon in parts of Germany where the rule that a 75% majority is needed to dismiss a shareholder-appointed member of the supervisory board is well-entrenched. I get the impression the Commission would quite like to punish the Germans for killing the Directive – turning the tables on them by using their own demands for a level playing field to outlaw other takeover barriers in Germany would be amusing.

5. We have discussed takeover barriers with Jonathan Rickford, the UK representative on the High Level Group, who as you would expect is very receptive to our ideas. The indications from the first meeting of the Group are that most if not all of the members, including the German, are emphatically not "old school". The Commission can be expected to try and steer the output from the Group in the direction it wants, and I am fairly hopeful therefore that we will be quite pleased with the report.

Differential voting rights

6. As noted above, differential voting rights are permitted in the UK. There are no restrictions in company law on the existence of non-voting shares, multiple voting rights attached to shares, or maximum permitted voting rights. The Company Law Review in its final report recommended against prohibiting differential voting rights, but recognised that regulatory authorities might wish to restrict them in the case of quoted companies. The Listing Rules do not prohibit them, though they do require that listed securities are freely transferable. The London Stock Exchange is said to frown on multiple and maximum voting rights, and abolished its own 4.9% maximum shareholding rule when it floated last year. But there are some well-known UK listed companies which have provisions in their articles preventing them being taken over: for example, you cannot acquire 15% of the votes in BT without the prior approval of the board of directors; you cannot own more than 15% of Reuters, and there is a special share held by the Reuters Share Foundation which can be used to out-vote all ordinary shares; and I believe Schroders has a mechanism by which control is kept in the hands of the Schroder family. There are probably other examples. In the main, such devices have been abolished in UK listed companies as market sentiment has turned against them, and institutional investors have made quite clear to us that they would very much like to see them abolished in all listed companies.

7. Aside from privately-held special shares, there are also Government-held ones of course

8. The Commission will be very keen to tackle privately-held special shares and similar defensive mechanisms. The issue for us is how hard we should encourage them in this in the interests of opening up Continental companies to takeovers (and in the interests of shareholders in UK companies), but in the face of likely opposition from BT, Reuters and others. We will need to come to an agreed Whitehall position on this. As a starting point, we have to identify the companies concerned, and who within HMG may have an interest. For example, CI Directorate here presumably have an interest in the BT restriction, and I guess DCMS in Reuters. I believe HMT may have gathered information on companies with privately-held special shares in the context of the BAA case. To my mind, the starting position should be that any special shares and similar powers permitted for public policy reasons should be held by Government, and it is up to the companies to try and justify why such powers should be in private hands. We would have to bear in mind that to argue in Brussels for exemptions for privately-held special shares would weaken our position on takeover barriers, not to mention that any exemptions would apply throughout Europe.

9. It seems the Commission are uncertain at present whether to attempt to restrict Government-held special shares as part of their barriers exercise. They realise they would have a battle on their hands with lots of Member States, including the UK, and this would almost certainly slow down progress. But they seem to think the Parliament will demand that they deal with the issue. They are awaiting the outcome of the present ECJ cases, to see if the Court permits golden shares, and if so, whether the judgements might form the basis for an exemption on public policy grounds.

10. It may be that we will need the Cabinet Office to convene a meeting of interested Departments. I will discuss with Mark Sweeney.

European Parliament/Lord Inglewood

11. You asked for views on Lord Inglewood's "cunning plan". As I understand it, he is suggesting a maximalist approach to tackling takeover barriers in order to remove the scope for German opposition to the Takeovers Directive. This chimes very much with what I have said above. Obviously it would be helpful if the Parliament were pressing for more rather than less. Somehow though I can't see it happening.

12. German arguments about the need for a level playing field were a crude attempt to lend their rejection of the Directive an air of respectability. Everyone knows it is far more difficult to take over a German company than a UK or US one, and that will continue to be the case even if differential voting rights are abolished in the rest of Europe, because of all the other barriers that exist. I do not believe the Germans, or the others who voted down the Directive, are serious about wanting to see a level playing field for takeovers. I got the impression that many MEPs would like to see takeovers abolished, not takeover barriers. I suspect they do not believe they will succeed in having differential voting rights imposed on the rest of the EU - there is overt opposition from Sweden, Finland and Luxembourg, and could well be opposition from France, Italy and others (as noted above, our own position is not straightforward either). If that is true, there is only one alternative according to Lehne – "concessions" to Member States in the text of the Directive (ie Article 9).

13. Even if differential voting rights and other barriers were abolished, there will still be plenty of scope for opponents of the Directive to argue that more is needed. For example, it would not deal with the perceived lack of a level playing field with the US (ie the fact that US companies are permitted to have poison pills in place). In fact, by removing other barriers to takeovers of EU companies, they could argue that the playing field would be tilted even further in favour of US companies. (Not that we accept the argument that US companies are immune to takeover by EU companies - all the evidence suggests the contrary. Apparently, any bid for a US company almost always succeeds.)

14. I would not be in the slightest bit surprised therefore if the Germans continue to argue for a relaxation of the Article 9 restrictions on frustrating action even if they succeed in imposing one-share-one-vote on all, and they may find they have more support next time round from other Member States such as Belgium and Netherlands who were never terribly keen on Article 9 in the first place

15. In short, let us encourage Lord Inglewood if he thinks he can persuade his colleagues to press for stronger action against takeover barriers. Frankly, I think he will have difficulty, but we should look for support from every direction

16. I am copying this to Andrew Land and Samantha Beckett (HMT), Richard Rogers and Robert Burns (CLI, DTI), Hugh Savill (EP, DTI), Rolande Anderson (CP, DTI), John Arnott (CIL DTI), Mark Sweeney (CO), Nick Williams (FCO) and John Fiennes (UKRep).

Philip Sack
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LIST OF BARRIERS TO TAKEOVERS

The main barriers to takeover can be divided into 4 categories: cultural, structural, technical and regulatory.

Cultural barriers

In the UK incumbent management protecting itself tends to be regarded as unethical. In other countries, predators acquiring companies over the heads of management may be seen as unethical.

In some countries, there may be a tradition of directors owing duties to stakeholders, especially employees, rather than first and foremost to shareholders.

There may also be a stronger tradition of long-termism on the Continent, with maximisation of investor returns regarded as short-termism.

There may be strongly-entrenched attitudes against relinquishing family ownership and accepting foreign investment/ownership, and an expectation that the government will intervene to prevent foreign acquisitions.

Structural barriers

In the past the greater use by continental companies of debt rather than equity as the primary source of finance, meant there were relatively few listed companies compared to the UK and US, and a relatively small free float of shares. This is certainly changing in some countries now.

The concentration of shareholdings in the hands of families, management or parties connected with management makes hostile bids difficult. In Germany, the role of banks in particular, which often have large shareholdings, sit on supervisory boards, provide much of the finance, and hold and vote bearer shares, means they can play a decisive role in whether a hostile bid will succeed (or even whether it is worth attempting one). The existence of cross-shareholdings and triangular shareholdings between companies is another form of defence, as is the French system of "hard core" (*noyau dur*) shareholders who agree not to sell shares to outsiders.

Entitlement of employees and trade unions to sit on supervisory boards in two-tier board systems can make any type of takeover more difficult

Technical barriers

Unequal voting rights. Both restrictions on voting rights (eg non-voting shares for stock exchange listing, or maximum limit to voting rights irrespective of number of voting shares held, including limits on voting rights if acting in concert), and special voting rights (eg double votes if shares held for a certain length of time, or multiple voting rights for founders or directors). Since June 2000 German law has generally prohibited maximum voting rights. The (now defunct) proposed 5th Directive would have imposed on public companies proportionate voting rights, with an exception allowed for preference shares in certain circumstances.

Restrictions on the transfer of shares. eg sale of shares requiring approval by shareholders or board of directors, sale to be made pre-emptively.

Appointment and dismissal of directors. In Germany the general rule is that a 75% shareholder majority is needed to dismiss the shareholder-elected directors on the supervisory board before their five year term has elapsed, while the employee representatives can be removed only by the employees. The articles of association may impose a different majority rule and additional requirements. In addition the supervisory board, acting by a simple majority, may petition the court to remove a board member for material cause. Members of the management board of German public companies may only be removed by the supervisory board before the expiry of their (usually five year) term of office for "serious cause", in particular, a gross breach of duties, inability to manage the company properly, or a no-confidence vote by the shareholders meeting unless such vote was made for "obviously arbitrary reasons". These requirements can create a further obstacle to a successful bidder obtaining effective control of day to day management. The proposed 5th Directive would have prohibited Member States laws or company articles from requiring a super-majority for the appointment or dismissal of directors, including directors on both boards in the two-tier structure. It would also have prohibited company's articles from giving particular categories of shareholders an exclusive right to nominate a majority of shareholder-appointed directors.

Proxy voting. The power of the depositary institution for bearer shares (often banks connected with incumbent management) to hold the proxy for the related votes, ie to vote shares without specific instructions from the beneficial owner.

Lack of squeeze out powers in some countries and/or strong minority rights making control difficult to consolidate and thereby making takeovers less attractive. The European Parliament sought a change to the Takeovers Directive requiring compulsory acquisition powers in all Member States – the provision was acceptable in principle, but needed amending so that undesirable changes to the relevant provisions in the Companies Act (Par

XIIIA) would not have to be made. The Commission has asked a High Level Group of company law experts to consider a possible harmonising provision.

Identification of shareholders. The widespread use of bearer shares makes it difficult to analyse the structure of shareholdings to see if a company is open to an offer, or to approach shareholders directly. This lack of information on who owns the shares may be compounded by the absence of a requirement for a publicly-available share register, the absence of the UK's section 212-type powers for companies to enquire into their ownership and a relatively high disclosure threshold (the Major Shareholdings Directive requires only a 10% threshold; many countries use 5% as the initial threshold; the UK uses 3%.)

Accounting information. Difficulty of obtaining statutory accounting information in some countries, and therefore of identifying suitable takeover targets

Poison pills. A conditional agreement or event triggered by a change of control or an acquisition of voting shares beyond a specified threshold, eg the issue of shares to certain shareholders or everyone except the new shareholder, triggering of put and call options on holdings in joint ventures, repayment of debt facilities, golden parachutes for directors, tin parachutes for employees, transfers to pension funds.

Other defensive measures. Any action taken by a (potential) target company board during the course of a bid, or when a bid is expected, which could effectively result in the company becoming less attractive or preventing shareholders taking a decision on a bid, eg issuing shares or options, selling the "crown jewels", acquiring material assets or incurring material liabilities, entering into significant new contracts, buying back existing shares.

Regulatory barriers

State-control of companies in competitive markets.

The existence of golden shares, especially those held by the Government, conferring for example, the right to veto a takeover or the acquisition of shares above a certain threshold (eg 10 or 15%).

Government intervening on spurious competition grounds, or on prudential (banks and other financial companies), security of supply (eg energy, water, telecoms), independence or plurality of the media, national security (defence mergers) or public health grounds.

Government intervention to delay bids so a more acceptable white knight or a "national solution" can emerge.

BARRIERS TO TAKEOVERS IN THE EU

1. In mid-1989 DTI commissioned Coopers & Lybrand to undertake a study of barriers to takeovers in the EC. The study was published in October 1989. It concluded that the main barriers to contested takeovers are structural (eg greater use of debt finance than equity by European companies, existence of family and cross-shareholdings) and cultural (eg shareholders' negative view of hostile takeovers) rather than technical, and therefore not susceptible to attack by legislation. But if attitudes to takeovers were to change, the technical barriers would assume greater importance, so it would be opportune to try and prevent this happening. The report also pointed out that dismantling barriers could make <u>agreed</u> takeovers easier as well as hostile ones because the threat of a hostile bid might persuade the target board to negotiate with the potential bidder.

2. In January 1990 DTI issued a consultative document to identify priorities in tackling takeover barriers, and a separate consultative document on the draft 5th Company Law Directive (which included *inter alia* measures to dismantle barriers). In April 1990 DTI published the results of its consultation on barriers and urged the Commission to tackle the key technical barriers, which it identified as accounting problems (ie the difficulty of obtaining reliable financial information on overseas companies), unequal voting rights, proxy voting practices, poison pill tactics, difficulties with appointing and dismissing directors, lack of powers to acquire a residual minority of shares ("squeeze out" powers), difficulties in identifying shareholders, and restrictions on the transfer of shares.

3. In May 1990 the Commission responded to the UK by proposing amendments to the 2nd Company Law Directive (to regulate acquisitions of shares by subsidiaries in their parent companies), the draft takeovers directive (prohibition on certain defensive measures during the bid period) and the draft 5th Directive (to limit differential voting rights, to prevent national law or a company's memorandum and articles from requiring a majority greater than a simple majority to make changes to a company's board, and to forbid provisions in a company's articles which give certain shareholders the exclusive right to propose the appointment of all directors).

4. The changes to the 2nd Directive were made in 1994 but otherwise the exercise ran out of steam because of a lack of willingness by the Member States to dismantle barriers, coupled with UK opposition to other elements of the 5th and 13th Directives.

5. There are strong arguments for returning to the subject now:

- The recent rejection of the Takeovers Directive by the European Parliament highlighted the existence of barriers to takeover of EU companies. The Commission said that it would be inviting a group of experts to examine a number of issues concerning company law in the EU, one of which was the question of a "level playing field" for takeovers in the EU. The issue is therefore back on the agenda in Brussels, and the UK should take the opportunity to influence the debate.

- The spate of hostile takeover bids on the Continent over the past two years or so (eg Vodafone/Mannesmann, Olivetti/Telecom Italia, BNP/Paribas/SG, Elf/Total, and Italian banks and insurers) suggests that cultural barriers and perhaps structural barriers to takeover are coming down. This has two implications - technical barriers to takeover could assume greater importance; and other Member States may be more willing to consider tackling technical barriers than they were in the past.

- The Commission appears more willing to tackle barriers than it was some years ago, as evidenced by its apparent disapproval of poison pills/defensive measures during negotiation of the takeovers directive, its recent activity relating to Government-owned "golden" shares, and its challenge of some Member States' declared wish to block foreign takeovers of key industries.

6. It should be recognised though that the outcome could have drawbacks. New EC legislation could threaten UK legislation which allows differential voting rights - the Company Law Review proposed that the law should continue to place no restriction on the freedom of companies to have separate classes of shares with different voting (or other) rights (*Completing the Structure*, p87). There are UK public (including listed) companies which have special shares conferring multiple voting rights and/or which have restrictions on the maximum number of voting shares any one person may hold. It could also be argued that the difficulty of making bids, especially competing bids, may be helping to keep the prices of target companies down in the rest of Europe.

7. It may be that evolution of capital markets will force companies and perhaps Member States to dismantle barriers to takeover without the need for EU legislation. It has been reported for example that investors in French companies have campaigned for the abolition of double voting rights, though it is not clear to what extent they have met with any success. Germany's decision to prohibit differential voting rights and the practice of restricting voting rights to a maximum of 5% could also be seen as a response to growing pressure from the markets.

8. DTI would therefore welcome views from the City consultative group on the Takeovers Directive, firstly, on whether the Government should be pressing the Commission to tackle barriers to takeover, and if so, what the priorities should be. The attached annex sets out some of the generally-recognised barriers to takeover, and suggests ways in which the technical barriers could be removed.

DTI Company Law & Investigations Directorate
12 July 2001

ANNEX: LIST OF BARRIERS TO TAKEOVERS

The main barriers to takeover can be divided into 4 categories: cultural, structural, technical and regulatory.

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Entitlement of employees and trade unions to sit on supervisory boards in two-tier board systems can make any type of takeover more difficult.

Technical barriers

Unequal voting rights. Both restrictions on voting rights (eg non-voting shares for stock exchange listing, or maximum limit to voting rights irrespective of number of voting shares held, including limits on voting rights if acting in concert), and special voting rights (eg double votes if shares held for a certain length of time, or multiple voting rights for founders or directors). Since June 2000 German law has generally prohibited maximum voting rights. The (now defunct) proposed 5th Directive would

have imposed on public companies proportionate voting rights, with an exception allowed for preference shares in certain circumstances.

Restrictions on the transfer of shares. eg sale of shares requiring approval by shareholders or board of directors, sale to be made pre-emptively

Appointment and dismissal of directors. In Germany the general rule is that a 75% shareholder majority is needed to dismiss the shareholder-elected directors on the supervisory board before their five year term has elapsed, while the employee representatives can be removed only by the employees. The articles of association may impose a different majority rule and additional requirements. In addition the supervisory board, acting by a simple majority, may petition the court to remove a board member for material cause. Members of the management board of German public companies may only be removed by the supervisory board before the expiry of their (usually five year) term of office for "serious cause", in particular, a gross breach of duties, inability to manage the company properly, or a no-confidence vote by the shareholders' meeting unless such vote was made for "obviously arbitrary reasons". These requirements can create a further obstacle to a successful bidder obtaining effective control of day to day management. The proposed 5th Directive would have prohibited Member States' laws or company articles from requiring a super-majority for the appointment or dismissal of directors, including directors on both boards in the two-tier structure. It would also have prohibited company's articles from giving particular categories of shareholders an exclusive right to nominate a majority of (general meeting appointed) directors.

Proxy voting. The power of the depositary institution for bearer shares (often banks connected with incumbent management) to hold the proxy for the related votes, ie to vote shares without specific instructions from the beneficial owner

Lack of squeeze out powers in some countries and/or strong minority rights making control difficult to consolidate and thereby making takeovers less attractive. The European Parliament sought a change to the Takeovers Directive requiring compulsory acquisition powers in all Member States – the provision was acceptable in principle, but needed amending so that undesirable changes to the relevant provisions in the Companies Act (Part XIIIA) would not have to be made. The Commission is expected to ask a group of company law experts to consider a possible harmonising provision as part of a review of several EC company law issues

Identification of shareholders. The widespread use of bearer shares makes it difficult to analyse the structure of shareholdings to see if a company is open to an offer, or to approach shareholders directly. This lack of information on who owns the shares may be compounded by the absence of a requirement for a publicly-available share register, the absence of the UK's section 212-type powers for companies to enquire into their ownership, and a relatively high disclosure threshold (the Major Shareholdings Directive requires only a 10% threshold; many countries use 5% as the initial threshold; the UK uses 3%.)

Accounting information. Difficulty of obtaining statutory accounting information in some countries, and therefore of identifying suitable takeover targets.

Poison pills. A conditional agreement or event triggered by a change of control or an acquisition of voting shares beyond a specified threshold, eg the issue of shares to certain shareholders or everyone except the new shareholder, triggering of put and call options on holdings in joint ventures, repayment of debt facilities, golden parachutes for directors, tin parachutes for employees, transfers to pension funds.

Other defensive measures. Any action taken by a (potential) target company board during the course of a bid, or when a bid is expected, which could effectively result in the company becoming less attractive or preventing shareholders taking a decision on a bid, eg issuing shares or options, selling the "crown jewels", acquiring material assets or incurring material liabilities, entering into significant new contracts, buying back existing shares.

Regulatory barriers

State-control of companies in competitive markets.

The existence of golden shares, especially those held by the Government, conferring for example, the right to veto a takeover or the acquisition of shares above a certain threshold (eg 10 or 15%).

Government intervening on spurious competition grounds, or on prudential (banks and other financial companies), security of supply (eg energy, water, telecoms), independence or plurality of the media, national security (defence mergers) or public health grounds.

Government intervention to delay bids so a more acceptable white knight or a "national solution" can emerge.

Possible solutions to technical/regulatory barriers

Nb. No comment is made on the merits or otherwise of the following.

Require one share one vote.

Prohibit restrictions on maximum voting rights and on the transferability of shares.

Prohibit the exercise of votes by depositories without a specific proxy.

Require a power for the general meeting of shareholders to dismiss and appoint all, or a majority, of shareholder-appointed directors without significant delay or cost, and without the need for a super-majority.

Require disclosure of beneficial ownership of shares, including bearer shares.

Require all Member States to provide for public access to company share registers.

Require or facilitate the introduction by all Member States of "squeeze out" provisions.

Prohibit poison pills.

Restrict defensive measures and the deployment of poison pills by the boards of target companies, along the lines of Article 9 of the defunct Takeovers Directive.

The Commission could be encouraged to monitor domestic takeover legislation and practice (supervision of takeovers, competition investigations, use of sectoral regulation), and the use of special shares.

LIDDLE AND DONNELLY VIIST TO COMMISSION - DG ENTERPRISE
BIOTECHNOLOGY IN EUROPE

Purpose

To support DG Enterprise in seeking measures to boost the research and competitiveness sides of biotechnology in Europe.

Lines to take

- UK welcomes the recent consultation exercise the Commission recently launched as a prelude to them drafting their Strategic Vision.

- We are still drafting our reply. However, the UK will play an active part highlighting economic benefits accruing from biotech, and the need for the right European economic conditions for biotech to flourish.

- Barcelona will provide useful opportunity for EU heads of State to comment on Commission's Strategic Vision for European biotechnology by 2010.

Background

EC's Consultation Document : Towards a strategic vision of life sciences and biotechnology

1. On 4 September 2001, the EC launched a comprehensive consultation document seeking views/comments from interested parties that will feed into an EC Strategic Vision for Life Sciences and Biotechnology for 2010, which will be drawn up by the end of this year. The document covers: innovation and competitiveness; research; ethical implications; public perception; regulation; and international relations. Comments are to be in by mid-November.

2. Although the Commission's Strategic Vision will be presented to the Council by the end of this year, the Commission intend to raise it at Barcelona next spring.

3 We welcome this consultation exercise. It is complementary to recent initiatives we have taken to seek agreement from other Member States on practical proposals for the Commission to take to develop biotechnology in Europe. Our response, which we are still drafting, will be focussed around the main messages that future Commission proposals on biotechnology should basically:

- allow scientific research and innovation to progress so that Europe will be seen as a global leader in bioscience.

- create the right legislative framework to create an atmosphere in which biotechnology research, competitiveness and innovation can flourish. Regulation will need to be based on sound science and should be proportionate, practicable and enforceable.

- encourage further dialogue between scientists and other stakeholders in society about the benefits and the risks of biotechnology.

DG Enterprise

4. There have been moves in the Commission, and European Parliament (John Purvis' report "Future of the Biotechnology Industry " passed virtually unamended by the European Parliament in March 2001) to make DG Enterprise the natural home of biotechnology policy in the EC. Currently it is divided among DGs Research, Environment (GMOS), Agriculture, Health and Enterprise. We would support such a move. But we would need to be reassured that although DG Enterprise would promote measures to boost the industry, that they would also look critically at regulations from other DGs (especially environment) which could have an adverse impact on innovation and productivity.

DTI - 24/10/01

NO 10/CABINET OFFICE MEETING WITH COMMISSIONER LIIKANEN, 31 OCTOBER

eEUROPE, E-COMMERCE AND COMMUNICATIONS: BARCELONA PRIORITIES

Lines to take

1 Agree need to keep eEurope high among competing priorities. But choose key issues carefully - avoid shopping list/proliferation of new targets (as happened at Stockholm).

2 Barcelona must lay the ground for Europe's strategic approach after current eEurope targets expire at end 2002.

3 Worth focusing on Europe's broadband future:

- A step-change in speed, content and accessibility of the Internet is needed. So we envisage that the post-2002 successor to the eEurope Action Plan should be written from a broadband perspective. It would be a strategy with a similar scope as eEurope, but the individual actions would be adjusted/extended to reflect the potential and impact of broadband.
- Broadband strategy must focus on demand-side factors pulling take up and exploitation of broadband (eg compelling content: suitable applications for schools and business; multimedia skilling; e-government), as much as on infrastructure roll-out.
- Do you agree this mainly requires deepening what we have already in eEurope, and at more local level?

4 Barcelona conclusions could therefore contain messages on:

- clear top-level commitment to broadband future
- thorough and deeper eEurope implementation
- intensified EU action on exchanging member states' best practice.

5 Willing to exchange more detailed ideas ahead of Commission's January Communication on eEurope's future.

6 Encouraging business participation in planning Europe's e-agenda. There is weak evidence of drive and organisation, despite the allocation of a third of the eEurope targets to be achieved by the private sector. Stronger sectoral forums and consultation? An eEurope Business Advisory Committee?

NO 10/CABINET OFFICE MEETING WITH COMMISSIONER LIIKANEN, 31 OCTOBER

eEUROPE, E-COMMERCE AND COMMUNICATIONS: BARCELONA PRIORITIES

Background

1. The eEurope Action Plan

This is Europe's strategic plan for realising the economic dividends of the information society, as envisaged by the Lisbon Summit on the knowledge economy. Over 60 policies and initiatives are listed for completion by end 2002, with responsibility allocated between Member States, the Commission and the private sector.

Priority streams of activity (corresponding to the UK's own priorities) are:

- cheaper internet through competitive communications services
- confident and early adoption of e-commerce through a coherent legislative framework and encouragement for consumers and SMEs
- step change in skills and training to cope with ICT and e-commerce

Other streams concern e-government; research networks; ICT in schools; social inclusion; ICT investment; and use in health and transport.

2. UK approach to eEurope

*e*Europe was moulded by the UK's national strategy UK Online. It *can* be seen as a mere repackaging exercise (the Trade and Industry Select Committee recently referred to it as "grandiose and flabby"). However, its added value is in giving priority to an e-commerce led information economy (rather than one led by social and employment imperatives for example), and generalising across Europe the UK's experience of strong co-ordination, leadership and monitoring to produce a sense of urgency and commitment.

Consistent with this, the UK aims to advocate its own positive experience, guard *e*Europe against exposure to delay or loss of confidence, avoid proliferation of side-issues, maximise lessons from proper benchmarking, highlight the role of the private sector in realising the targets, limit the risk of an unhelpful shift of emphasis away from private sector investment and development of markets on 3G mobile and future internet technology, and raise Europe's potential for leadership in development of global ICT strategy and regulatory solutions for e-commerce.

3. eEurope progress and Presidency handling

The Action Plan is on track in the priority areas. In December the Commission will produce a first full benchmarking of progress and performance. This is the basis for exchanging best and worst practice, which in turn will help determine policy after 2002.

The Stockholm Summit resulted in emphasis on new strands of horizontal co-ordination rather than new projects. The Belgian Presidency is stressing the social dimension with a likely Council Resolution on e-inclusion, and another on network security. A key issue for the Belgians and probably the Spaniards is achieving European Parliament approval for the major package of regulatory reforms for communications, on which Council has already reached common position.

The Spanish Presidency, besides steering the communications regulatory package through remaining processes, wants the Telecoms Council to take on an assortment of information society issues. Broadly, the forward-looking and external-facing character of this agenda suits the UK. It is favourable for our aims on follow-up to *e*Europe Action Plan; stronger role for private sector in policy development; settling any e-commerce and communications regulatory problems; and achieving common ground and impetus on international issues. One source of UK input will be a bilateral Anglo-Spanish IT Ministerial round table with business on 8 November covering business and consumer confidence in e-commerce, e-business issues, and broadband Europe.

The Barcelona Summit can be influential for the direction of future *e*Europe strategy. As preparation, the Commission will present benchmarking results in December, and a Communication on eEurope progress in January, for discussion at an informal Information Society Council meeting in February.

4. Broadband Europe

The Government is considering options for action to stimulate the roll-out and use of broadband communications, so that the UK regains its leading role here and can maintain its lead in 3G mobile development. A report from the widely based Broadband Stakeholder Group is under consideration.

When Ministers' choices on UK broadband developments are clear, we need to ensure European policies are supportive of them. Our input will also ensure that Europe's knowledge economy gets the benefit of a step change in speed and content of communications. In general, infrastructural obstacles to broadband at the European level are being addressed through current regulatory reform to promote competitive communications access and services. Most European-level infrastructural limitations have already been eased by the eEurope strategy (eg on spectrum allocation; easier access to EIB and regional structural funds). Most scope for new EU activity probably lies in addressing obstacles to take up and exploitation of broadband (eg policies and programmes for schools and distance learning, small firms' awareness, content and applications, e-government). To underpin this, Barcelona could adopt a political commitment to inject a broadband focus into Europe's e-agenda when the renewal of the eEurope Action Plan after 2002 is discussed.

Douglas Alexander raised this issue with Commissioner Liikanen in the margins of the October 15 Telecoms Council. Liikanen confirmed his interest in focussing on broadband at Barcelona.

CII2 DTI 26 October 2001

NO 10/CABINET OFFICE MEETING WITH COMMISSIONER LIIKANEN, 31 OCTOBER

eEUROPE, E-COMMERCE AND COMMUNICATIONS: BARCELONA PRIORITIES

Further background: note of Robin Young's meeting with Robert Verrue, DG Information Society

From: Bartelot Richard (Mr RA)
Sent: 11 October 2001 18:21
To: CII Directors - BC Group; 'Parker Chris - e-Envoy e-Commerce -'; 'Atkinson Moira OEE'; 'Ascough Ian - e-Envoy e-Government -'; Duggan Michael (Dr MJ); Smith Geoff (Mr GJ); 'Lambert Anne OFTEL'; 'HendonD@ra.gtnet.gov.uk'; Bellingham Jim (Dr JR); Savill Hugh (Mr NH); 'Leake Nick UKREP'; Love David; Conway, Matthew; Tait, Mary; Pinder, Adrian; Russell Guy; Holterhoff Mary; Macintyre Bill
Subject: FW: Note of Robin Young's Meeting with Robert Verrue, DG Information Society

David Love cc CII Directors, A Lambert, D Hendon, C Parker and as above

I recommend you and cc addressees read this record of a good quality discussion with a reasonably satisfied client.

Confirms DG INFSO well focused on a broadband future. As we agreed, the note is helpful for your steering Douglas Alexander around the margins of the Telecoms Council on Monday, especially as Liikanen has now asked to meet him there.

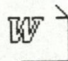
Particular points:

- para 4 - hint of new EU legislation promoting flat rate tariffing
- 5 - recognition of the tall order facing new member states (Jim to note)
- 6 - step up exchange of dialogue with Commission on Ofcom
- 7 - network security/cybercrime (Geoff)

Couple of points to explain note taker's glitches:

- para 4 the e-govenrment conference is at end next month not next year - Lord Macdonald attending
- para 8 the December data pack is the Commission's comprehensive benchmarking report on eEurope: Internet penetration and 22 other indicators.
- para 8 The Feb 2002 Council meeting is an informal Telecoms Council in Vitoria, Spain, which could be an important for processing conclusions to be agreed on the knowledge economy at the Barcelona Summit.

Richard



RobertVerrueNote.doc

To: ci PS/Sec of State
PS/Mr Alexander
Bill Stow UKREP

JONATHAN SPENCER
BILL MACINTYRE CII
JOHN ALTY EP
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From:

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8 October 2001

NOTE OF A MEETING BETWEEN ROBIN YOUNG AND ROBERT VERRUE, DG INFORMATION SOCIETY, EUROPEAN COMMISSION

Robert Verrue, DG Information Society, on 5 October 2001. Mr Verrue was accompanied by Andy May of DG IS. John Alty, Antony Vinall and Fergus Harradence were also present.

2. Robert Verrue began by outlining the structure of DG IS. He said that DG IS had two key responsibilities: the creation of a regulatory framework and promoting the development of electronic communication; and promoting unbundling of local loops and broadband uptake. With regard to the former, digital convergence had had a major effect. He hoped that the Belgian Presidency would see the adoption of a number of new Directives to take these issues forward. He was also hoping to gain agreement to a 15 month period for transposition of the Directives, a relatively short period. With regard to local loop unbundling and broadband, Robert Verrue said it had been difficult to take this forward due to obstruction by incumbents who had formerly enjoyed monopolies. He felt that only the UK and Germany were really active in pushing incumbents to open the local loop, and most of the EU member states were inactive, despite the fact that unbundling was critical to the success of broadband.

3. Robert Verrue said that the rest of DG IS was responsible for managing research and application programmes for communications technologies, the e-content areas of the eEurope action plan. The eEurope Action Plan, a series of actions intended to create a dynamic

information society in Europe, was a key part of DG IS's work. Robert Verrue said he thought Europe was "behind where it should be" on rates of internet penetration and broadband uptake. DG IS also gathered statistical information for the member states to create a picture of the uptake of new technologies. One of the reasons for this was that he hoped to be able to identify and best practice amongst the member states. Robin said this was a useful initiative which the UK supported; the UK was looking for ways to drive the creation of the information society forward, and recognised it lagged in certain areas, notably broadband, although it was ahead in others.

Broadband

4. Robert Verrue said a key question was whether the right broadband policies were in place. DG IS needed to look at tariff rates, and whether a policy framework for setting these was needed; this could possibly result in flat tarification, although this was unlikely. Andy May said that it was possible to envisage a recommendation for a flat tariff rate on certain types of product, although a strong evidence base would be needed to justify this and DG IS had not gathered this. Antony Vinall said that e-Government was a key part of eEurope, particularly for the UK. Robin Young agreed, saying the UK Government had committed itself to a series of challenging targets for e-Government initiatives. Robert Verrue said he would be organising a conference for Ministers on e-Government next year, and he hoped the UK would participate fully.

5. Robert Verrue said that the EU applicant countries would need to adopt the new Framework Package which was the result of the 1999 Communications Review. This would not be popular, as the applicant countries had already devoted considerable effort to negotiating the transposition the 26 Directives the Package would replace. It was justified because the new package would result in a significant simplification of the regulatory framework, which would be beneficial. However, a number of applicant countries would find it difficult to adopt as they did not have the necessary regulatory structures in place. Robin Young said that existing regulators (e.g. Oftel) within the member states could help. Robert Verrue said that DG IS had a budget to help candidate countries develop regulatory structures and train staff for these.

6. Robin Young said that recognition of communications convergence had led the UK to create Ofcom, which merged the current regulators of advertising, telecoms, the radio spectrum and broadcasting standards. Andy May said that the Ofcom model was potentially a model for the future of communications regulation, although there was a question as to whether the EU could create a similar structure at the present time. Robert Verrue said the EU would need to look at the UK as only the UK and Italy were attempting to develop unified communications regulators. In other member states this comprehensive approach would be impossible; for example in Germany, where broadcasting was the responsibility of the Lander.

7. Robert Verrue said that cybercrime was a key issue for DG IS, for which it shared responsibility with the DG for home affairs. The two DGs had issued a White Paper earlier this year on the issue, and had established a forum and a number of best practice groups to consider what the EU should do in this area, including whether to legislate, although he emphasised the forum had no preconceived ideas about the desirability of this. DG IS would need to be careful if it tried to frame legislation due to ECHR considerations. However, he felt that tighter controls in most member states were inevitable following the attacks in the US. Robin Young commented

that there would be pressure for the authorities to have greater access to electronic personal data. This was likely to influence the debate over the provisions of the Communications Data Protection Directive and the retention of e-mail traffic for law enforcement purposes. Robert Verrue accepted this was likely to be the case.

Preparations for Barcelona

8. Robert Verrue said Barcelona would be the first opportunity to review the Lisbon approach. DG IS would be circulating a data pack in December, which would be discussed at the Electronic Communications Council in February. The deliberations of the Council would input into Barcelona. The data pack would include comparisons between the EU and foreign countries, although due to weaknesses in comparative data, the statistics would need some qualification. Robert Verrue said he was under pressure to limit the preparations for Barcelona; the Spanish did not want a whole raft of documents, although he felt their approach was "optimistic" as the member states would inevitable wish to circulate documents on areas of interest. He thought the broad economic situation would also affect Barcelona, and may make it more difficult for the Spanish to control the agenda. However, he hoped to use Barcelona to drive the issue of broadband.

9. Robert Verrue concluded the meeting by saying DG IS had a very close working relationship with the DTI, matched by a good relationship between the Secretary of State and Commissioner Liikanen. The issue of data retention was the first issue on which the UK and DG IS had disagreed since 1996. He valued the support and intellectual input of the DTI, and said communications worked well.

10. Robin Young thanked Robert Verrue for the meeting. They agreed to keep in touch.

FERGUS HARRADENCE

NO 10/CABINET OFFICE MEETING WITH JOHN MOGG, 31 OCTOBER

ACCELERATING E-COMMERCE: NON-FINANCIAL SERVICES SINGLE MARKET ISSUES

Points to make

1. UK works closely with DG MARKT on opening up cross-border e-commerce, and achieving confident businesses and consumers.

2. The Lisbon e-agenda is based heavily on the success of principles set out in the e-commerce directive (especially the country of origin principle). Keen to work with Commission on consistent implementation among the member states. UK is consulting on this; we will do it thoroughly and correctly.

3. Welcome DG Markt efforts to see country of origin principle prevail in other legislative proposals on e-commerce, financial services and consumers. In UK experience, key to this is maximum coherence within and between member states, and within Commission; and full consultation with business and consumers. What are the current obstacles to coordination within the Commission? How can UK help?

NO 10/CABINET OFFICE MEETING WITH JOHN MOGG, 31 OCTOBER

ACCELERATING E-COMMERCE: NON-FINANCIAL SERVICES SINGLE MARKET ISSUES

Background

1. **The Lisbon Summit** conclusions recognised the achievement of agreement on the E-Commerce Directive. This is the key measure to remove barriers in the single market and set the legal framework for e-commerce in the EU. They urged member states to enhance the confidence on business and consumers in e-commerce by agreeing a number of other complementary measures by 2001. (This was achieved and includes measures on copyright, dual use of encryption technology, e-money (relaxed prudential rules for issuing pre-paid cards etc), distance selling of financial services, jurisdiction and mutual recognition of court judgements, and initiatives for settling online consumer disputes out of court).

2. The **eEurope Action Plan 2002** includes all the above measures in a chapter entitled "Accelerating e-commerce". They are on track, but at risk from two directions: ineffective coordination within the Commission on new proposals for legislation affecting e-commerce, especially in the financial services and consumer area; and inadequate or unfaithful implementation by the member states.

3. The **E-Commerce Directive** is the basic measure to achieve the EU legal framework for freedom to provide cross-border online services, and raise the confidence of consumers and businesses. It enhances the information to be provided to consumers on websites; clarifies rules on advertising, prohibits general obligations on service providers to monitor Internet traffic, or be authorised to take up online business; limits the liability of service providers for illegal information they may transmit or store; and encourages self-regulatory initiatives through industry codes of conduct.

4. The key principle in the E-Commerce Directive is the "country of origin principle". Each MS enforces EC and national law on providers established in it regarding the taking up and pursuit of business (the and must not restrict incoming services, although it can take case by case measures to do so subject to strict procedures. The Directive aims to provide legal certainty for a service provider located in the EEA to trade online in the single market on the basis of his own country's laws. This should produce a consequential reduction of the burden of having to know and comply with all the laws of the 18 EEA states where customers may reside, leading to economies of scale, competitiveness and consumer choice. However, this may mean a UK firm would have to comply with higher standards under UK law (eg financial services conduct of business rules), while competitors in other MS may be able to do business in the UK subject to their own lower standards. The conditional right to derogate in relation to a particular online service cannot be exercised routinely. There remain differences of interpretation among MS as to the degree of reliance businesses and consumers can place in these provisions. Legal advice is that there is a policy choice to be

made between a wide or narrow interpretation of many of the provisions and exclusions on the country of origin principle.

5. DTI has issued a consultation document on implementing the Directive in the UK. There are still issues to resolve between departments before the approach to the country of origin principle is finalised. The Treasury is consulting separately on financial services and e-commerce, but ministers are committed to taking decisions in the light of both exercises. In these circumstances, transposition in the UK by the January deadline is extremely tight, and a decision will be made to balance implementing on time with implementing in full confidence that the UK regulations will properly complement other member states' implementation. At a recent meeting with DG Markt officials, it appeared that about ten member states will miss the deadline.

6. There was controversy in 2000 over the review of the **Brussels Regulation**, which in some cases allows the consumer to sue in his home court in the event of a contractual dispute with a trader in another Member State. This is consistent with the E-Commerce Directive, which makes an exception from the country of origin principle for obligations arising out of consumer contracts. However, the end result is that it is up to the trader to take positive action to make clear on his web site whether he is offering services for sale in a particular EU jurisdiction or not, if he wants to be sure that his sales will not be deemed to be "directed at" the consumer in a particular country, and thus trigger non-UK jurisdiction unexpectedly.

7. The controversy over the Brussels Regulation has increased demand for progress on alternative ways of settling disputes such as ombudsmen and arbitration schemes **(Alternative Dispute Resolution – ADR).** The E-Commerce Directive requires Member States to encourage these solutions as an important part of the effort to increase the confidence of businesses and consumers to trade online. The Commission has set up EEJ-Net, a network of contact points for "European extra-judicial dispute resolution", and the UK has recently announced its own organisation for this.

8. The Commission plans to issue later this year a draft Regulation **("Rome II" Regulation)** to harmonise Member States' private international law rules on the law applicable to non-contractual obligations. There are a range of non-contractual obligations which are of relevance to business including product liability, personal injury, fraud, misleading advertising, unfair competition and infringement of intellectual property rights. Again, it will be difficult for online traders to ensure that their activities do not inadvertently trigger rights to sue under another country's legislation. The Commission was planning earlier in the year to issue a Green Paper, but decided to move directly to the issue of a draft text. The latest position is that DG Markt is believed to have ensured that the text from Directorate General for Justice and Home Affairs will not propose solutions based on a narrow private international law perspective and undermine the country of origin approach to determining the applicable law. In due course there will be a revision of the Rome Convention **("Rome I Regulation")** to harmonise Member States' private international law rules on the law applicable to contractual obligations.

9. We can expect the **Green Paper on consumer protection ("general duty to trade fairly")** to raise important issues about the interaction between the protection of consumers and the integrity of the single market. There could also be important implications for the home country principle of regulation established in the e-commerce directive. This would happen if, for example, there was a harmonised provision regarding avoidance of misleading advertising, but member states were still free to apply detailed national rules of which an e-commerce trader would need to be aware, alongside the laws of every other member state.

CII2
26 October 2001

SERVICES LIBERALISATION

Lines to Take

- Broadly support the two stage Internal Market Strategy for Services presented by the Commission. Hope it will remain the centrepiece for the Commission's action on removing barriers to services.

- Support the horizontal approach presented in the strategy and the use of the six stage business model.

- Welcome the Commission's intention to investigate a full range of regulatory and non-regulatory options before taking forward legislative or non-legislative initiatives as part of the Strategy.

- However, remain concerned that there are a number of initiatives that could potentially cut across the Strategy. Notably the recently published Commission Green paper on Consumer Protection and the Commission Communication on Contract Law.

Background

In general the internal market in services is much less developed than that in goods. Key areas where the Internal Market could be improved include the professions, mutual recognition of qualifications and cross-border advertising and marketing of services.

The Commission Communication on 'An Internal Market Strategy for Services' was adopted at the end of 2000 as a response to a specific request from the Lisbon European Council. The Strategy was endorsed by the Internal Market Council in March 2001 and subsequently by the Stockholm European Council.

The Strategy aims to remove the remaining barriers to the free movement of services within the Internal Market in order to allow services to move across borders as easily as within an individual Member States.

It is a two stage Strategy and focuses on barriers that can arise at different points in a six-step business model. The first stage (which is still underway and due for completion at the end of this year) is a thorough analysis of the existing barriers to cross border trade in services. The second stage, for completion by end 2002, will propose initiatives to remove these barriers.

In addition to the Strategy, there are a broad range of initiatives emerging from different Directorates-General in the Commission, all of which might have a significant impact on the regulatory environment for the provision of services in the EU. The Commission's initiatives are driven by widely different policy considerations, subject to the triangular tensions of market opening, consumer protection and private international law. These triangular tensions

are not irreconcilable at a level of principle. However, in separate negotiations it will be very difficult to avoid contradictions at a detailed level.

SMEs

Lines to take

· Vital that sufficient focus is given to SME issues and that action is taken to boost the European Small Firms Charter (an integral part of the Lisbon agenda);

· If the Small Firms Charter is to retain its currency we must have a strong report on actions taken since its adoption; this is a very important political tool for the Commission and Member States and we are keen that it figure strongly at the Barcelona Summit and in the Commission's Synthesis Report.

· We would strongly welcome a **politically focused extract** from the Small Firms Charter in the Synthesis Report covering the good achievements picked up on by the media, demonstrating that the Commission and Member States can deliver through such a mechanism.

· Much has changed in the UK as a result of the Small Firms Charter (the UK has submitted a Progress Report) and DG Enterprise. Significant recent achievements include:
Ø Proposals for lifting many of the burdens of company law - this involved entrepreneurs in drafting the proposals;
Ø A Government White Paper "Productivity and Enterprise - Insolvency - A Second Chance" setting out proposals for reform on insolvency law;
Ø New proposals on competition rules aimed at identifying public sector regulations which could be anti-competitive;
Ø The UK online for business initiative, a partnership between industry and government aimed at helping businesses get the full benefits of new information and communication technologies (ICTs);
Ø The opening of the Small Business Europe office in Brussels.

· We are calling for:
Ø Strong focus on the Small Firms Charter, highlighting positive actions of each Member State, and therefore areas where we should emulate each other.
Ø Greater involvement of small business in influencing policy in Europe - perhaps through the development of a network of Brussels based SME liaison points - acknowledge that the creation of the Enterprise Policy Group's Professional chamber is a significant step forward on this.

· The knowledge economy is crucial to growth in all business sectors, but we need more than words. The UK will be looking for:
Ø Renewed work on eEurope Action Plan, for example, using Multiannual Programme for delivery of Go-Digital benchmarking activity - comparison of EU and International rules and regulations, barriers to Broadband, measures to develop E-commerce in SMEs (including sectoral areas for SMEs).

· We also want to see greater focus on SME issues within the Industry Council, which normally focuses on major industry issues like shipbuilding. We would like to see the introduction of an SME segment in each Industry Council.

· Recent news from Commissioner Liikanen of the SME envoy within DG Enterprise most welcome but would welcome more information. Important that the envoy *works with officials* in the DG to help them to develop SME friendly policies and Directives.

· There are already good signs from the Spanish Presidency that they are interested in an SME focus at Barcelona, indicated by the SME Ministers' meeting planned for Madrid in February and their very positive reaction to SBS priorities on SMEs.

Briefing for Liddle & Donnelly to Brussels – Better Regulation

Meetings with Liikanen, Mogg and Liikanen's cabinet

Main Message

- UK needs a good Commission Action Plan for Laeken – firm commitments (concrete actions and deadlines) on establishing a robust impact assessment system, better and earlier consultation, a rolling simplification programme and structures as a minimum.

Likely attitudes

- Liikanen, Mogg and Liikanen's cabinet all likely to be positively disposed to this message, though they will probably cite internal politics as a reason for caution. The pirate copy of the draft Action Plan we have seen is reasonably good on consultation and simplification, OK on structures but weaker than ideal on impact assessment.

- Phil Wynn Owen will be in Brussels on 5 November to see Mogg, Colasanti and others to lobby specifically on this topic.

UPDATE ON BETTER REGULATION

European Commission's Strategy

The first major breakthrough on achieving better European regulation came at the Lisbon European Council in March 2000, which called for "a strategy for further co-ordinated action to simplify the regulatory environment... at both national and Community level" and gave high level political commitment to this agenda.

The Stockholm Council, one year on, then agreed the date by which that strategy would be delivered - by the end of 2001. The conclusions from Stockholm then went on to clarify that this would be achieved through the Commission working in co-operation with relevant groups, primarily the Mandelkern Group. They also mentioned consultation on proposed regulation, assessment of the impact of regulations, codification and review of existing legislation as key elements to the new regulatory environment.

The deadline by which the Commission's action plan for better regulation would be produced was further substantiated by the conclusions from the Gothenburg European Council, held in June 2001 which stated that it would be ready for presentation to the Laeken European Council in December 2001. Our current understanding is that the Commission will adopt the action plan on 14 November.

Governance White Paper

In July this year, the European Commission published its Governance White Paper and with it came a further promise that the Commission will present an Action Plan for Better Regulation to the Laeken European Council in December 2001. The paper itself contains several positive recommendations on better regulation that the UK welcomes and strongly supports. These include good initial recommendations on impact assessment, use of alternatives to regulation, minimum standards for consultation, establishment of a high-profile programme to review and simplify Community legislation and introduction of organisational arrangements.

Mandelkern Group

Although we are confident that the Commission is now on target to deliver its final report by the agreed deadline, we are continuing to work in close co-operation with both the Commission and other Member States to ensure that this commitment is fulfilled. One of the main vehicles for this co-operation has been the Mandelkern Group on Better Regulation, which was set up in November 1999 to develop a coherent approach to improving the European regulatory environment and to make proposals for how this could be achieved. The group is made up of representatives from all fifteen Member States and the European Commission. The UK played an active part in its establishment and has continued to do so in its subsequent activities.

The group's initial report, published in February 2001, sets out some general principles of better regulation and makes specific and practical recommendations on simplification and codification of existing legislation, regulatory impact assessments including alternatives to legislation, better consultation and the structures required to support these measures. All 15 members of the group committed themselves to the report's recommendations: the first time

that there had been such a degree of commitment on the issue. The group is currently working on its final report, which will be produced in time for discussion at Laeken.

Other Initiatives

Transposition Conference

On 16 October 2001 the Regulatory Impact Unit held a conference looking at how the UK handles European legislation. The conference gave the Government an opportunity to enlist the help of business and others in identifying where the problems lie, as well as to explain the efforts already being made to improve the way that the UK transposes European legislation into British law. The invited audience of about 80 delegates was made up predominantly of business people, although a number of Government officials and academics were also present. (Gerard de Graaf, the invited speaker from the Commission was unable to attend.)

Slim V

The Commission's SLIM initiative, or Simpler Legislation for the Internal Market, is currently in its fifth round. The working groups are expected to produce their final reports and recommendations later this autumn. Three different legislative sectors are currently being examined: the shipment of radioactive waste; pesticides residue levels; and the Cosmetics Directive. The UK is actively represented on the working group looking at the shipment of radioactive waste.

European Business Test Panel (EBTP)

The RIU has been assisting in the European Commission's most recent consultation of the European Business Test Panel on the revision of the Electromagnetic Compatibility Directive. This consultation period is now complete and the responses have been returned to the Directorate-General for the Internal Market for analysis. The Commission has completed its evaluation and the results are on both the Commission and RIU web sites. The next consultation of the European Business Test Panel is currently expected to be on Electrical and Electronic Equipment, to be launched late in 2001.

Regulatory Impact Unit
Cabinet Office
24 October 2001

SOCIAL AFFAIRS

Annexes:

A Robin Young's letter to Odile Quintin
B Draft Commission proposals on corporate restructuring (our translation)

Information and Consultation

The Belgians are moving very quickly to get this back into Council, with the first working group discussion on Monday 5 November. We are having an internal CO/No 10 discussion on 1 November and a Whitehall meeting on 6 November to discuss our negotiating strategy and a lobbying telegram has been sent to posts to elicit other MS reactions. For now, our line is that - while we welcome the movement in the EP (e.g. on sanctions) - we are clear that the Common Position must be maintained. It would be useful if:

- you could make this clear to Kridelka, Quintin and Tachmintzis;
- you try and get their views (particularly Kridelka's) on how they expect conciliation to pan out.

Agency Workers

DTI attended an experts group to feed into the process, which they followed up with a letter from Robin Young to Odile Quintin (attached). Basically, we are trying to argue against the Franco-Belgian dogma that agency work is 'second class' work on the basis that it benefits people with flexible working patterns, those seeking entry into the labour market, and firms coping with leave entitlements of permanent employees. We still have difficulty in seeing how we can operate with a user enterprise comparison. **If you could reinforce our views to Quintin and Tachmintzis that would be helpful**.

Corporate Restructuring

We have seen an under the counter copy of a draft proposal to be put to the social partners in early November (our unofficial English translation is attached). You can see from it that it essentially seeks to impose the French model of restructuring at a European level, and will saddle firms with significant costs and obligations and effectively give unions a veto over restructuring.

The specific proposals are:

- An obligation of "concertation" with workers' representatives, in advance of proposed restructuring and backed up with sanctions.

- An obligation to justify the proposals and to show they are proportionate. The Commission says companies must demonstrate that redundancies are the last resort and not the first action that is taken to reduce costs. The number of redundancies must be justified when compared with the economic case for them.

- Training obligation. Companies "must" help workers adapt to changing requirements by setting up continuous personal development programmes.

- Redeployment. If workers can be redeployed rather than made redundant, this must happen.

- Liaison with the local community and local authorities.

- Responsibility for sub-contractors. Companies at the head of the supply chain must assume responsibility for workers employed by sub-contractors in respect of restructuring, training and "security of orders".

- Social and employment aspects of a merger should be taken into account by the Commission when deciding how to rectify competition concerns raised by mergers.

- Involvement of workers in the procedures under the EC Merger Regulation. Notifying companies would have to state how they involved workers in their company generally, and in particular the merger in question; workers would get the same information from the Commission about the merger as competitors and suppliers; opportunity for workers to make representations to the Commission and generally be treated on a similar basis to competitors.

Our strategy is twofold: to get in a few pre-emptive strikes (through your visit and a phone call from Patricia Hewitt to Anna Diamantopoulou) in the hope of getting the proposals watered down, and then to work through the social partners as the social dialogue takes place. **We should take every opportunity to emphasise how difficult these proposals are for us.**

Corporate Social Responsibility

We continue to work up our response to the Commission's green paper, in which will advocate a voluntary system. Regrettably, the Belgians have tried to pre-empt the outcome of this consultation by proposing Council conclusions that send us down the social labelling/regulation/compulsory audit route. Our view is that the Commission's consultation should be able to run its course, and that the Presidency's actions are premature and extremely unhelpful.

DTI Translation 01-0979/French/CLL/PMO

First consultation of the management and labour at Community level on

"The Community response to restructuring of undertakings"

1. INTRODUCTION

During 2001 there have been many instances of large-scale restructuring of undertakings, that is to say, covering several sites of the same company or group of companies throughout the world and having serious social effects, particularly in terms of job cuts.

This move follows a turnaround in the growth cycle of industrialised countries, the majority of which are now suddenly, after a long and sustained period of growth, facing a general slowdown in economic activity which is affecting most sectors, especially those which, over the last decade of the 20th century, had emerged as being the most innovative, prosperous and promising in terms of creating new and quality jobs (the sectors linked to the new information technology).

This trend is most certainly going to continue and increase during the coming months and years given the uncertainties weighing on the world economy, particularly in the United States and Japan, which have been aggravated by the traumatic events of 11 September in the United States.

Despite a more favourable economic situation than other areas and the positive overall trends in employment, Europe has not been spared from this restructuring, which has caused much concern either because of the way in which it has been carried out or because of doubts as to whether it was justified considering the performance of the companies in question. The simultaneity and the sectoral concentration of many of these cases have only served to increase the fear that the process of restructuring to which European industry has been subjected over recent years will continue and intensify. Added to this is the feeling that the legal, economic and social frameworks within which restructuring is implemented are inadequate.

In certain cases restructuring has been carried out preventatively and continuously, whilst anticipating possible social problems and finding appropriate or at least possible solutions, and discussing the matter with employees' representatives, the authorities and other interested parties.

In other cases the restructuring has been a reaction to crisis situations that the company had not foreseen or was not prepared for. They have not been able to, nor have they known how to, or wanted to avoid breaking employment contracts. Talks with the affected workers and their representatives have been ineffective, have come too late or have not taken place at all, and the search for alternatives to site closures and redundancies has been insufficient or non-existent. Appropriate support for workers who will be dismissed has not been implemented.

These two methods of confronting the economic and social problems posed by the need for companies to adapt to changing market conditions are becoming increasingly clear in the minds of European citizens, especially those who fear that one day they may be subjected to the consequences of such operations, but this is true of management and labour, political decision-makers etc... The Green Paper "Promoting a European

framework for the social responsibility of undertakings" presented by the Commission on 18 July 2001, which opens a serious and profound debate on these and other related questions (environment, consumer protection etc...) is the logical follow-up to this new European awareness of the need to develop responsible social and environmental practices, which moreover provide a long-term source of increased profitability.

The Green Paper is however only part of the necessary response to the problems posed by large-scale restructuring of undertakings. Aside from the promotion of good practices to be adopted voluntarily by the companies targeted by this initiative, questions should be posed about the possible need to adapt the European and national frameworks which govern the restructuring of undertakings in their various aspects.

The European Union has a certain number of instruments which aim to ensure that the social dimension is taken into account within the framework of restructuring operations. These are mainly Community directives on collective redundancies, company transfers and European works councils. Other instruments are in the process of being adopted and are planned before too long, for example rules relating to employees' involvement in the European Company and the directive proposal setting out a general framework for information and consultation of workers in the European Community.

Nevertheless, these instruments, however important they might be, simply create a means of involving the employees' representatives in the restructuring process (among other things). They do this by increasingly promoting an anticipatory, preventative and consultation-based approach which is the only approach capable of contributing both to the economic success of the restructuring operations from the point of view of the company's competitiveness and longevity, and to an appropriate treatment of the social implications of such operations.

This is important, even fundamentally so, but it is not sufficient to ensure that the objectives listed above are fully achieved. Other policies, methods and instruments could be used to achieve these objectives, either by adapting those already in existence or introducing new ones. Some of these operate at Community level which, for want of a viable short-term global approach, is that which best suits the transnational dimension of most large-scale restructuring.

Considering the above and in accordance with Article 138, paragraph 2 of the EC Treaty, the Commission intends to submit this consultation document to management and labour at Community level in order to find out their opinion concerning the possible direction for Community action providing a global response at this level to the issues at stake in large-scale restructuring of undertakings, the justification for, objectives and content of which are set out in the following points.

2. JUSTIFICATION FOR COMMUNITY ACTION

In March 2000, in Lisbon, the European Union set itself the strategic objective of "*becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth along with quantitative and qualitative improvements in employment and greater social cohesion*".

More recently, in Gothenburg, the European Council highlighted the importance of "*the action by the public authorities (...) in encouraging undertakings to be more aware of their*

responsibilities on a social level and setting up a framework ensuring that undertakings integrate environmental and social elements into their activities".

Restructuring of undertakings, either aiming to change their share structure (in the form of mergers, acquisitions etc...) or that linked to changes in the way the company organises the production of goods or the provision of services (closures, relocation, reorganisation of work, etc...), aims to preserve or increase companies' current or potential competitiveness. Something which all cases of restructuring have in common are the negative consequences that they often have on employment within the companies involved.

These cases of restructuring, whether they are spaced out over a period of time or sudden and unexpected, are always presented as a reality imposed by the economic constraints in a global market. However, according to the way in which they are prepared, managed and carried out, particularly with respect to the treatment of their social consequences, they will be a help or a handicap in achieving the objectives linked to the company's competitiveness and, in general, those set in Lisbon. Hence the importance of implementing in Europe a practice of restructuring guided by a long-term vision which is favourable to employment.

One of the most important factors in the success of restructuring both with regard to strengthening the company's competitiveness and with regard to employees' interests, is good practice in employee representative involvement: permanent involvement in the general running of the company, effective involvement which therefore anticipates possible sharp changes in production conditions or the provision of services leading to a job crisis.

The Community instruments in force and in the course of being adopted mentioned above ensure the existence in the European Union of a common legal framework in this field.

On the other hand, with the exception of the directive on collective redundancies which demands that the public authorities be notified, there is no Community rule of substantive law governing the way in which companies exempt themselves from their obligations as responsible companies vis-à-vis the workers which they no longer need, whatever the type of restructuring (share structure or the organisation of the production of goods or the provision of services). This type of rule exists in certain national laws, having been introduced by legislation or convention, but there are no such rules at European level.

However, when a restructuring operation affecting several countries has to be defined, launched and implemented, regardless of its type, it must be done at European or an even wider level. This simple fact justifies Community intervention guided by the aim of setting a certain number of rules which are both general and confined to this area – therefore respecting both the principles of proportionality and subsidiarity.

Fixing minimum rules at European level which any undertaking of a certain size engaging in large-scale restructuring must observe can, according to the Commission, be justified:

- on the one hand, by the fact that there are great differences between the different Member States with regard to the level of protection provided for the workers in

question and also the other interests at stake (environment, local and regional development, dependent undertakings, competitiveness of the undertaking or the sector), which create a favourable ground for undertakings to seek methods of restructuring, at the lowest cost, largely ignoring social and other consequences;

- on the other hand, the absence of Community rules makes transnational restructuring easy: closures and redundancies, in other words employment, therefore very often appear to be not only the cheapest, but also the easiest solution to implement. The added value of Community intervention may then lie in a major development in the way in which undertakings approach this problem, leading to a raising of the status of employment in the hierarchy of variables to be considered by undertakings.

Furthermore, restructuring which affects the share structure (mergers of undertakings in the sense of the 1989 Community regulation) has for a long time been governed by Community competition law, social considerations or even considerations relating to the competitiveness of the undertaking being largely non-existent in the Community's practice concerning control of concentrations (in contrast to that which occurs in most Member States when there are identical operations which, because of their smaller size or territorial limits, are subjected to their control).

Consequently, any changes to rules of law or the control of this type of merger, particularly in order to introduce an "employment" dimension, have to be made at Community level.

Lastly, all types of large-scale transnational restructuring, regardless of how they are prepared and implemented, very often take place in a difficult, even painful, social context, because of the consequences that they have on those affected. They are, therefore, a potential source of cross-border labour disputes.

Nevertheless, there is no Community level mechanism intended to prevent or contribute to the settlement of collective labour disputes with a transnational dimension, such as those which exist at national level for disputes limited to a single country (in other words, to a single collective employment relations system). This is an element missing from an emerging European collective relations system, which already has the players (Community-wide management and labour, European works councils), the rules (Community directives and European collective conventions) and the ground for confrontation or dialogue (multinational undertakings etc...). The debate which was recently opened on this subject and which will continue in the future should inevitably take place at European level.

3. THE POSSIBLE DIRECTION WHICH COMMUNITY ACTION COULD TAKE

The Commission is seeking the opinion of management and labour at Community level regarding the possible direction for Community framework action aimed at providing an all-inclusive and consistent response to the particular problems raised by the restructuring of undertakings within the current economic and social climate. The Commission feels that five approaches could be considered:

- promoting good practices

- introducing mechanisms for the prevention and settlement of transnational labour disputes

- requiring large undertakings which are conducting restructuring to fulfil certain obligations

- seeking better coordination between competition policy and labour policy

- adopting new or better targeting of existing measures to facilitate structural readjustment within the economy

The first approach described forms a major component, amongst others, of the Green Paper entitled "Promoting a European framework for the social responsibility of undertakings", presented by the Commission on 18 July 2001. The debate between management and labour, the Community institutions, governments and other players involved has therefore been opened and should be pursued within this other context, together with other aspects of the social responsibility of undertakings.

Similarly, the problems with the mechanisms for the prevention and settlement of transnational labour disputes are not confined to those aspects connected with the restructuring of undertakings. Studies are under way following meetings with experts and management and labour and, when the time comes, the Commission will give its views on the debate which has already started on this subject, which is also therefore excluded from the present consultations.

Regarding the other three approaches described above, the Commission wishes to inform management and labour of its preliminary views, at the same time asking them to make a useful contribution towards the debate initiated by the present consultations.

3.1. Obligations to be imposed on undertakings conducting restructuring

Amongst other things, the various restructuring processes which are occurring at the moment show four features which distinguish them from those which have taken place before and which, in the Commission's view, are relevant for the purposes of the present consultations:

- the speed with which they are implemented and the fact that they are virtually on-going (workers and management no longer have the time to "digest" a major operation before another one is already under way)

- the fact that labour is considered the first variable to which adjustments can be made: previously, companies made cuts in profits, then in sub-contracting and then in investments before making any changes to their labour force, the size of which was calculated on a long-term basis. Today, workers are laid off at the slightest variation in demand or production

- the increasing volume of sub-contracting and other forms of outsourcing, with the appearance and rapid development of the concept of the undertaking without production plants. In fact, production plants still exist, but groups now sub-contract all or a major part of their production and no longer consider that they

have any responsibility as regards the economic and social conditions under which this production takes place

- the weakening of links between undertakings and local economic systems: decisions to move businesses are taken much more readily and those employed by or connected with them are expected to follow them or fit in with these decisions. Businesses are attaching less and less importance to integration with the local area, which can result in widespread destabilisation of entire regions, which then suffer long-term effects

In the majority of Member States, undertakings introducing restructuring have to abide by certain rules of substantive law imposing obligations towards their workers (and also other parties financially dependent on them), for example when redundancies or job cuts are planned. These obligations vary between Member State and in some countries are relatively limited.

Amongst other things, they cover the following:

- the obligation to anticipate and evaluate the social consequences of the restructuring

- the application of the principle whereby job cuts and redundancies are used only in the last resort (*"ultima ratio"*) where other, less drastic, solutions are not feasible

- the related obligation (expressed either in terms of resources or results) to make a credible effort to seek alternative solutions, such as redeployment, training or retraining of the workers concerned, staggering the proposed measures over time, and the requirement that an attempt must first be made to reorganise work schedules, including working hours, before undertaking more radical measures, providing help in finding new jobs, vocational guidance, support for the development of independent activities or the formation of SME by the affected workers, support to enable workers to take over certain parts of the undertaking's operations etc.

- the obligation to seek someone to take over the business which the undertaking is giving up

- the obligation to redevelop and find alternative uses for abandoned industrial sites as both an environmental measure and one which provides work for some of the employees who have lost their jobs

Taking these existing obligations as its inspiration and adjusting them to suit the particular nature of the restructuring operations with which it is concerned, especially as regards their transnational dimension and also in view of the fact that the framework action forming the subject of the present consultations will necessarily be of a general nature, the Commission considers that the debate concerning the obligations to be imposed at Community level on undertakings conducting restructuring could be based around the following points:

A) The obligation to hold consultations

Any process of restructuring should involve effective consultation with employees' representatives in an approach which involves anticipation and evaluation of the social and economic consequences of the restructuring and in which penalties will be imposed if these obligations are not met.

B) The obligation to justify the restructuring and to ensure that it is proportionate

The basic principle to be applied in this area could be expressed as follows: plans for job cuts must always be proposed as the last resort. They should be justified by genuine and serious current or potential economic reasons. They should be proportionate with the needs demonstrated by the reasons given.

C) The obligation to prepare workers for change

Undertakings must make a major contribution towards helping workers adjust to changes in employment by means of in-service training and by providing them with the resources to enable them to obtain independent skills assessments and also through other measures of this kind which are applied in some countries (see above).

D) The obligation to assist redeployment

Under this heading, we could consider several types of measures such as those which already exist under some national legislation (see above) in the form of an obligation expressed in terms of resources or results, as appropriate.

E) Responsibility to the local area

Points to be considered: evaluation of local effects, consultation with local bodies and firms, local training, measures to deal with abandoned industrial estates etc.

F) Responsibility towards sub-contractors

Advance planning, guarantees concerning security of orders, participation in training sub-contractors' personnel, a coordinated and all-embracing approach to be taken to the workforce as a whole(employees of the main undertaking and its sub-contractors) during the consultation process and the adoption and implementation of measures described in the above sections.

The Commission therefore intends to gather opinions from management and labour at Community level regarding the possible introduction of various obligations which major undertakings would have to comply with when conducting major restructuring, such as those discussed above.

It would also be useful to have their views on how to do this: by means of an agreement to be negotiated and signed between management and labour at Community level, by including the problems described above in the revision of the Directive on European works councils, by means of a possible revision of the "collective redundancies" Directive or by means of a separate initiative ?

3.2. Seeking better coordination between competition policy and labour policy

Restructuring of the shareholdings in undertakings (mergers, acquisitions) and also other operations involving concentrations between undertakings raise particular questions in so far as they come under a system of Community control which largely disregards the social aspects or even those connected with the competitiveness of the undertakings involved, in order to concentrate almost exclusively on the "pure" competition policy aspects.

The all-inclusive approach, which is that recommended in the present consultation document, cannot exclude this aspect, in view of the influence which the competition authorities exert over the final configuration of the restructuring process underlying or resulting from the concentration.

Consequently, the Commission feels it would be useful to initiate a debate between management and labour on how to introduce more coordination between competition policy and social policy in the control of concentrations field, as an integral part of the Community response to the social problems resulting from major restructuring.

Moreover, a consistent and logical approach to the economic and social consequences of mergers seems to be particularly necessary in the light of the obligation contained in the Treaty that all Community policies and activities must take account of the need to achieve a high level of employment. Nor should we forget the fundamental approach adopted in the Lisbon strategy and the Agenda for Social Policies, which requires an integrated approach to economic, social and labour policies.

At least two ways of improving coordination and consistency between competition policy and social policy could be envisaged:

- incorporate economic and social criteria in general and employment-related criteria into decisions taken in the competition policy field

- strengthen relations between employees' representatives and the regulatory authorities

A) Incorporate economic and social criteria into decisions taken in the competition policy field

Several kinds of measures could be envisaged in order to incorporate economic and social criteria into the Commission's actions as a regulatory authority. These could include:

a) the obligation for notifying parties to supply information on the initial employment situation and their intentions regarding future activities

b) the principle that the economic and social aspects must be evaluated and taken into account when deciding on the concessions to be demanded of undertakings if they want authorisation to be granted for their proposed operations

B) Measures concerning the involvement of employees' representatives in procedures conducted pursuant to Regulation 4064/89

Several kinds of measures could be envisaged in order to develop opportunities for and the rules to be applied to the involvement of employees' representatives right from the initial stages of procedures conducted pursuant to Regulation 4064/89:

a) the notifying parties could be required to provide:

- information on the bodies representing employees within the undertakings concerned

- information on action already taken or planned for the purpose of involving employees' representatives in advance planning for and/or dealing with the social impact of the restructuring, which respects the employees' rights to information and consultation

b) the Commission could inform employees' representatives within the undertakings involved in the concentration that a notification has been submitted and also inform them about the right to a hearing and to access to the file, in the same way as it does with the principal competitors and suppliers

c) implementation and development of the opportunities provided by the Regulation for employees' representatives to make contact with the Commission:

- and to submit an opinion and be given a hearing by the Commission on the operation as a whole, on any concessions which may be demanded and any changes made to the proposed operation

- to consult the file and to be permitted to obtain assistance on terms and conditions at least identical to those granted to the principal competitors and suppliers.

Management and labour at European level are invited to submit their views on these various measures intended to ensure better coordination between Community competition policy and labour policy.

3.3. Measures intended to facilitate structural readjustment

Mergers and concentrations are very often a time for looking at the underlying structural changes in the economy. This is why a balanced and exhaustive approach to the economic and social aspects of mergers should also include measures to encourage advance management of the structural readjustments required. By supporting measures of this kind, the European Social Fund – like the other structural funds – provides a major financial instrument for mitigating the effects of industrial restructuring on employment and also a means of dealing with the resulting social costs.

Between 2000 and 2006, the ESF is to invest nearly 60 billion euros in human resources throughout the European Union, including nearly 11 billion euros on promoting greater adaptability. The essential instrument to be used to lessen the impact of socio-economic readjustment is Objective 2, to which the Structural Funds are to allocate over 22 billion euros over the next six years up to 2006. These resources, which are the result of joint

funding between the public and private sectors, represent a significant investment in economic and social readjustment in regions facing major restructuring problems.

Full use should be made of these opportunities in order to remedy the social effects of mergers. Amongst the ESF's major activities in this area, we would mention the following:

- advice and guidance for employees, particularly opportunities for retraining and new jobs

- the development of systems to anticipate the emergence of new requirements on the employment and qualifications front, possibly including studies to identify major trends in the labour market and potential problems connected with industrial restructuring

- modernisation of government employment services, in particular to improve the effectiveness of their placement services

- training and re-training for the labour force

- assistance in obtaining wage-earning and non-wage earning employment

- development of active labour market policies

Member States are entirely free to use these funds as they see fit in order to reduce the negative impact on employment and the local authorities. It is up to them to take advantage of these facilities within the current framework of the Community competition policy and the current social context. Specifically and above all when company closures involve major job losses in a particular region, the existing programme should be reviewed within the Structural Funds to enable them to deal with these new situations. Within the context of the regions covered by Objective 2, this could also involve changes to the list of regions (during the course of 2003) so as to include regions affected by a serious crisis.

What are the views of management and labour at Community level on the points discussed above ? What contribution could management and labour make in this area ?

4. THE PURPOSE OF THE CONSULTATION

In the light of the points discussed above and in accordance with Article 138(2) of the EC Treaty, management and labour are therefore invited to express their views on the possible direction to be taken by Community action concerning:

1. The need to establish a certain number of obligations at European level which major undertakings must fulfil when conducting major restructuring and what kind of obligations should these be ?

2. How these obligations should be applied:

a) by means of an agreement between European management and labour

b) by including this problem in the revision of the Directive on European works councils

c) by means of a possible revision of the Directive on collective redundancies

d) by means of a separate initiative

3. Management and labour at European level are also invited to give their views on the various measures intended to ensure better coordination between Community competition policy and labour policy.

4. Lastly, the Commission is seeking the opinion of management and labour on the role which the Structural Funds could play in reducing the impact of restructuring and on the contribution which management and labour could make in this area.

Robin Young
Permanent Secretary

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23 October 2001

Dear Madame Quintin

It was a great pleasure to meet you in Brussels earlier in the month and to have the opportunity to discuss EU employment policy with you. I hope that you will come to London later this year so that we can meet again. I'm writing now about the Commission's proposed directive on agency workers.

I have now seen the outline of the Commission proposals on agency work attached to the invitation to the experts' meeting on 15 October and discussed at that meeting. I welcome that opportunity for the member states to put forward their views, but also wanted to set our views out to you in this letter. I hope you will allow further time for reflection before the Commission publishes any proposal.

In the UK, temporary agency workers are an important part of the labour market, complementing, rather than substituting for, fixed term and permanent employees. Temporary agency work has been a significant source of employment growth and acts as an entry point into the labour market for the long-term unemployed and other excluded groups – many of whom then go on to obtain permanent positions. Increasingly it is the employment mode of choice for those workers who wish to pursue flexible working patterns. Temporary agency workers have contributed greatly to the efficiency of the UK labour market, which has in turn allowed us to keep unemployment at historically low levels, and participation rates high, in keeping with the Lisbon goals.

We do share the Commission's aim of protecting agency workers. We have no difficulty in principle with measures to encourage agencies and user enterprises to facilitate training for temporary agency workers or with measures to help agency workers to obtain permanent posts in the user enterprise if they are seeking them.

...... in line with these objectives. I enclose a note providing more detail on the UK legislative framework on agency work.

The directive as currently envisaged is incompatible with the current UK system in a number of ways. In particular it is not possible for us to uphold a principle of non-discrimination based on a comparison with a user organisation worker. Agency workers are employed by the agency, not the user organisation. The user will not know what the agency worker's contractual conditions are and the agency will not know what those of the user's workers are. In many organisations, workers are not covered by collective agreements and individual benefit packages, which can differ considerably, are a confidential matter. An agency worker would therefore probably be unaware of comparable permanent workers' employment conditions. Confidentiality clauses also mean it would be extremely difficult for an agency to assess whether, as the employer, they are meeting any equal treatment requirements imposed by legislation. A non-discrimination requirement based on a comparison with another agency worker from the same agency may offer a more practicable way forward, since the comparison would be made between workers with the same employer. However, we would need to consider whether the benefits of such an approach would be outweighed by the regulatory burdens it would impose. I think it would also be helpful if the Commission were to produce a detailed Regulatory Impact Assessment, setting out the costs and benefits of its proposed measures in the Community and in each individual member state.

The tripartite nature of the agency worker – agency – user relationship situation makes the situation more complex, from a practical point of view, than that for fixed term or part-time workers, who share a common employer with other comparable permanent employees. Moreover, it does not merely give rise to practical issues. Agency workers and permanent workers are in many ways fulfilling different roles and it is not clear that they should receive the same treatment in all respects. Comparing workers employed by different employers and not covered by the same collective agreement would cause practical problems and seems inappropriate. The Social Partners were very much aware of this aspect during their negotiations and did not want to take an approach which constrained the present practices in Member States or which copied the Part-Time/Fixed term model. We should respect their views on this and leave the areas on which they could not reach agreement to member states.

I recognise that the Commission wants to build some flexibility into this proposal through derogations. But we cannot see how derogations from an approach which is fundamentally incompatible with our system will make the proposals workable in the UK. Moreover, it is uncertain whether the derogation currently proposed for open-ended contracts will work in the UK context. A derogation that might be more suitable in the UK would be to allow member states to impose an equal treatment requirement only after an agency worker has been in the user enterprise for a certain period. This would be a much simpler approach and seems to us a reasonable balance between protecting workers and helping workers, particularly the long-term unemployed,

I must remind you of our firm view that a directive concluded under Article 137 of the treaty could not apply to pay, due to the effect of article 137(6) which excludes pay from the scope of the provisions concerning working conditions. The UK stated in the Council minutes that this was its view when it agreed to the extension to the UK of council directive 1997/81/EC on part-time work and also when directive 1999/70/EC on fixed term work was agreed.

In summary the UK shares the Commission's objective of protecting agency workers, but is anxious that measures to achieve this should be compatible with encouraging an efficient labour market and sustaining a high level of employment in the Community. I am concerned that the application of a non-discrimination principle would cause serious practical problems in the UK. We therefore ask you to consider alternative means to protect agency workers, as outlined above.

I hope it's helpful for you to have this explanation of our position, in the spirit of frank exchange which you and I agree is the best way!

Yours sincerely

Fergus Marrxlene

pp ROBIN YOUNG

(approved by Mr Young and signed in his absence)

AGENCY WORKERS IN THE UK

Temporary agency workers in the UK are protected by statutory employment rights in the same way as other workers having the same employment status. Much recent legislation, particularly the National Minimum Wage Act and Working Time Regulations, applies to agency workers as to other workers. The UK regulatory framework also provides protections for agency workers specific to the particular nature of the triangular relationship between agency, worker and user enterprise.

Most temporary staff hire in the UK is supplied by "employment businesses", who supply temporary staff to work for client hirers. The individual worker will have a contractual relationship with the employment business, and the business will also have a contractual relationship with the hirer to supply the worker. The existing legislation concerning agency workers is principally contained in the 1973 Employment Agencies Act and the 1976 Conduct of Employment Agencies and Employment Businesses Regulations. The main aims of this legislation are: to prevent agencies from charging workers for finding work; to ensure agencies inform workers fully about their assignments; to ensure agencies pay workers on time; to protect workers from unsuitable or dangerous employment; and to protect hirers by obliging agencies to ensure workers are suitable and have any legally-required qualifications and are legally entitled to work in the UK. The legislation covers both "employment businesses" and "employment agencies".

The Act defines an employment businesses as "*the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under control of, other persons in any capacity.*" The word "employment" is given a wide, inclusive definition in the Act, and includes those working under a contract for services as well as those working under a contract of service. It will not necessarily be the case that an "employee" of an employment business will be an employee in the narrow sense of the word as defined in the Employment Rights Act 1996 s.230, as the legislation does not specify on what basis an employment business must employ the worker. In reality, the majority of employment businesses operate using contracts for services, rather than contracts of service.

An employment agency is defined as meaning " *the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them*". Employment agencies deal with permanent recruitment, or direct employment for individuals with the hirer.

Under the current legislation, it is possible for temporary workers to be supplied on an employment agency basis, where the work-seeker contracts with the person to whom they are supplied. Whilst this type of temporary staff hire has been the exception

rather than the norm, in a few sectors, such as the supply of care workers, some employment businesses have adopted this manner of trading. However, it is often the case that despite the paper-work issued by employment businesses who hold themselves out as trading on employment agency terms, the reality is that the workers have an ongoing relationship with the employment business, and merely act for and under control of the hirer. It is the employment "agency" that pays the worker, makes the necessary statutory deductions from his remuneration etc.

Legislation governing employment agencies and employment businesses in the course of being updated, so as to simplify it and ensure it is relevant to the modern labour market. The new Conduct of Employment Agencies and Employment Business Regulations, which are expected to come into force later this year, will remove barriers to hirers permanently employing agency workers. They will also aim to ensure that the status of agency workers is made clear to both users and workers.

The majority of employment businesses do not operate using contracts of service, but employ work-seekers on contracts for services. Employment businesses pay the temporary workers' remuneration, and make statutory deductions such as National Insurance and PAYE, whilst charging the hirer on an hourly basis for the services of the worker. Temporary staff are supplied to hirers, and are generally under the supervision, direction and control of the client. They do not have a written contract with the hirer. However, the question of whether it is the employment business or hirer that is the worker's employer for the purposes of making a claim for unfair dismissal, for example, has arisen in a series of cases which have highlighted the need to look at the facts in each case particularly where the individual has worked for a particular hirer for an extended period of time.

We believe that most employment business contracts with the temporary worker are open-ended rather than fixed term, although this will depend on the facts of the employment relationship and, in the event of a dispute, would be for a court to decide. Separate documentation is usually provided for each particular assignment. The new Regulations will make it a requirement that, in relation to each assignment, the employment business sets out in writing the relevant details, including the nature of the position, location, duration of assignment, rate of remuneration, length of notice which the work-seeker has to give and may be entitled to receive, as well as any risks to health and safety.

FINANCIAL SERVICES

Papers attached

A **UKREP update on Cion/EP discussions on Lamfalussy**
B ~~**FT article on Prospectus Directive and smaller quoted companies**~~
C **HMT paper on Barcelona priorities in financial services (to hand over)**
D **Summary of state of play and next steps with Barcelona priorities**

Barcelona objectives

We have agreed with HMT a set of priorities for agreement in the run up to, or at, Barcelona. A slightly edited version of their paper is attached at C. You might run Mogg through the main points and perhaps hand a copy over. It would be useful to have Mogg's support for this agenda, including in discussions with the Spanish. You might also to check his views on negotiability.

Lamfalussy

You might check latest progress on attempts for a deal between Commission and EP. The news is more negative since David Wright's visit earlier in the month (see Flag A). The EP side appear to be insisting on right of call back for implementing measures even though the Commission argue this is incompatible with Treaty and they would publicly offer their support for the issue to be reviewed in the next IGC. You will want to emphasise the importance the UK continues to attach to successful implementation of Lamfalussy and might offer any assistance that Mogg feels would be useful. (If we want to take the line that the IGC should focus exclusively on the Nice leftovers and are pressed on this point we might argue that the EP role in secondary legislation is really part of the delineation of powers heading).

Prospectus Directive

The dialogue between the City and Commission now appears to have largely moved from pages of the FT to the meeting rooms of Brussels. It would be useful to confirm with Mogg that the Commission will support amendments to the Directive to deal with the problems the draft Directive causes for the euro-bond market and the lack of flexibility in choice of jurisdiction that companies will be required to seek their single passport in. Wright implied to us there would be movement on both points. Also worth pressing the concerns of smaller businesses and alternative markets that disclosure requirements that are appropriate for multi-nationals raising capital on a global basis are too onerous for them and would damage their ability to raise capital, undermining the purpose (at least for us) of the Directive. You should probe whether the Commission has made progress in discussions with their representatives on "clarification" (Wright's term). The latest brickbats in the FT from representatives of smaller companies suggest that the Commission may be disinclined to flexibility in this area.

FSAP mid term review

You should ask Mogg about latest Cion thinking. You can emphasise the importance of the FSAP agenda to our short-term Barcelona objectives as well as the longer term vision of an integrated EU capital market. We can support a mid term event under the Spanish Presidency provided that it is not simply used to shift blame for delays in progress and genuinely stands a chance of moving things forward. As agreed at our recent Whitehall meeting, it might be an idea to get business people and the EU fs community involved in some form or another. Could they provide input to a mid term review event highlighting problem areas for policy makers to focus on in next 12 months? This might be followed up by a supportive steer from Heads at Barcelona.

Pensions Directive

No progress at the 16 October Ecofin. Useful if Mogg can confirm that Bolkestein still intends to withdraw proposal rather than see an illiberal version agreed by the Council.

Quality of legislation

You might emphasise the importance of ensuring effective consultation on all future legislative proposals and check latest Cion thinking.
Although extremely sensitive you might also consider raising staffing issues: does Mogg have the expertise he needs to take forward complex regulatory proposals? Can the UK do more to help? You are aware of the constraints on offering additional FSA resources. But I gather there is a good HMT candidate up for a new DNE Post (Grade 7 equivalent) in DG Markt looking at FSAP strategy who is being backed by the department.

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11 October 2001

Robin Fellgett Esq
HM Treasury
Parliament Street
LONDON
SW1E 5EB

Dear Robin

LAMFALUSSY

1. John Mogg and David Wright told me yesterday that discussions with the European Parliament seemed to have broken down.

2. The Commission had understood that a deal would be acceptable, on the following lines. The EP would agree to implement the Lamfalussy procedures through the draft legislation currently under discussion. The EP would insert a sunset clause (for the fast-track legislative procedure, not for the regulatory rules in the legislation), timed to come into effect well beyond the next IGC. The Commission and the Council would buy this. It would be understood but not formally recorded that the Commission would propose a Treaty change to allow some form of callback to the next IGC. Mogg spoke broadly on these lines at last week's EFC.

3. However, for reasons which were not clear to the Commission, von Wogau MEP had changed his mind. The mood in EMAC had now reverted to demanding callback immediately, ie full parallelism with the position of the Council on "aerosol" clauses. This was not negotiable with the Commission and was in any case, in the Commission's view, in breach of the Treaty.

4. EP officials are dispirited but are urging the Commission not to give up. Randzio-Plath will have a private word with the President of the EP. Pending that, the hope is that the agreement not to talk to the press holds. But relations between some of our main interlocutors on each side of the argument are getting worse.

Yours

Nick

N J Ilett

cc: David Green, FSA
Ivan Rogers, HMT
Sir N Sheinwald
Peter Wilson
Danny Pruce
Stewart James

BARCELONA: FINANCIAL SERVICES PRIORITIES

Aim

- Ensure that Barcelona focuses on the priority measures in the FSAP; and on outcomes – i.e. the benefits for EU firms and citizens. Not another "box ticking" exercise.

Objectives

i) A key goal at Barcelona should be taking measures that **cut the cost of capital** for EU firms. We should focus on the liberalising measures that will deliver this goal:

- ensure there is an **effective passport for issuers** across the EU (prospectuses directive);
- A **legal framework for collateral** provided to back securities transactions (collateral directive);
- A **clear and proportionate legal framework for investment firms and market infrastructure providers** (Investment Services Directive);
- **Pensions reform** to deliver the EU's economic reform and social objectives and increase investment (of which the Pensions directive is one part).

But we need to ensure that the proposed legislation will deliver these objectives. For example the Prospectus directive as currently drafted would be likely to increase the cost of raising capital across the EU – particularly for SME's.

ii) We also need to ensure that we deliver the **Lamfalussy objectives** of consultation and transparency; and of greater legislative flexibility subject to clearly defined principles and objectives (there is only limited evidence to date that these objectives are being followed)

iii) Further progress on delivering a competitive retail financial services market – **lower prices and wider**

choice for consumers of retail services - would also be desirable through:

- Delivering an **effective framework for e-financial services business**. This entails full implementation of the E-commerce directive consistent with the Country of Origin principle

- A **consistent approach to the regulation of financial services**, regardless of how they are sold. This will require progress towards country of origin regulation of all retail financial services, including the removal of the clauses that currently exclude certain financial services products from the ambit of the E-commerce directive

- Maintaining the momentum of work to **alternative redress mechanisms** for cross-border financial services transactions. Building upon the establishment of the FIN-Net arrangements to improve their coverage and ensure that in practice consumers are given a viable means of redress.

iv) The Commission should publish a set of **output indicators** to measure progress in establishing an effective single market in financial services which captures the benefits for firms and consumers

FINANCIAL SERVICES PRIORITY DOSSIERS

Dossier	Progress	Next steps
Prospectuses	Commission proposal published June. Hostile City reaction. To Council working groups and to EP for 1st Reading in the Autumn.	HMT have sent note outlining concerns to Presidency and Commission. Planning to distribute to other Members States. Need to step up lobbying contacts and ensure further City lobbying is well focussed. If possible use contacts with MEPs to encourage dossier to go to EMAC (Huhne would be rapporteur) not Legal Affairs.
Collateral (harmonised rules on use of collateral)	Slow but steady progress in Council working groups. Spanish not keen.	Need to lobby Spanish at political level to ensure taken forward with priority as part of Aznar's integrated financial services markets agenda for Barcelona.
Consistent approach to the regulation of financial services/ Review of Investment Services Directive (sets framework for regulation of most financial services products)	Commission published Green Paper in the summer.	HMT consulting City and aim to respond to consultation at end October. Need to clarify key UK objectives before lobbying on back of our response: avoiding/removing over-burdensome regulation and acceptance of principle of home

		country regulation for all financial services products, including those carved out of E-Commerce Directive and those sold by conventional (ie face to face) means. May need to consider more extensive harmonisation of consumer protection than HMT has hitherto preferred as quid pro quo.
Pensions (Supplementary Pensions Directive)	Commission proposal envisages sweeping away quantitative restrictions on investments by pension funds. But blocked in Council by illiberal majority.	Need to get Spanish to reconsider their opposition to Directive if to have any chance of progress. HMT/FSA roadshow to explain how our system works?
Pensions (mobility)	Ecofin agreed non-legislative package to end double taxation of cross-border pensions.	Need to ensure Commission monitor progress and provide regular reports to Ecofin on progress. Work in EPC/SPC on also relevant. Need to ensure interim report to Laeken contain UK-friendly list of indicators and contains proposals for open method of co-ordination on pensions to consider sustainability issues. Barcelona should endorse when final

		report submitted.
Alternative dispute resolution	Network now established.	Key objective is to ensure system works effectively. Need to work up UK view on this point and then put proposals to Commission. Encourage other Member States to establish single financial services ombudsman to improve coherence of national systems.
Output indicators	Commission interested in pursuing but currently lacking ideas.	UK needs to talk to Commission and share our thinking. Limited HMT work already done: need to flesh this out.
Effective framework for e-financial services business (E-Commerce Directive)	Embodies country of origin principle for regulation of most financial services products sold electronically and at a distance. Implementation required by 17 January.	UK in danger of missing deadline. DTI and HMT need to work closely together to minimise slippage. Then ensure Commission monitors and reports on implementation of E-Commerce regularly. Also need to ensure EP does not claw back home country provisions of Distance Marketing Directive agreed at IMC last week during co-decision process. Lobbying UK MEPs.

UK NON -PAPER

USING INDICATORS TO DRIVE THE EU'S SOCIAL AND ECONOMIC REFORM AGENDA

Introduction

At the Lisbon European Council in March 2000, the EU set itself the ambitious objective of becoming the most **competitive** and **dynamic knowledge-based economy** in the world capable of sustainable economic growth with **more and better jobs** and greater **social cohesion**.

Meeting this target will require an ongoing and concerted effort by the Community and the Member States to put in place the policies of **economic and social reform** necessary to remove barriers to greater growth, employment and social inclusion, and to realise the full potential of new technology. To ensure that the positive momentum behind reform generated since Lisbon is maintained and strengthened it is vital that the European Council remains fully focussed on this agenda, regularly taking stock of progress and considering where further action is needed.

The role of indicators in delivering the Lisbon objective

The effective use of the 12 'headline' structural indicators requested by Nice European Council and endorsed by ECOFIN on 12 March 2001, and the forthcoming **sustainable development** indicators being developed by the EPC and the Commission, can play a central role in achieving this. In particular they can do three things:

- **Act as the most powerful tool for monitoring the EU's progress against the strategic objective set at Lisbon**. The European Council already plays an active role in considering the EU's performance in delivering specific policy remits. But it also needs to be in a position to consider a quantitative assessment of how these reforms are coming together to deliver real improvements in economic and social conditions in the Union. By remaining unchanged over time, the 'headline' indicators can act as a fixed benchmark against which we can judge progress. Regularly reviewing developments against these 'headline' indicators will allow informed judgements to be reached

on the overall success of the strategy and provide an indication of whether the EU is on track to reach its ultimate Lisbon goal.

- **Provide a means of identifying areas where the Union needs to take further action if it is to meet the Lisbon target**. The provision of timely data on key aspects of the Union's economic and social development will provide the European Council with early warning of possible barriers to realising its long-term objective. This will help to stimulate a debate on identifying appropriate further policy action. In many cases this may involve highlighting issues on which it has historically been politically difficult for the EU to agree necessary reforms or where implementation has faltered. The availability of clear statistical evidence about the impact of failing to remedy such problems should increase the prospects that the political will to overcome such difficulties will be found, driving the whole process of reform forward and ensuring that it proceeds swiftly on all, including the most difficult, fronts.

- **Highlighting areas of economic and social reform where Europe is achieving significant success**. Indicators can play a major part in ensuring the Lisbon process is positively presented, providing a means of linking a comprehensive policy agenda with tangible improvements in prosperity, employment and entrepreneurial opportunities that citizens and businesses in the EU can identify with. Effective presentation of the benefits of the Lisbon process will also help to build up a wider constituency of support for reforms in the business community, trade unions and more generally in civil society.

How can indicators be used most effectively to deliver these objectives?

The European Council's main discussion of progress on the Lisbon strategy takes place annually each Spring. It was agreed at the Stockholm European Council that the major input to these discussions would be a **Synthesis Report**, produced by the Commission, which would assess progress on the basis of agreed structural indicators.

In order to effectively integrate indicators into this review process the synthesis report needs to be structured around them. It also needs to strike the right balance between giving the European Council a clear but

succinct **assessment of the EU's performance** against each of the indicators, identifying recent **progress** on policy reform and future policy priorities and providing a detailed and intellectually rigorous analysis of trends.

Meeting the Lisbon objective requires both an improvement in the EU's absolute performance and its relative performance against third countries. It is therefore important that the report, as well as looking at developments within the Union over time, also **benchmarks the EU** against key third countries, notably the US and Japan.

One way of achieving this would be for the synthesis report submitted to the Barcelona European Council to include a relative short **executive summary** that would do four things:

- Set out the **development over the last two years** of the EU's "score" against each of the consistent 12 'headline' structural indicators. The executive summary should also draw on the agreed '1st tier' of indicators, endorsed at Nice European Council, which would change to highlight issues of particular concern at that time;

- As well as illustrating performance **within the EU**, they can provide a comparison of the values of each of the 12 structural indicators with key third countries. As well as the US and Japan it would be useful to **benchmark** the EU's performance against the OECD average.

- Assesses the implications of this data for **progress** towards the Lisbon objective;

- Identify areas where the EU's performance has been relatively strong and highlights where **further action** is likely to be necessary.

Such a summary would provide Heads of State and Government with a clear idea of the progress the Union had made in the first **two years** since the Lisbon objective was adopted. It would also help to focus discussion in on those areas where **further policy reform** is required to meet it.

In order to maximise the impact and coherence of the summary it would be desirable to group commentary on the 12 indicators into

the five broad categories agreed at ECOFIN, covering the macroeconomy, the labour market, innovation/research, economic reform in product/capital markets and social cohesion.

The rest of the report could then:

- provide a **more detailed assessment** of the EU's performance, including by drawing on the whole of the "first tier" set of structural indicators agreed at the Nice European Council. This might also draw on the most relevant indicators and benchmarking work being developed in a number of specific policy areas following mandates from the European Council;

- give an account of **policy developments** in the EU over the previous year;

- set out the **future policy agenda**, identifying priorities for action and the timescale on which it should take place.

Apart from the inclusion of an executive summary in the Synthesis Report along the lines described above, there are other things that should be done to ensure the full potential of the indicators in driving forward reform is realised:

- The Commission and Eurostat, supported as appropriate by the Member States, should ensure that reliable **data** is available to measure each of the indicators so that they provide as accurate an indication as possible of progress.

- To avoid creating confusion, there needs to be **continuity** and **stability** in the way in which we assess the EU's performance in delivering the Lisbon objective . Therefore, additions or other changes to the short list of 'headline' structural indicators should either be avoided or kept to an absolute minimum.

- The Commission should use every opportunity to **integrate** the use of indicators into **policy development** and **presentation in all relevant aspects of its work.** For example, Action Plans and Communications on specific policies might include prominent references to the appropriate indicator with new policies justified on the basis of the need for improvement in performance in that

area. This year's Broad Economic Guidelines, where indicators were used to very good effect, might provide an example of 'best practice'. Member States should also be encouraged to adopt a similar approach in the various Action Plans and programmes that they submit. And the Council, in its ongoing work in various formations, should also give prominence to the structural indicators wherever possible.

Conclusion

The effective integration of indicators into all aspects of the Lisbon process has an important role to play in raising the profile of the EU's efforts to reform social and economic policies, ensure momentum behind reform is maintained, and enhance the presentation of policy. The pivotal role of the Spring European Councils in reviewing progress and the importance of the Synthesis Report in preparing those discussions suggests that the indicators should be given a prominent position in that report. It will also be important to maintain continuity in the list of indicators, ensure appropriate data is available for each of them and link indicators fully into the Community's wider policy development and its presentation.

4 July 2001

DRAFT LETTER FROM MARTIN DONNELLY TO KATY PETERS, HMT

USE OF STRUCTURAL INDICATORS

At a recent meeting here on preparations for Barcelona I promised to let you have some comments on the most effective way to deploy the structural indicators, taking as a starting point the format used in your letter of 27 July to Stephen Wall. This is relevant both in the context of the Commission's synthesis report and the Treasury's Economic Reform White Paper.

In summary we thought your paper provides a solid base for developing the indicators as a tool to promote economic reform. Our comments in the rest of this letter therefore take the form of suggestions on how to develop this approach.

Firstly, it is reassuring that up to date **data** already exists for most of the indicators and that back runs over several years are available in most cases. It will be important to ensure that Eurostat and the Commission are in a position to provide such comprehensive data on – ideally - all the structural indictors in good time for preparation of the synthesis report (even if, on current plans, the Commission will also provide updated data in a supplement to the report closer to the date of the European Council). I imagine this is something that Joe Grice's EPC sub-group on indicators is monitoring closely.

We need to ensure that the best is not the enemy of the good and may therefore have to try and restrain the statisticians' natural desire not to provide data until they are completely happy with the definitions and sources associated with it.

The **grouping** of indicators under thematic headings was helpful as a way of drawing out key policy messages. We should build on this by increasing the **analytical content** of each of the sections. This will help to provide a clearer and more detailed picture of where the indicators show that the EU is performing well - both compared to its major competitors and against its recent history. It also helps to demonstrate where **further action** is necessary to stay on track with the Lisbon remit. We might also want to see in each of these sections some specific **priority policy prescriptions** for the next two years, and (briefly) set

out where major policy proposals have been successfully delivered over the last year.

A **general assessment** of the state of play in delivering the Lisbon remit, highlighting developments over the last two years, would also be helpful in focussing policy makers on the extent of the challenge ahead and where they need to focus their efforts. This might take the form of a slightly more detailed version of the headline messages on the first page of your paper.

Highlighting the best and worst performer in the EU, together with the EU average, US and (for domestic use) UK performance in each graph seems an effective way of:

(i) demonstrating how the EU is performing compared with its most significant competitor and trading partner, thereby facilitating **benchmarking**, and;

(ii) emphasising the range of experience across the EU, and thus the importance of **peer review**, spreading **best practice** and the **open method of co-ordination**.

If it can be done without over-cluttering each of the graphs you might consider extending this approach by adding in data for the OECD average and, perhaps, Japan.

Finally one very obvious point: all this looks much clearer in **colour**. I hope therefore that new technology means that we will be able to disseminate widely colour versions of the synthesis report and White Paper.

I hope this is helpful. We might come back to this subject at a future meeting of the Barcelona group, perhaps after you have had the chance to work up a further version of your paper. We should then pass our ideas on to the Commission and incorporate them into preparatory work on the White Paper.

I am copying this letter to [Nick Ilett and Sian Millar at UKREP].

MARTIN DONNELLY

Sustainable development

Lines to take

- UK pleased with the strategy adopted at Gothenburg. Important now to ensure that **sustainable development finds its place** at future Spring Councils.

- Sustainable development needs to complement the Lisbon agenda. **Wary of diluting the Spring Council focus on economic and social reform**. This handout sets out our views in more detail.

- UK supports adoption of a good set of indicators, within the overall synthesis report, to help us measure sustainable development. This should look equally at economic, social and environmental challenges within policy. Important that environmental element does not dominate.

- Before Barcelona, we need to identify **priority areas** within the Community strategy as a focus for this work, and **policy tools** for taking it forward. UK is particularly keen on the external dimension to our work in the run-up to Johannesburg.

Background

Our objective is to keep **sustainable development separate from, but complementary to, the Lisbon process**. We will have to fight a rearguard action against some who would rather use the SDS to add an environmental dimension to Lisbon. These arguments are currently being played out in environment Council.

Work is moving slowly under the Belgians. There will be an anodyne discussion at Environment Council on 29 October. The conclusions will identify areas in which sustainable development indicators can be adopted. Priorities for Barcelona are emerging as Climate Changes, Transport and (maybe) fisheries.

Then the Commission will produce their proposal for a synthesis report incorporating sustainable development. The key discussion will be at December Environment Council.

German has broadly supported approach to the SDS so far. They have been keen on using this as a way of covering CAP reform.

EU SUSTAINABLE DEVELOPMENT STRATEGY

BRIEFING NOTE

Support for sustainable development

- UK is strongly **committed to promoting sustainable development** both in the UK and internationally; focus of UK approach is on ensuring a better **quality of life** for everyone, now and for generations to come; the UK's domestic strategy is shared by all in Government and has been developed through extensive public consultation.
- UK strategy aims to integrate the 3 pillars of sustainable development by meeting **four objectives** at the same time: social progress, a better environment, prudent use of natural resources and high and stable levels of economic growth and employment;
- Sustainable development requires a **"joined-up" approach** to developing new policies and reviewing old ones – this is a particular challenge for the EU and its institutions.
- UK **welcomes EU sustainable development strategy** that was adopted at European Council in Gothenburg:
    - It is a demonstration of desire of Heads of State to address the major long-term threats to quality of life in Europe, to complement the "Lisbon" medium term social and economic reform programme; both will be considered at the annual spring councils;
    - The strategy rightly focuses on a limited number of priorities (climate change, transport, public health and natural resources) and the need for better policy-making;
    - The strategy rightly calls for action at all levels of government.

Priorities for the EU sustainable development strategy

- The EU sustainable development strategy has to **find its place at the spring European Councils** without usurping the Lisbon economic and social agenda; most of the work needs to be done throughout the course of the year (e.g. in the Commission and Council of Ministers) with the European Council providing a high level steer or focussing on a particular issue only;
- **More flesh** needs to be put **on the priority topics**: for example by looking at whether Community policies as a whole are pushing in the right direction, e.g. on energy, agriculture and rural development, fisheries, trade and our external impacts; this could be a useful focus for the synthesis reports;
- Work needs to be done to develop some of the **tools for better policy**: agreeing how the General Affairs Council can add value realistically; on the scope and application of sustainability impact assessments; and the contents of the Commission's annual synthesis report which needs to be more than just an environmental assessment, by addressing the relationships between different community policies.

- The EU strategy needs to have a **more fully developed external dimension**: some of the most significant long-term problems are global rather than regional; the EU plays a major role as both a trade body and the biggest provider of overseas aid.
- More needs to be done to describe the EU's **vision** for sustainable development and sell it publicly; there is a widely recognised need to tackle public apathy and cynicism about the the EU; the strategy should be an indication of the commitment of Member States and the institutions to tackling major public concerns.
- **Targets** can inform policy development and provide a useful focus, but they need to be set following proper analysis of the problems and consultation with those affected. Most of the targets proposed in the Commission's communication were ones we could support or are already implementing; the others need careful study.

Practical next steps in the run-up to Barcelona

- The UK believes it can contribute in the following areas:

  - Sharing experience and ideas on **sustainability appraisal which integrates economic, social and environmental concerns** [Commission is to present a better regulation action plan by December];
  - Providing expertise and practical suggestions on formulating **indicators** for the priority topics [indicators to be included in Commission's synthesis report in January];
  - **Environmental innovation**: share report from Performance and Innovation Unit on resource productivity [Commission to report to Barcelona on how environmental technology can promote growth and employment];
  - **Global dimension**: feed in UK views on priorities for the World Summit on Sustainable Development; promote renewed commitment to the International Development Targets [Commission Communication due by January 2002];
  - **Broad Economic Policy Guidelines**: Provide details of UK experience on the use of economic instruments to promote sustainable development [as part of the country reporting process to ECOFIN]
  - Strengthen the links between the EU sustainable development strategy and the "**Cardiff**" process of integrating environment into sectoral policies (eg by systematically addressing the priority areas, piloting impact assessments, broadening consultation).

Background

The conclusions of the Helsinki and Feira European Councils called for the Commission "to prepare a proposal for a long-term strategy dovetailing policies for economically, socially and ecologically sustainable development to be presented to the European Council in June 2001." The European Council also committed itself to undertake at the same time a comprehensive review of the "Cardiff process" of integrating environment and sustainable development into the business of the main Council formations.

After a brief consultation period the Commission issued its Communication on 15 May setting out its proposals for a sustainable development strategy for the EU to the Gothenburg European Council on 15-16 June. The Commission Communication proposed a number of priority areas identifying significant threats to Europe's future development, as well as proposing a number of high-level objectives and specific measures in relation to each of the priority areas.

Whilst much of the initial analysis and priority themes were aired in the consultation paper, the high level objectives, targets and measures were new and demanded closer discussion than the run up to the European Council allowed. A good number of proposals included were acceptable to many Member States, including the UK, although some of the proposals presented problems (e.g. proposing further targets on climate change and targets for road transport), preventing Heads of State at Gothenburg being able to adopt the document as it stood.

In the event, Heads agreed a strategy based on the Bruntland definition of sustainable development. This gave some recognition of the integration of the three pillars (i.e. economic, environmental and social) but with the key priorities tending towards an environmental focus. It recognised the importance of the global dimension but with rather EU-centric priorities relating to trade rules and institutional reform. The strategy set some objectives in relation to its four priority areas (climate change, sustainable transport, public health and natural resources) and established a process for follow-up. This included GAC co-ordinating "horizontal preparation" of the strategy, the Commission evaluating implementation in annual synthesis reports on the basis of indicators to be agreed in time for the Spring 2002 European Council, and future Spring Councils giving policy guidance and reviewing progress.

Council was also invited to finalise environmental and sustainable development integration strategies under the Cardiff process, taking into account the 6th Environment Action Programme and the Sustainable Development Strategy, and to present results of this work before the Spring 2002 European Council.

The Belgian Presidency has been keen to keep up the momentum of Gothenburg. They will be seeking agreement on a first set of sustainable development indicators. The Spanish Presidency has so far given relatively little thought to the subject but is expected to want to keep the main focus of the Barcelona Spring Council on economic reform. They will, however, need to ensure that the EU is well prepared for the World Summit on Sustainable Development in September 2002.

U

Climate change – emissions trading

Lines to take

- UK committed to ratification of Kyoto by **next September**. Pleased to give you our **core script** setting out the Government's priorities.

- EU-level action needs to **protect UK and German achievements** in cutting emissions so effectively. We must resist those who have not done so well, and want to delay progress or to re-open national targets within the EU bubble. UK considers legal base of unanimity is also essential, to safeguard national interest.

- We want a **voluntary, market based EU trading scheme**; with as broad a coverage of industrial sectors as possible. Need to build up widespread trading experience at EU level in advance of international trading.

- Market based system would **send the right signals to EU industry**, to reward their commitment to tackling climate change. Our national trading scheme, to begin next year, will pilot a market-based approach. There is significant industry interest in this.

- Important that UK and Germany work together in future. **DEFRA/ BMU** bilateral last week was a good start. We would welcome joint working with Chancellery in parallel to this.

Background
The 1995 Kyoto agreement committed the EU to an overall reduction in CO2 emissions of 8% against a 1990 baseline. The Member States agreed amongst themselves how to meet this collective target: the UK goal was a 12 ½% reduction. Germany's target is a 21% reduction.

The Commission is shortly to produce proposals for the implementation of this commitment. Their instrument will need to confirm the allocation of the EU bubble amongst the Member States.

UK priorities for this compliance regime are to ensure that we get market value for the carbon credits we have accumulated by exceeding our national target. We would do this through a market-based trading regime, with a central role for the City of London as part of this. Our domestic

trading regime – to be launched next year – will be market based. A core script setting out our national priorities can be handed to the Germans.

DEFRA have worked closely with Germany to ensure a joint approach to this work. They and Luxembourg are the only states to have carbon credits. Germany agrees on the need for clear rules for the operation of the EU bubble. But they are less concerned about getting full market value for their credits, and in having a legal base of unanimity to protect their national position. Attached note of last week's meeting gives detail.

UK POSITION PAPER OCTOBER 2001

CLIMATE CHANGE - IMPLEMENTATION OF THE EU BUBBLE

The European Commission is expected to present shortly its proposals for the implementation of the first phase of the European Climate Change Programme. This will include a proposal for legislation to set in place an EU emissions trading scheme and other significant measures. An important related issue will be the Commission's proposal for the implementation of the EU bubble.

The UK, with the rest of the European Community, is working towards ratification and entry into force of the Kyoto Protocol by 2002. It will be important for the Community to be seen to be among the first to ratify in order to maintain the leadership it has shown in this vital environmental area. Before this can happen, the Community and Member States need to agree the legal instrument that will formalise the political agreement that was reached in June 1998 on the bubble that will share out the Community's Kyoto target. This paper sets out the UK's preliminary thoughts on a number of key issues associated with the legal instrument to ratify the Protocol

General Approach

- The UK believes that we should use balanced and cost-effective measures to implement our obligations. We want to ensure that businesses can contribute to the reduction in GHG emissions whilst staying competitive. This is why we favour instruments such as emissions trading which allow business to take decisions about the best way to reduce emissions. The UK's proposed emissions trading scheme has been drawn up in close consultation with business. Our aim is that this system is up and running in April 2002. We hope to get a swift decision from the Commission to allow the scheme start at this time.
- In order to set targets for our business, and put in place the rest of our climate change programme, we need certainty at the EU and the international level about our national target, and the rules that underpin its achievement. It's important that the rules are robust and well understood to ensure that there is widespread public and business confidence in the system.
- It is a fundamental principle of a fair and robust system that credit is given to those countries (and businesses) that do better than their target. Each country needs to take domestic action to reach its target. In the UK, for example, that has meant the imposition of the climate change levy on business which is related to carbon use.
- There are strong links between climate change and energy supply. In drawing up a balanced climate change programme the UK has made some important decisions about energy, in particular renewable energy. That is why we favour taking decisions at a European level by unanimity.

Type of Instrument
The UK considers it important that the political agreement is formalised by means of a straightforward process that will ensure that the Community and Member States have the legal instrument in place in good time to ensure ratification in 2002. There are a number of possible approaches, but a Council Decision, with its straightforward and familiar procedure, would appear to be the most appropriate way forward. A Decision also has the advantage of a strong and well-established enforcement mechanism.

Legal Base
The strong links between the Kyoto targets and choices about energy supply will be important in deciding the legal base of the proposed instrument. The UK considers that the instrument to formalise the political agreement on the bubble will have the capacity to significantly affect a Member State's choice between different energy sources and the general structure of its energy supply. This points strongly to the legal instrument being agreed under Articles 175(2) and 300(3) of the Treaty which provide in such situations for decisions to by taken by unanimity in consultation with the European Parliament.

Operation of the EU Bubble
There are a number of important internal arrangements relating to the operation of the EU bubble that will have to be settled. Although the European Climate Change Programme, trading and other work is in train to ensure that Member States meet their individual obligations, arrangements will have to be agreed to cover the possibilities that (1) under-performance by some Member States is more than balanced by over-performance by others; and that (2) Member States collectively miss their bubble target. In framing these arrangements, further information on the detailed Kyoto rules covering compliance will be necessary before a comprehensive EU regime can be agreed. Ideally these arrangements should be set out clearly in the legal instrument. These are, however, certain to need detailed consideration and are likely to take some time to agree. The UK considers that it is therefore vital that early consideration is given to these internal arrangements if the Community and Member States are to be in a position to adopt the legal instrument in good time to ensure that we are able to ratify the Protocol in 2002.

UK Department for Environment, Food and Rural Affairs
October 2001

Sweeney Mark - Sec D -

From: Sweeney Mark - Sec D -
Sent: 24 October 2001 14:01
To: Wall Stephen - No 10 -
Cc: Donnelly Martin -Sec D-; 'rachel.cowburn@no10.x.gsi.gov.uk'; Liddle Roger - No. 10 -; Bye Adam - European Secretariat -; Green Rachel - European Secretariat -; Crabtree Richard - European Secretariat -
Subject: Import of cigarettes/alcohol for personal use: press coverage

Importance: High

Stephen,

I've done some digging with Nick Ilett and Mike Wells (Customs) in the wake of this morning's coverage in Telegraph and Sun. They say:

- a pre-226 letter is in the pipeline (which we tried and failed to stop in the usual way). This follows concerted letter writing to the Cion since a toughening of policy by Customs in July (see below). But they had no advance warning from the Commission that they would comment publicly before issuing it. They suspect this may have a political motivation.

- the legal position is that the directive sets out "indicative levels" of alcohol (110 litres of beer, 90 of wine, 10 of spirits) and tobacco. Above these limits member states are entitled to question whether the goods are for personal or commercial use. But the directive is silent on methods and criteria for doing so. Customs officers are given a reasonable degree of latitude to determine intent, which they do against a set of obvious criteria, e.g. are the goods hidden in panelling etc.; is this one of a frequent number of repeat trips; are there receipts; is there an obvious reason (wedding reception etc.)? Since July Customs hae been more aggresive in their questioning policy to try to tackle tobacco smuggling. They say that only 24,000 people out of 14m who cross the channel each year (less than 0.02%) have goods confiscated. But they are adamant that the indicative levels are not being applied as absolute limits, and that we are not in breach.

- Cion have apparently turned down repeated offers to come to see Customs officers in action. But they have agreed to an official level meeting (tomorrow) with Customs/UKRep so they can explain UK position. Customs have undertaken to involve us in the process from now on (they will have to if/when they get a 226 letter...). They have faxed me their advice to HMT Ministers/line for PMQs (coming round by hard copy).

Meanwhile, Arlene McCarthy has rung up to ask what HMG's line is. Se said that this has been stirred up by lib Dems and Conservatives in the EP who, together with people writing to him, have put pressure on Bolkestein to act. I said that HMG line would be to say that we believed we complied with Community law; we had not received a formal complaint; and we would respond to any 226 letter in the terms set out above. She understood this. But she did say that her constituents had written in with tales of intrusive questioning etc. (Which may of course in some cases be justified.) I advised her to send them to Mike Wells/Nick Ilett so they can be brought to peoples' attention.

Once we have got our case together we will need to consider how to handle this. Maybe need to get round a table with HMT, UKRep and Customs.

Rachel Cowburn - to be aware.

Mark

MT
cc: JSW RL
JPo FC
Press

SECRETARY OF STATE

MINISTRY OF DEFENCE
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MO 13/8C

22 October 2001

Dear Jack,

Thank you for copying your minute of 28 September to Clare Short about Institution Building in EU Candidate Countries to me. Although the Ministry of Defence is not involved in the twinning programme, we are undertaking similar activities in Central and Eastern Europe through our 'Outreach' programme, which is funded from the Global Conflict Prevention budget.

This "Outreach" programme seeks to encourage and support security sector reform. Our aim is to assist in the establishment of democratically accountable and cost-effective armed forces that are capable of contributing to national, regional, and international security through peace support operations.

Our activities are agreed on a bilateral basis to ensure that we target the specific needs of each nation, although there are some areas of assistance that are common to most. A key part of the programme is the provision of military and civilian personnel on secondment to host governments to advise on various elements of the reform of their Armed Forces. These are normally provided for periods of up to three years and we currently have advisers in Poland, the Czech Republic, Slovakia, Slovenia, Romania, Bulgaria, Lithuania, Latvia, Estonia, and Macedonia.

The Rt Hon Jack Straw MP
Secretary of State for the Foreign and Commonwealth Office

Recycled Paper

Institution building is supported by English Language Training; academic and military/civilian staff courses; consultancy studies on democratic controls and defence management reforms; seminars on legal issues and various aspects of personnel management; and high level contacts and visits between Ministers and senior civilian and military officials. Our officials work together closely on all of these.

I am sure that these activities have an important role in complementing the twinning initiatives.

I am copying this letter to the recipients of your minute.

Yours sincerely,

Geoff

GEOFFREY HOON

CABINET OFFICE LEGAL ADVISER

[European Secretariat]

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Martin Donnelly
Cabinet Office (CO)
European Secretariat
70 Whitehall
London SW1A 2AS

22 October 2001

Dear Martin

PLAIN LANGUAGE: CLARIFYING EUROLAW

1. You sent me a copy of the letter dated 5 October 2001 from the Minister for Europe to Roger Liddle. I understand from the Regulatory Impact Unit that the letter was also sent to the Parliamentary Secretary at the Cabinet Office

2. I have not seen the booklet on European legislation published by the Plain Language Commission. Its message, that European legislation should be written in clear and plain language, is obviously right and one which should be supported. There are measures in place, which the Government has supported, notably the Inter-Institutional Agreement on quality of drafting and the further measures called for in that Agreement. But improving and maintaining the quality of legislative drafting is a long-term business. It might be worth doing a stock take of progress under the Inter-Institutional Agreement and considering what more could be done in this area.

3. Making progress in this area is still more difficult than doing so domestically, having regard in particular to the number of parties involved in making European legislation. In both the domestic and European areas, plainness of language may not remove all barriers to understanding where the substance of legislation is complex.

4. As to the proposal for citizens' summaries, my instinctive reaction is to worry about the increased burden this will produce, for the European institutions or national governments or both. But the right approach should be to undertake a kind of cost/benefit analysis in collaboration with those on whom the burdens might fall. This points to opening up the debate with departments.

5. We have something like summaries in the domestic area – Bills are introduced with explanatory memoranda, and Statutory Instruments all have a (non-binding) explanatory note printed with the Instrument. The Commission publishes explanatory material with its proposals for legislation, but no equivalent is published when legislation is finally made on behalf of the Community.

6. We ought, however, also to consider whether the production of summaries would meet the perceived need. Who would benefit from summaries – national parliaments, legal

INVESTOR IN PEOPLE

practitioners and other professionals, citizens at large? What alternative sources of information are already available?

7. If it were decided to proceed with some kind of summary, there will be some technical questions to consider – for example, which Community instruments should have a summary (only the principal ones, or all the comitology-based measures and non-binding instruments); is a summary needed for a Directive, when it will be transposed into national law anyway; how would the summaries be published; might the summaries have inadvertent legal effects.

8. Perhaps we could consider how to take these issues forward. Although some of the questions are for lawyers, as always there are underlying policy and administrative considerations too.

Yours sincerely,

Mike Thomas
M C P THOMAS

cc Sir Stephen Wall (CO/No 10)
Roger Liddle (No 10 Policy Unit)
Mark Courtney (RIU)

f

From: Roger Liddle
Date: 19 October 2001

STEPHEN WALL

cc: Martin Donnelly (CO)
Philip Buddon (CO)
Clive Tucker (DFES/DWP)
Peter Drummond
(The Hague)

THE OPEN METHOD OF CO-ORDINATION

I was very interested to read Peter Drummond's report of Frank Vandenbroucke's views on the open method of co-ordination. I would like to suggest that in our thinking about the future of Europe, we are more clear headed about our own views of this approach to European policy-making.

I rather feel that within Whitehall we have seized on the open method of co-ordination where we see it as an alternative to nasty European regulation which we don't like, particularly in the employment field. On the other hand, where there is no immediate prospect of regulation, we come across as little better than half hearted in areas such as social inclusion and pensions because we basically don't like the idea of Europe getting involved in what we see as essentially domestic questions.

The policy community outside Whitehall has, however, seized upon the open method of co-ordination with much more enthusiasm. People like Charles Grant and David Miliband genuinely believe that Europe has much to gain from policy competition in which best practice is compared and spread across member states through a process of explicit co-ordination. I have a lot of sympathy with this.

When the EU enlarges, the likelihood is that in core member states the pressure for harmonising legislation, particularly in the social field, will grow. That is not what we want to see. Nor will it be received that enthusiastically by the new members. On the other hand, they will not want to present themselves as "bad" Europeans. So my judgement is that they will not obstruct social regulation unless they are offered a coherent alternative.

In my view, the open method of co-ordination is that alternative, and we should be far more active in proselytising it. For that reason, we should be doing internal work now about how we think bench-marking can be made more effective; the role of targets and guidelines; to what extent we can present a case for them being softer and harder on its actual merits rather than simply grounds of political convenience; and what is the Commission's proper role. I see this as potentially a positive British contribution, possibly to Laeken, almost certainly to the Convention.

ROGER LIDDLE

Rliddle\open method vlb

f

From: Stephen Wall
Date: 17 October 2001

PHILIP BUDDEN

cc: James Bevan, FCO
Ivan Rogers, HMT
Mike Thomas, COLA
Giles Paxman, UKRep
Roger Liddle

COMPETENCES

Verbeke's paper is a good one which shows the scope - and limitations - of a competences exercise. But, as with the e-mailed paper we saw on Monday, there is scope for describing the division of competences in a reassuring way as per Verbeke's paper. But this is more a political, than legal, approach.

Verbeke rightly stresses subsidiarity - which brings us back to our own approach. We have to make the subsidiarity rules work better.

STEPHEN WALL

RESTRICTED

10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

bcc: JPo
MT
DM
Press

16 October 2001

Dear Kim,

NORTHERN LIGHTS

I was grateful for the briefing Chris Brealey provided for last night's meeting in Copenhagen. The other participants were: Per Poulsen-Hansen (Denmark – chair); Lars Danielsson (Sweden); Jari Luoto and Alec Aalto (Finland) and Wim Geerts (Netherlands).

Ghent European Council

All agreed with Danielsson that Afghanistan should be discussed before the Presidency Press Conference and dinner, but the Presidency were resisting. Persson wanted only three things from the meeting: to hear from Mr Blair about the situation; to reaffirm the EU's solidarity and to affirm a continuing UN role. The press too would be interested only in this subject. I said it was difficult for us to lobby the Belgians on this point since they already felt we were raining on their parade. (See also the record of PM/Rasmussen today.)

Future of Europe

General agreement on the duration and content of the Convention; though Geerts was suspiciously quiet on some of the content points, where everyone else was convinced the Belgians would try to be too ambitious, prematurely asking and answering questions that were for the Convention and the IGC. The only really new points were:

(i) Presidency. No one else had heard Delors' name mentioned but all thought him past his sell-by date. Ditto Dehaene. Ahtisaari was ready and willing, said the Finns, but the latter were not pushing. They had one overriding EU priority: to secure the European Food Agency for Helsinki.

(ii) Timing. The Finns thought the Convention might run from March 2002 to June 2003. I and the Swede warned of the risk of the firebreak being squeezed at both ends: a year was enough (March to March).

(iii) Participation. No strong feelings about the Turks one way or the other. But I think most would be happier with them out. I said it would be good to get the Turks to sign up on ESDP as a prior condition if they were going to participate. But we recognised that a choice between being in the Convention and being beastly was probably no contest where the Generals were concerned.

(iv) Agenda. Kok, said Geerts, wanted to add the external cohesion of the Union and strengthening the democratic legitimacy of the Union to the Convention agenda. I said that, on the first, I thought the Convention would get bogged down in institutional gamesmanship (abolishing Solana, co-decision for going to war etc). The Finns thought weighting of votes might get another airing.

Council Reform

We talked briefly on this, mainly because Persson will cover it in a speech in Germany on Thursday. He will support us on the role of the European Council, and advocate team presidencies. He will also be very strong on CAP reform.

Enlargement

Most thought Friday's discussion would be brief: what message should Verhofstadt take to the Poles next week? Most were gloomy about the prospects for the Miller government, despite relatively upbeat reporting from all our embassies. Danielsson thought the message should be: we want you in but you must pull your socks up, and there are no guarantees. I did the Alex Ellis number on French/Spanish intentions on the CAP draft common position. No one else seemed aware - or concerned.

JHA

Despite my best efforts to prise open some flexibility on issues like dual criminality, minimum penalties and common definitions, I got nowhere. The basic line is: 'We have our constitutions. We can speed up our procedures within those limits but not get round them'.

Nordic EU Council

The first meeting of the Nordics had been last week. They would meet before each European Council to concert their views.

Dioxin in Fish

The Scandinavian participants sought our support for an exemption from the new dioxin rules for Baltic Sea Fish. They were the staple diet of Scandinavians and, for many people, their main source of protein. If they wanted to take a chance on dioxin, that should be their business.

Danish Presidency

Poulsen-Hansen outlined Danish Presidency objectives which were enlargement (with the slogan "Copenhagen to Copenhagen"); the agriculture mid term review; relations with Russia; the WSSD Summit; reform of the CFP; relations with Turkey - and handling Cyprus. I find, incidentally, that almost all meetings with EU colleagues now include anxious references to Cyprus. We should probably have another discussion ourselves soon to check our tactics and our line.

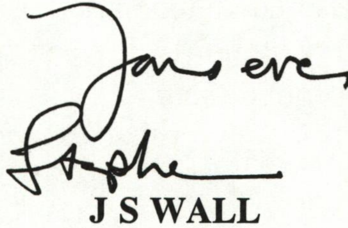
Duisenberg

Geerts said there was no possibility of Duisenberg resigning as President of the ECB within the next year. The Dutch were looking at the legal situation as regards Noyer. Danielsson said that Frank Belfrage (about to be their ambassador in Paris) had picked up from his chums there that Trichet was still in trouble.

Next Meeting

Our next meeting will be in Stockholm on the evening of Monday, 10 December.

I am copying this letter to Sir Nigel Sheinwald (UKRep Brussels), our Ambassadors in Copenhagen, The Hague, Helsinki and Stockholm, and to other members of ESG.



J S WALL

Kim Darroch CMG
FCO

MINUTES OF A MEETING HELD IN THE CABINET OFFICE ON FRIDAY 12 OCTOBER 2001 CHAIRED BY SIR STEPHEN WALL

Item 1: Preparations for Ghent European Council, 19 October

JHA issues

1. The three main JHA anti-terrorism measures would be discussed either at the Jumbo Council itself (freezing of assets and evidence) or the JHA Council immediately following (fast track extradition and the terrorism framework decision). Germany and the Netherlands, with a few other Member States, were pushing for changes that would significantly weaken the measures. It was agreed that:

(a) the key issues on the asset seizure and extradition measures were ensuring wide scope and avoiding unnecessary judicial process in the member state receiving an asset seizure or extradition request. The key issue on the terrorism framework decision was ensuring tough specific penalties;

(b) we should not expect these dossiers to be resolved by Ghent. But we should use both the 17 October GAC and Ghent to raise the political pressure on the back-markers. Without such pressure, the relevant Justice Ministries were likely to remain intransigent. There were indications that the Dutch in particular would be receptive to political pressure;

(c) Stephen Wall would lobby Peter Moors, offering language that Verhofstadt might draw upon with the press at Ghent (there were unlikely to be Conclusions);

(d) Home Office should rapidly resolve remaining Human Rights Act difficulties. Counsel believed we were comfortably placed to push for an ambitious approach on the asset seizure measure. We needed urgent advice on fast-track extradition.

Financing of terrorism: EU implementation of UNSCR 1373

2. Most participants had not seen Wasim Mir's (FCO) letter of 11 October to Michael Roberts proposing a UK approach to the forthcoming negotiation of an EU instrument. But COLA were broadly content. It was agreed that:

(a) it was unlikely that the Presidency would seek to settle this issue at the Joint JHA/Ecofin Council;

(b) nevertheless, interested Departments should comment in time to allow the paper to be submitted to FCO ministers for the weekend box on 12 October.

Joint JHA/Ecofin Council, 16 October

3. It was agreed that:

(a) congratulations were due to all those involved in securing a satisfactory deal with the European Parliament on the second money laundering directive;

(b) the draft conclusions for the Joint Council were good from a UK perspective;

(c) HMT press officers should urgently liaise with their Home Office counterparts on media handling for the Council.

Future of Airline Industry

4. It was agreed that:

(a) various drafts of a joint HMT/DTLR lobbying paper had been circulated. The final version should reflect HMG's current position, ie that while we welcomed the Commission's paper on post-September 11 support for airlines, we had not yet agreed that HMG should bear the cost. DTLR should revise the draft to remove any tension between the need to support consolidation and to respect the Commission's competition rules;

(b) the paper should avoid giving the Commission a mandate to pursue external negotiations. We should take a gradualist approach, allowing the Commission to prove itself by resolving existing difficulties before taking on wider responsibilities;

(c) Ministers should see the paper over the weekend. UKRep should be in a position to distribute it on the morning of 15 October.

Airline Security

5. It was agreed that:

(a) at the 16 October Transport Council and at Ghent, the UK should welcome the Commission's prompt production of a proposal on airline security. However, we should not be shy in arguing that the proposal was doubly flawed in that it did not reflect the most recent ECAC standards, and that it imposed unnecessary limitations on member states wishing to impose more stringent standards.

General Affairs Council, 17 October

6. This would look across the board at the issues coming to Ghent. It would be an opportunity for Foreign Ministers to put pressure on the JHA back-markers. It would also look at practical ways for the EU to help build support for the anti-terrorism coalition. Concern would no doubt be expressed about statements from Washington on the possible extension of the campaign. It was agreed that:

(a) UK ideas for the future of Afghanistan should amply reflect a coherent vision of what the EU might offer in this area. They should give weight to what both the EU and its member states could contribute and the role that Chris Patten should play;

(b) the Prime Minister would want both the GAC and Ghent to give new impetus to the non-military aspects of the campaign.

Future of Europe debate

7. It was agreed that:

(a) on the timing of the IGC, we should not abandon our insistence on a 2004 start date for which we had strong arguments. But we need not die in a ditch if we secured a 6-month firebreak between the Convention and the IGC.

Enlargement

8. It was agreed that:

(a) discussion at Ghent would centre on the roadmap. But Verhofstadt would want to sound colleagues out on the messages he should be taking with him to Poland on 22 October;

(b) the Prime Minister should be given a strong, political brief on Poland. This should be supportive of Poland, but should maintain pressure on the new government to bring Poland's performance up to scratch;

(c) the French wanted to identify key areas in which effective monitoring would be carried out. Our view was that this should focus only on areas which really mattered. We should feed in suggestions of two or three areas which might be used for this purpose;

(d) there was a risk of Ghent having a difficult discussion of CAP reform.

Sites of EU institutions

9. It was agreed that:

(a) Verhofstadt might still propose a mini-package for Ghent, although a larger package at Laeken was more likely. There was no evidence of any groundwork having been done so far.

(b) if it became clear that a mini-package was on the table for Ghent, FCO should clear their brief widely within Whitehall.

Draft FCO paper on prospects for Ghent

10. It was agreed that:

(a) any further written comments on the FCO's draft paper for EP should be received by close on 12 October.

Item 2: Launch of a new WTO Round

11. The meeting considered DTI's draft paper for EP committee on 18 October. It was agreed that:

(a) the draft paper outlined a sensible approach on preparations for the WTO Ministerial. The situation remained fluid, and there might be a need to review tactics in the light of the WTO meeting in Singapore on 13-14 October. EP committee was likely to discuss the merits of continuing to stick behind the Commission and the approach that the UK should take at the 29 October GAC;

(b) it was important to avoid circumstances in which the UK might be blamed for any failure in the process. We should therefore tell the Commission in advance if we planned to explore possible flexibilities with third countries. We should also avoid circulating such ideas in writing. This should be brought out more explicitly in the draft paper;

(c) Departments should provide any outstanding drafting comments without delay to allow the draft paper to reach the Trade and Industry Secretary's weekend box. In particular:

(d) DTI/DfID should liaise further on the wording on implementation in para 6 to underline the importance of continuing to seek agreement on these issues before the WTO Ministerial;

(e) the environment section should include greater nuancing of what we might realistically expect to achieve, eg references to MEAs and labelling might be more acceptable to others than the precautionary principle. The paper should also draw out that member states attached importance to environment for a combination of both substantive and tactical reasons. This meant that, irrespective of the substance, it would remain an important element in the EU's position. A narrow agenda would not sell in France;

(f) the agriculture text should reflect that fact that we might be able achieve more on phasing out of subsidies during the negotiations than France would accept in a launch declaration;

(g) the reference to animal welfare should be moved further down the paper;

(h) DWP should provide DTI with revised wording on labour, reflecting the need to avoid the UK being seen as a back-marker;

(i) DTI should ensure the TRIPs section was consistent with the recently agreed EP correspondence on this issue;

(j) on tactics, the paper should also include reference to lobbying the Germans and Vajpayee;

(k) on presentation, we should ensure that the UK's messages were consistent with Ministers' wider response to 11 September and with our approach to the challenges of globalisation. This was a point Ministers might wish to discuss further;

(l) Departments should advise the Cabinet Office which of their Ministers would be attending the rescheduled EP committee meeting (11.30am on Thursday 18 October 2001);

(m) DWP should liaise with DTI/UKRep to arrange a meeting with the Commission to discuss current developments and our ideas for launch language.

Cabinet Office
12 October 2001

cc: PH
IH
REG RC
MS Roger Liddle
Edward Oakden

Copy to ~~Jeremy Heywood~~
Geoffrey Norris
Roman Hubbard
Andrew Adonis
Patrick Diamond
+ return

CABINET OFFICE

70 Whitehall London SW1A 2AS
Telephone 020 7270 0177 Facsimile 020 7270 0112
e-mail: Martin.Donnelly@cabinet-office.x.gsi.gov.uk

Martin Donnelly
European Secretariat

cc GM

Roman Escolano
Moncloa

28 September, 2001

Dear Roman

NETWORK INDUSTRIES

It was good to talk to you yesterday.

I attach the promised paper on network industries, which sets out our current thinking on how we think we could make progress in this important area. The note draws on more detailed work underway in UK Departments. Our experts would be happy to discuss the paper with colleagues in the appropriate Spanish Ministries if that would be helpful.

I also attach a short UK non-paper setting out how reform of the cars block exemption to increase competition might be taken forward. I hope we can work together on this.

with best wishes

yours

Martin

MARTIN DONNELLY

ANNEX

Networking Europe: UK non-paper

Introduction

This paper looks at network industries in the context of European liberalisation and the Lisbon agenda. It is intended to set the scene for taking forward the creation of a fully functioning internal market of network industries at EU level. It suggests some specific measures that might be taken forward at the Barcelona European Council.

2. Network industries include the transmission and distribution systems for electricity, gas, and (by extension) water and to some extent communications. Conceptually, other industries are also network industries, including the road network, the railway system, the air transport system (taken as a whole) and broadcasting systems. This paper:

(a) sets out four principles to guide action on promoting networks for Barcelona;

(b) considers specific measures we could consider taking on energy and transport networks at Barcelona.

General principles

3. Network industries display some or all of a series of important characteristics which give them a unique role in the EU economy. Their combination of universal reach, access to customer information, financial power, long life, high levels of investment, substantial economies of scale and a strong political franchise adds up to almost inevitable market power for larger vertically integrated incumbent providers of these services. The extent to which that market power operates in the interests of the wider European economy, at a time of significant change and at a time when the need to improve Europe's economic competitiveness has been identified as a key issue, is central to the modernisation agenda.

4. The complexity and political and economic sensitivity of these issues also means that we have to approach liberalisation of markets and enhancement of networks in a range of ways. We propose that **four principles** should govern our approach to these issues at Barcelona:

(i) networks have dominant market positions in their area. Even if ownership or operation is shared among a number of undertakings, this remains true. The Stockholm European Council included in its conclusions a reference to the use of **competition rules** in the energy sector. The purpose of competition rules in this area is to allow non-discriminatory access to monopoly networks, not to produce competing infrastructure. This point **should be pressed vigorously in both energy and transport fields**. There must be adequate reassurance for new entrants to compete in previously closed markets through tighter regulation of monopoly network operators;

(ii) networks that are also vertically integrated are almost certain to abuse that dominance. **Legal separation of monopoly networks, with proper supervision of their behaviour, is essential for the development of competition and the protection of consumers**. Agreement on that point is the key to progress. Companies which agree to separate in this way and submit to independent regulation of monopoly elements should be free to pursue strategies under normal rules;

(iii) creating truly European networks demands a strategic approach to the interconnectivity of infrastructure. In particular, it is important to accept that the issue goes beyond connections between Member States' own territory and that of their immediate neighbours. There therefore needs to be a **coordinated effort to identify gaps and bottlenecks and agreed principles on how measures to address these should be funded, including the role of the private sector and how regulatory mechanisms can incentivise investment**.

(iv) The process of building political support for liberalisation needs to be addressed. The case for change must combine elements of hope – for a better deal; reassurance, for the vulnerable and on wider security issues; and unmasking of some of the economic exploitation going on in many markets at present. **It is important to take account of the wider public interest, through realistic timetables which take things in stages and are accompanied by a process of evaluation**.

5. There are two areas where we particularly need to bear in mind the considerations in iv. above. One concerns **access to networks by socially excluded and geographically remote groups**. The other concerns ensuring **security of supply** in a liberalised market. The need for reassurance is particularly important in this area. A more detailed paper on this point is annexed.

6. The difficulties discussed above should not obscure the potential benefits of the process. Liberalisation in telecoms has helped stimulate and support significant economic growth, and well as whole new industries (like mobile communications systems and services, where the EU has a significant global position). It has not been accompanied by any deterioration in service for vulnerable groups of consumers: quite the reverse. **Liberalisation of energy and transport markets has the potential to benefit consumers and industry immediately, through lower prices and better service. But is also has the potential to stimulate whole new areas of activity.** The market for "smart" energy products – intelligent meters, domestic CHP plants, embedded generation products for example – is potentially very significant both in the EU and as an export earner too.

Energy

7. The Lisbon European Council called for a speeding up of **liberalisation** in a number of areas, including gas and electricity, with the aim of achieving a fully operational internal market in these areas. However, several key obstacles have emerged to the legislative process:

- the entrenched social and political position of incumbent firms, in addition to their economic power. In some cases continued state ownership or involvement, and fears of the immediate consequences of liberalisation on employment have added further complications;

- there is debate about the model of regulation proposed by the Commission and how to ensure non-discriminatory third party access. While 14 Member States have a form of independent economic regulation, Germany does not. Although the German model may work reasonably well for companies already established in that market, it makes new entry to the German market very difficult. Publishing access prices and introducing speedy dispute settlement procedures would help address this.

More generally, it will be important for economic regulators to co-operate and share best practice if we are to establish a well-functioning single market in energy;

- adequate interconnection does not exist in a number of cases. This inhibits the proper operation of the internal market, as the absence of, or inadequate capacity on, interconnectors reduces the potential benefits of competition;

- meanwhile, in anticipation of liberalisation a wave of industry consolidation has started. This has been controversial when companies benefiting from a protected home market, strong domestic cash flow and immunity from capital market pressures have started to acquire energy businesses elsewhere in anticipation of liberalisation and even of enlargement of the EU. In the absence of EU-wide liberalisation this has the potential to undermine competition, as the result might be an EU market dominated by four or five large players who do not then compete very hard in each other's home market.

8. Meanwhile, on **physical infrastructure**, the Commission is currently considering a revised TENS regulation in order to address concerns over security of supply, the related need to establish an integrated market in energy and the challenge of forthcoming EU enlargement. These proposals are also likely to place more emphasis on integration of peripheral regions and the environment. The Commission could well suggest that TENS funding be more generally available for investment and not just, as now, towards feasibility studies.

9. The UK sees as the main priority for such work the need to address both the gaps existing between/within Member States' infrastructure systems and the EU's need for energy security, and for the effective operation of an integrated energy market. The UK also considers infrastructure gaps between the EU and third countries needed for security of supply, and infrastructure contributing to access to renewables and diversity, as priorities.

10. To address the need to make progress on **energy liberalisation** and to ensure that the EU can develop the **infrastructure** it needs, we make the following proposals for Barcelona:

ANNEX

- build consensus around the four principles above as a way to address the special qualities of network industries without compromising competition in the internal market;

- a Commission study of how the competition rules might be pressed more vigorously in the energy (and transport) fields. This should take account of (a) the impact of acquisitions in other Member States by firms which are dominant incumbents in their home territory and (b) the need to provide a level playing field for new market entrants. This should be completed in time for the June 2002 European Council;

- include a process of evaluation on the path towards full liberalisation, including international transmission issues, so that public concerns on access and security of supply can be addressed;

- ask the Commission to report on the scale of infrastructure gaps and bottlenecks in the energy market and means of addressing them, in time for the June 2002 European Council. The study should examine:

- how to use regulatory and market mechanisms to incentivise business finance to act to address these, in particular through a regulatory mechanism to permit network monopoly owners to fund infrastructure investment in return for a guaranteed future level of business revenue for agreed periods;

- whether there are projects which have positive spillover effects which may not be commercially viable and how such projects can be delivered, including the possible role of the public sector and the EIB;

- other obstacles to the delivery of essential infrastructure projects (eg delays in the planning system).

- a "Smart Energy" initiative to build demand for more open markets, and to develop and demonstrate the technologies which open energy markets across the EU could support.

Transport

11. There is a high degree of common interest between the UK and Spain in work to develop transport networks. Specifically, there are three key areas where we can work together to achieve our goals in the context of Barcelona.

Rail liberalisation

12. Spain and the UK have both supported moves by the Commission towards greater liberalisation of rail and other public transport services. We welcome the Commission's intention to bring forward legislation to extend liberalisation of rail freight to domestic and cabotage services, and of international passenger services. The UK and Spain have both supported the Commission's introduction of legislation on public service requirements (PSR), which should open up markets for the operation of public transport. We should:

- work together to seek rapid progress in 2002 on further rail liberalisation. We should draw on the UK's experience of a highly liberalised rail freight market and of regulated competition in rail passenger services alongside public service contracts. We should ask the Commission to ensure that forthcoming legislation on rail liberalisation and urban transport systems respects the principles of competition and unbundling;

- work together to seek to ensure that proposed accompanying measures to create a genuine internal market, on rail safety standards and interoperability, are proportionate and do not impose unreasonable burdens on public funds;

- secure agreement to the PSR Regulation during the Spanish Presidency.

Developing transport networks

13. The Commission's recently published Common Transport Policy White Paper recognises that the internal market and territorial cohesion of the EU are heavily dependent on a transport network which is interconnected and free from bottlenecks. And it makes clear that one of the principal obstacles to the development of such a network is the difficulty of mobilising capital. The UK

has substantial experience of working with the private sector on the development of transport infrastructure. We propose that:

- the UK and Spain should work together to encourage the Commission to examine ways of incentivising business finance as the primary means of financing TEN projects and encouraging innovative public-private partnerships. This should include ensuring that its proposals for revising state aid rules for inland transport facilitate innovative financing solutions and do not undermine legal certainty for existing projects involving private finance.

Single European Sky

14. Successfully concluding the single sky package would contribute to more effective air transport across Europe. It would also have environmental benefits through reduced flight times. The proposals have met with widespread support, and with the previous obstacles to progress now resolved, it should be possible to make good progress under the Spanish Presidency.

Communications

15. There are clear attractions in launching a strategic move away from communications based on narrowband networks in Europe to ones predominantly based on **broadband**. It is not yet clear whether there are any barriers to be addressed at European level regarding users' access to, and use of, broadband networks (in accordance with the end-2002 target of the e-Europe Action Plan). Nevertheless, it would be timely to review at Barcelona the scope for additional action by the private sector, member states or at EU level to accelerate the development of broadband networks. The principles outlined in this paper could play a useful role in such a review: we are developing our thinking on this. Issues of take-up and use of broadband services will also be critical factors in such a review.

We propose:

- a strategic commitment at Barcelona to a broadband perspective for the information society of the future;

- wider discussion and exchange of experience on the role of markets and Governments in the roll-out of broadband infrastructure. This should cover

key supply issues including cost of capital for infrastructure investment, the role of regulation, potential for sharing facilities, retaining the EU lead in 3G mobile services, and integrating high-speed research networks, wireless, digital TV and other platforms. This work should also consider the value of setting targets.

Cabinet Office
September 2001

ANNEX

UK non-paper on the consistency of security of supply and internal market objectives

Headline points

- Economic security provided by an open and integrated market underpins security of supply because such markets allocate resources efficiently at any given price level.

- Concerns about opening the EU market in advance of economic reform in supplier countries can be addressed by transitional measures (e.g. gas release) and in political dialogue on investment in parallel with market opening.

- Concerns about attracting investment for infrastructure are not borne out by UK experience but a number of options for action are possible:

  - monitoring by Member States and Commission
  - Commission to study the effect of liberalisation on existing contracts and how to incentivise new investment
  - Commission to identify gaps holding back market integration or needed for security of supply and explore EU funds that may be available.

- Other actions relating to physical security could include:

  - increased gas storage
  - new LNG capacity
  - emergency planning across EU

- Liberalised markets support environmental objectives because they allocate resources efficiently but demand-side measures will remain important.

Detail

Economic security:

To contribute to their economic security, governments look for energy supplies at prices that are politically acceptable and do not undermine competitiveness. Political expectations aside, conceptually the "right" price for different types of energy is one that reflects market fundamentals over

time, including externalities, and gives clear price signals (both in the long and short term) for both suppliers and consumers. A large efficient, financially traded market, free from distortions will be the best basis for this. Such markets allocate resources efficiently at any given price level. Measures to incorporate (internalise) externalities can then be considered on top of this. Pursuit of productive efficiency provides a base from which any adverse competitiveness impacts of (for example) taxation measures (such as the climate change levy in the UK) or the UK renewables obligation are more likely to be acceptable, and enhance the effectiveness of the policy instrument. Although the EU has not yet achieved a fully integrated and liberalised market the Commission's proposals would go some way to achieving it and there is general acceptance that liberalisation brings wider economic benefits and these underpin the ability of governments to deliver security of supply.

2. Gas exporting countries in general remain, however, a long way behind the EU in terms of liberalisation and because of this some Member States are concerned about compatibility between liberalisation and economic security of supply. The core of their concern is that the EU is dependent on these countries for gas supplies, and that the supply is made more certain if commercial arrangements are managed through very large scale contracts for both gas and infrastructure, giving the exporter a large and certain cash flow, and the importing country a large and certain flow of gas. If the importing companies cannot in turn "manage" the marketing of the gas, then these contracts would become too risky for the importer, and the exporting country will be deprived of the incentive to co-operate in flowing gas, and may seek to extort better terms at significant economic cost. Traditionally these contracts have been on take-or-pay terms, with prices linked to oil or oil product prices. Thus the producer has borne the price risk, the buyer the volume risk.

3. The consequences of liberalisation on these arrangements raise legitimate concerns, and they should be addressed carefully. The benefits of liberalisation are real (including through strengthening the EU's position vis-à-vis suppliers). But if this process leaves existing contracts with Russia or other supplying countries stranded, then real disruption could follow. The Commission should study the effect of liberalisation on existing contracts, and consider ways of managing any stranded contracts. Such problems are by no means insoluble. For example, gas release schemes provide an established means of managing the risk of "stranded" long term contracts as they solve the twin problems of incumbents being saddled with stranded contracts if they lose customers, and new entrants not being able to get hold of gas supplies. There may be other solutions too.

4. Equally, the EU should recognise that the establishment of a liberalised and integrated EU market will change the sort of commercial environment faced by supplying countries. In fact, their opportunities may well grow as a result of liberalisation, but the process of explanation and adjustment should be started soon. It should form a key part of the EU's energy dialogue with Russia, the Ukraine, and with Euro-Med exporting states too. Infrastructure and transit issues will become central to the energy relationship with these countries in a liberalised market, and the EU should review urgently whether special bilateral framework agreements on infrastructure and supply issues are needed (covering technical convergence as well as commercial terms). A fully integrated and liberalised EU market will strengthen our negotiating position and enable the EU to articulate a common interest and give clear and consistent signals to third countries.

Physical security:

5. To ensure physical security governments want reliable energy supplies free from disruption whether caused by technical fault or supply failure. The UK experience shows that there are benefits for physical security in an integrated and liberalised market. However many of the immediate benefits were because the UK enjoyed large indigenous reserves, a single "backbone" transmission system under unified control and no physical interconnection with the continent. Surplus gas meant prices were pushed down and other economic benefits gained. Plainly, this would not be the case for an isolated market without indigenous resources. Such countries may seek to develop uneconomic sources. The UK ended its physical isolation by building the gas interconnector and has effectively "imported" higher gas prices in the short term in return for economic security of supply in the long term.

6. The relevant question at EU level is whether integrated and liberalised markets create the right environment for new physical investment. Most existing EU energy infrastructure was funded by state monopoly or by means of long-term contracts on terms that would now be considered anti-competitive (or a mix of both). There is the view that the investment needed to develop gas reserves (e.g. in Russia) or key infrastructure, such as international pipelines, will not be forthcoming unless they are financed on the back of secure long term take-or-pay contracts. The argument continues that gas suppliers can only enter into these contracts if they, in turn, have secure long term markets and that this will no longer be the case if liberalisation takes hold and they face the threat of competition. Recent experience does not, however, support these

arguments. In electricity, not only is there investment in new generation but some costly and ambitious interconnectors are being built e.g. UK-Norway. Evidence so far suggests that liberalised markets attract capital for new types of electricity generation capacity - smaller, more local, and often innovative. That may help manage the gas market on the demand side.

7. Also, there is still room for long term contracts in a liberalised gas market. However, new contracts are likely to be more pro-competitive with more price re-openers and greater inclusion of links to the spot market for one element of indexation. The issue will be to manage the risk and not - as in the past - simply to pass them on to consumers.

8. It is not proposed that infrastructure funding should simply be left to the market. In the UK we have a regulated gas pipeline company and the regulator (OFGEM) is developing increasingly sophisticated ways of incentivising new investment. There is no reason why regulated EU gas companies, or indeed European funds in some cases, could not help pay for individual pipeline projects. The transition to a market approach will be a complex process and involves breaking new ground. For this reason we are commissioning an expert study of how the new market will work in practice. This also underlines the need for monitoring as the Commission has proposed to alert ourselves to emerging investment and capacity problems.

9. Greater integration of markets mean a common need to ensure adequate investment and management of networks across the region and with third country suppliers, in particular cross border interconnectors. This suggests a role for the EU in monitoring infrastructure development and - if necessary - bringing forward proposals to help ensure that networks are physically robust, properly linked and technically compatible. There may be a need to consider using EU funds to promote investment in gaps, especially in accession countries and with third countries, where the market is hesitant about coming forward with projects. (see TENs paper).

10. Political risk is thought to represent a major hurdle to large investment in producer and transit countries. With liberalisation, the relationships - involving states and more private sector players - look more complex than ever. Industry and countries such as Russia agree that they would like to see an EU investment guarantee trust fund on the lines of the US OPIC scheme. Discussion has taken place in the context of the EU/Russia energy dialogue with some support from EBRD. Although greater consideration could be given to the possibility of such a fund, the most significant hurdle to investment is

the lack of economic reform in these countries and a guarantee fund would have little more than a sticking plaster effect.

11. Concerns about reliability of supply from external sources could suggest more work may need to be done on development of gas storage and new LNG capacity. This would also reduce the need for new infrastructure build.

12. Finally, there may be a need to look at emergency planning across Europe to ensure that the risks of disruption are managed to an acceptable standard. These points also apply externally because increasing dependence means that physical security will become strategically more important.

Environmental security (sustainability):

13. For the purposes of this paper we could regard the main measure of sustainability as the impact on greenhouse gas emissions. Liberalised markets provide the best context in which to deal with climate change targets and security of supply; they allocate resources efficiently because they ensure that an optimal level of resources will be consumed for any given level of demand, price, technology etc. They are not a substitute for policy instruments designed to secure these policy objectives directly but they make other policy instruments more effective and minimise the economic equivalent of collateral damage.

14. Continuing concerns about the use of nuclear power may well lead to an increase in demand for gas for electricity generation across the EU. This could undermine EU Kyoto objectives. This suggests more work should be done to address demand-side issues, where the priority would be to ensure that measures were market-based as far as possible and did not undermine economic development. The UK already takes a strong position on encouraging the Commission to develop proposals in this area. We are also supportive of work on renewable sources. Whatever decisions are taken on nuclear generation, the case for gas market liberalisation remains strong. Gas will continue to play a key role in the European economy over the coming decades, and getting the market framework right is a significant objective in almost all circumstances.

15. In terms of physical security and sustainability, governments and regulators have important roles in establishing a sound regulatory framework to ensure that these policy objectives are met and the balance between the three aspects of security is maintained.

DTI
September 2001

CARS BLOCK EXEMPTION

Key Points

- UK Ministers have not yet made any decisions on this issue, but they are clear that significant changes to the system of car distribution in Europe are required if consumers are to gain the full benefits of the European single market.
- The European Commission's analysis of the operation of the current cars block exemption (in its Evaluation Report of 15 November 2000) is persuasive.
- The Report's conclusion that the present system has failed to meet important objectives is in line with those reached by the UK Competition Commission.
- UK Ministers support the view of Commissioner Monti that any reform of the block exemption must put the consumer in the driving seat.
- New car retailers, spare parts producers and independent servicing and repair outlets, as well as manufacturers, all need the opportunity to compete effectively.
- The Evaluation Report notes that:
    - the present system still leaves manufacturers dominating the market and able to make use of practices to segment markets on national lines
    - the current framework inhibits the operation of the single market
    - this 'selective and exclusive distribution' framework also limits competition.
- Relying on detailed policing and enforcement is unsatisfactory: a more competitive and less restrictive system will work better than relying on regulation.
- Present system is costing consumers Europe-wide, not just in the UK.

- UK shares Commission's view that justification for compulsory link between sales and servicing now seems weaker and considers the link distorts competition significantly.

- Any new arrangements must give due weight to safety considerations.

- UK also shares concern that present block exemption regulation may hinder the development of innovative distribution channels such as the Internet.

Note

The cars block exemption creates a special regime for the distribution and servicing of motor vehicles within the context of Article 81 (formerly 85) of the Treaty. In particular it allows car manufacturers to operate selective and exclusive distribution systems, subject to certain restrictions. The block exemption expires at the end of September 2002.

Background

The UK has not yet taken any decisions on new arrangements to replace the existing block exemption when it expires in September 2002. Nevertheless, the UK has welcomed the European Commission's review of the workings of the current cars block exemption. We find its conclusion that the present system has largely failed to meet its objectives persuasive. Ministers will want any new regulation to enable all sectors of the market to compete effectively to provide the consumer with new cars and aftermarket services on the best possible terms.

The UK Competition Commission, in its review of the UK new car market published earlier in 2000, concluded that manufacturers remain able to segment the European market on national lines under the selective and exclusive distribution system allowed by the cars block exemption. Manufacturers have been able to exploit practices permitted by the block exemption to limit parallel importing, thus weakening the single market. This is not just a UK problem. Indeed, the European Commission has had to take action to stop manufacturers deterring sales between other member states.

The Competition Commission concluded that practices deriving from the selective and exclusive distribution system operated against the public interest in the UK and made the market for new cars less competitive. Since all European countries use the same system, it is reasonable to suppose that many of these detrimental effects exist in other member states. The European Commission agrees with the Competition Commission's conclusion that the present system stifles *intra-* brand competition. In addition, experience in the UK (for example the persistent failure of prices to respond to exchange rate movements) suggests that *inter-* brand competition is muted as well.

The Competition Commission found that prices to private buyers were some 10% higher than they would be in a fully competitive market. Prices in the UK subsequently fell by about 10% but have recently started rising again. Surveys by the European Commission show international price differences remain very large.

It is worth noting that the "aftermarket" (i.e. servicing and repairs) employs more people and contributes more to GDP than the market for making and selling new cars. Increased competition in the aftermarket could have great benefits for consumers, especially those on lower incomes who are more likely to buy second-hand cars.

We share the European Commission's view that the present selective and exclusive distribution system may well hinder innovation in new car retailing (e.g. through supermarkets or via the Internet), to the long term detriment of European consumers. We also share the view that the so-called "natural" link between sales and servicing (i.e. compelling authorised dealers to provide servicing on the premises, and inhibiting non-dealers from becoming authorised service outlets) may no longer apply.

In summary, the UK sees significant change to the cars block exemption as essential to strengthen the single market and to make competition more effective for the benefit of the consumer. Commissioner Monti has already made some valuable observations on the need to put power in the motor vehicle market in the hands of the final consumer. We share his priorities and look forward with interest to the Commission's proposals.

MT
cc DM
Press
G/R/DCU

R 28/9

28 September 2001

1. cc. Mark Sedwill, FCO
(this page only)
This text looks okay.

2. file

Foreign &
Commonwealth
Office

London SW1A 2AH

Dear Michael,

Message from the Prime Minister for Apeldoorn Conference Brochure

The organisers of the next Apeldoorn Conference (Edinburgh, 4-5 November) have asked whether both the Prime Minister and Wim Kok could agree, as patrons, to a joint message to put in the conference brochure. Although this has come rather late in the day, it would be worth trying to secure the Prime Minister's agreement to such a message (there was a message in last year's brochure, copy enclosed). The organisers are approaching Wim Kok's office separately.

...

I enclose a suggested draft message, agreed by HMA The Hague. I should be grateful to know whether the Prime Minister would be content to put his name to this. If possible, we should like to know by 2 October, to meet the organisers' print deadline.

...

Yours ever,

Mark

(Mark Sedwill)
Private Secretary

Michael Tatham Esq
10 Downing Street

We are delighted to send our warm greetings to all participants in the second Apeldoorn Conference, or Netherlands-UK Annual Meeting, in Edinburgh.

As recent developments on the international stage graphically demonstrate, no country can afford to stand alone in these times. Working together in the European Union, NATO, the United Nations and other international fora is as important now as it ever has been. But close bilateral cooperation between partners with shared strategic interests and common challenges continues to play a very important role. The closeness of the present British and Netherlands Governments in their approach to so many important issues offers an unprecedented opportunity to develop the bilateral relationship still further. That is why, when we met in February 1999, we established a joint framework to help bring out the full potential of the close and longstanding links between the United Kingdom and the Netherlands.

The Apeldoorn Conference is a key element in that bilateral framework. It offers an opportunity for key opinion formers, both current and future, to address together some of the fundamental questions facing our two countries. These are issues in which we share a close interest, and which we have to address as leaders of Government. We look forward to hearing your ideas.

Apeldoorn offers a unique chance to exchange views and experience. We are confident that the conference will not only extend the range of personal ties between opinion formers from our countries, but will also contribute to the further strengthening of this dynamic bilateral relationship, helping to make it more significant still.

Wim Kok, Prime Minister of Minister the Kingdom of the Netherlands	Tony Blair, Prime of the United Kingdom

27-SEP-2001 16:12 FROM TO EUD(B) P.02/03

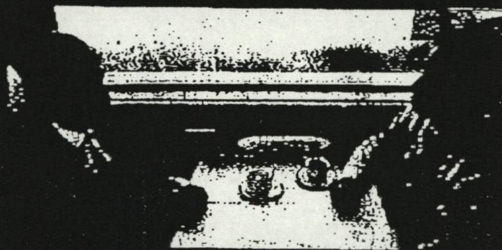
Message from Patrons

PATRONS Mr Wim Kok
Mr Jozias van Aartsen
The Rt Hon Tony Blair MP
The Rt Hon Robin Cook MP

CHAIRMEN Mr Morris Tabaksblat KBE
Baroness Williams of Crosby

DATE 18–20 May 2000

LOCATION Hotel de Keizerskroon
Apeldoorn



We are delighted to send our warm greetings to all participants in the first British-Netherlands Conference in Apeldoorn.

Within a further enlarging European Union and in a world of growing international interdependence, bilateral cooperation between our two countries is becoming even more important. When we -the two Prime Ministers- met in Bristol in February last year we therefore established a joint framework to further develop the full potential of the close and longstanding relationship between the United Kingdom and the Netherlands.

This Apeldoorn Conference embodies the way in which we are working to develop this. At this first meeting, you will address some of the most challenging and far reaching questions which society has to face, issues in which we share a close interest, and which we have to address as leaders of Government. We look forward to hearing your ideas.

Apeldoorn offers a unique chance to exchange ideas and experience. We are confident that the conference will not only extend the range of personal ties between opinion formers from our countries, but will also contribute to the strengthening of this dynamic bilateral relationship.

Wim Kok, *Prime Minister of the Kingdom of the Netherlands*

Tony Blair, *Prime Minister of the United Kingdom.*