



Ref. A084/443

PRIME MINISTER

Cabinet: Community Affairs

The Foreign and Commonwealth Secretary will report on his discussions about the post-Stuttgart negotiations with Herr Genscher, the German Foreign Minister, on 6 February. A disturbing feature was an indication that the Germans were wobbling on the need for a lasting solution and were now more willing to share the French view that a time-limited solution on the budget inequity would be acceptable. He will also report on his discussions on 8 February with Monsieur Dumas, the French Minister for European Affairs, whom you will also have seen.

2. The Agriculture Council met on 6-7 February, the Finance Council on 6 February and there was also an informal meeting of Social Affairs Ministers. None of these meetings produced decisions which make a report to Cabinet essential. The Agriculture Council continued its discussion of the 1984 farm price proposals and made a further unsuccessful attempt to roll over the structures directives which authorise the payment of capital grants and Hill Livestock Compensatory Allowances. The Finance Council discussed the international economic situation, the continuation of the European Monetary System interest rate subsidy on which further work was postponed until after the March European Council, and the possible introduction of innovation loans on which the United Kingdom and Germany maintained general reserves.

3. Over the next seven days there will be a Ministerial meeting as part of the negotiations for the third Lome convention on 9-10 February, and an informal meeting of Energy Ministers on 14 February. Mr Davignon, Vice-President of the European Commission, will be in London for talks on 13 February.

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

ROBERT ARMSTRONG

8 February 1984



Ref. A084/464

PRIME MINISTER

Cabinet: Community Affairs

The Minister of Agriculture, Fisheries and Food may refer to a statement he is circulating this evening about the resumption of payments to farmers under the agricultural and horticultural development scheme and the Hill Livestock Compensatory Allowances in the light of the Law Officers' advice that the Community's agricultural structures directives do continue in force after 31 December 1983, that member states are under an obligation to make payments under the schemes and that the obligation for the Community to reimburse expenditure incurred by member states continues.

2. There has been doubt about the legal status of the directives since the period of their extension expired on 31 December 1983. The Agriculture Council has been unable to agree either on a rollover, with or without an amendment, or on their replacement. The Commission has made it clear that it will propose that any rollover arrangements eventually agreed should be applied retroactively from 1 January 1984, and most other member states are believed to be prepared to continue to make payments. The major problem for the United Kingdom arises on the Hill Livestock Compensatory Allowances, the bulk of which are normally paid in the first quarter of the year.

3. The Minister of Agriculture has discussed the position with the Chief Secretary in the light of the very clear advice from the Law Officers and would like to be able to make a statement before he leaves for Australia at the end of the week that the United Kingdom is resuming payments of the capital grants on development plans approved after 31 December 1983 and of claims for the Hill Livestock grants received after that date.

8 February 1984

approved by ROBERT ARMSTRONG

and signed in his absence.

CONFIDENTIAL

Lindsay Wickham

Communications on this subject should be addressed to THE LEGAL SECRETARY ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS, LAW OFFICERS' DEPARTMENT, ROYAL COURTS OF JUSTICE, LONDON, W.C.2.

Prime Director

See the Law Officers' opinion on pages 2 and 3

Our Ref: EEC 84/7

8 February, 1984

A.J.C. 8/2

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ROLL OVER OF AGRICULTURE STRUCTURES DIRECTIVES

*will repeat it revised*  
The Attorney General and the Lord Advocate have seen your letter to Henry Steel of 3 February and have advised as follows:-

"In terms of Article 6 of the Regulation 729/70 EEC, it was necessary for the Council to make an estimate of time for execution of the common measures contained in the structural Directives. We are asked to consider in effect whether the expiry of that estimate of time affects the continued operation of the Directives, in respect of the continuation of the schemes, of the duties of Member States, so far as making payments to beneficiaries under the schemes is concerned, or (as the Council Legal Service suggest), in respect of the responsibility of the Community to pay the contribution from the Fund (FEOGA Guidance Section).

In our view the Regulation 729/70 is the fundamental starting point. It makes it clear that the achievement of the Community objectives (under Article 39 EEC) is properly the responsibility of the Community. Of course, it does not work out in that way completely; because the Community does not provide the whole finance. However, that element of sharing in making provision by Member States seems to be foreseen in Article 6(2)(b) which requires the Council to determine the Fund's contribution to the expenditure. The purpose of Article 6 is to determine how the contribution of the Fund to the financing of the common measure is determined. The "common measures" contained in the structural Directives must be considered in the light of the requirement of Community financing laid down in Regulation 729/70.

/The

ATTORNEY GENERAL'S CHAMBERS,  
LAW OFFICERS' DEPARTMENT,  
ROYAL COURTS OF JUSTICE,  
LONDON, W.C.2.

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The object of the structural Directives is to achieve certain Community objectives under Article 39 EEC, and these objectives have not yet been fully attained. There was an obligation to take measures to achieve the objectives, and that obligation still persists. Accordingly, in our view, it would require the clearest indication in the Directives that they were intended to terminate before the Community objectives were attained. There is no such indication, and indeed, although both the Council and the Commission legal services have expressed views hostile to the continuance of the Directives, or of obligations under them, we have seen no substantial argument in favour of those views.

The estimate of time in Article 16 of the Directives is not an estimate of the period during which the Directives are intended to subsist, but an estimate of the period which the Council considers will be required to carry out the common measures. In our view it was clearly envisaged that payments will take place after December 1983, because by approving schemes, it is accepted that the Fund will have responsibility for their execution for a period which clearly was bound to extend beyond the end of 1983. That is to say, it is clear from what has already been done that the period of execution of the common measures (to use <sup>the</sup> language of the Regulation) was to extend beyond the estimate of time currently given in the Directives and that it was not envisaged that payment would be prevented merely by the expiry of the estimate of time, which is after all, only an estimate. As we understand the assurances which the Commission has given concerning payments arising out of previously approved schemes, they have really accepted this.

It is never the case that one can predict with certainty the decision of the European Court of Justice, but in our view there is a strong case in favour of the proposition that these Directives continue to be in force, and in favour of the continuation both of the obligations of Member States to make payments, and of the Fund to reimburse them. Subject to similar reservations as to legal certainty, we do not believe that it is likely that we will put Guarantee expenditure on beef and

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sheep seriously at risk by continuing to make the payments.

Accordingly, we would answer the questions put to Law Officers as follows:-

- (i) Yes, we think that the structural Directives do continue in force after 31st December 1983, and that Member States are under an obligation to make payments under the schemes;
- (ii) Yes, we consider that the obligation for the Community to reimburse expenditure incurred by Member States continues;
- (iii) if the answer to (i) were "no", then any payment which the Minister made would be in the nature of a state aid; it could not be made under the orders made under section 2(2) of the European Communities Act;
- (iv) On the view we have taken on (i), the risk of payments by the UK being held to be state aids vulnerable to action under Articles 92 and 93 is no greater than the risk of that view being incorrect."

I am copying this letter to Douglas Duncan in the Lord Advocate's Department, David Bostock (Treasury) and to John Coles. May I leave it to you to circulate the Opinion of the Law Officers more widely as you see fit.

MICHAEL SAUNDERS

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8 FEB 1984

