

MR COLES

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cc Mr Redwood

EC BUDGET: CONTINGENCY PLANS

Used as a threat these plans could strengthen our negotiating position; as a device for clawing back our money there are dangers. The contingency measure under discussion is somewhat akin to a nuclear weapon - more use when it is not used, and likely to have irreversible and unforeseeable effects if it is used. It would set UK domestic law against the Treaty, which at article 207 obliges Member States to place financial contributions "at the disposal of the Community", and at article 208, enables the Commission to transfer its holdings "into the currency of another Member State". As paragraph 26 of the paper indicates, a Withholding Bill would be regarded by our partners as a fundamental change to the Community's rules, despite our assurances to the contrary.

In domestic political terms, such a measure would be very popular. An amendment to this effect was moved by the Opposition yesterday. However, if it went wrong (eg was successfully challenged, or lost us more money than we gained, or led to damaging retaliation), it would be interpreted as a sign that the Government had blundered precipitately, trying to win an argument in a high-handed fashion. It may be important, therefore, to design the withholding plan with an eye to correcting past wrongs, rather than one which is a unilateral step to secure clawbacks which we may not be able to negotiate. It is unfortunate that there is asymmetry between our Treaty obligation to pay money to the EEC, and the negotiated agreement to make refunds to us.

Following the logic of this argument, the withholding plan ought:

(i) only to restrict payments out of the Commission's No 1 Account. We would need to find ways of blocking attempts by the Commission to withdraw funds from this account, pending legislation;

(ii) in the first instance we should accumulate only those

funds which the Council considers obligatory (Option (iii) - some £425 million);

(iii) legislation ought to precede any blocking action. If the Government was successfully challenged in domestic law, its moral authority would be weakened;

(iv) the Foreign Secretary might be the most appropriate person to pilot the legislation, given the pressure of the Finance Bill on Treasury Ministers, and Foreign Secretary's expertise on the subject; he can also make the best assessment of the risks of retaliation;

(v) we should not sue the Commission, the Council or the Parliament in the European Court of Justice since this would make it difficult for us to maintain, or threaten to introduce the withholding arrangements if, as is almost certain, we failed in our action.

Such a withholding plan could be a useful reserve against further EC delay in making our payments. Escalation of the dispute is best phased with measured warnings rather than launching all our missiles at one go.

  
NICHOLAS OWEN