



PM/84/40

THE PRIME MINISTER

Prime Minister.

Agree letter to Mr. Chayson?  
(Flag B).

A.S.C.  $\frac{6}{3}$ 

Yes  
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1982 Risk-Sharing Refunds

1. I attach a copy of the letter which the President of the Commission has sent me in reply to my letter of 3 January about our 1982 risk-sharing refunds, also enclosed.
2. The main points in M. Thorn's letter are as follows:
  - (i) The Commission considered at the time that there was no ground for mitigation of the UK's share in the financing of additional risk-sharing payments to Germany.
  - (ii) In preparing their preliminary draft supplementary budget in 1983 the Commission calculated the gross amount of our risk-sharing entitlement on the payments basis, but did not and has not expressed a view on whether this or the Assiette Method was the correct one.
  - (iii) The figure finally chosen by the Budget Council was a 'political figure which did not itself correspond to any precise formula of calculation'.
  - (iv) The Council has not shared the British view of the problem and, in these circumstances, the Commission does not feel that it has a locus standi for taking a further budgetary initiative.
  - (v) It does however hope that the UK's concern will find a satisfactory resolution in the Council in the context of the current negotiations on the future of the Community.
3. Thorn's letter is not as bad as it might have been, given that the Commission were never likely to accept our case fully or seek to involve themselves directly in resolving it. The most positive elements from our point of view are:
  - (i) The Commission shared our view that the issue needs to find a satisfactory solution in the context of the current negotiations.

/(ii)



- (ii) The Commission confirmed the basis used for its original calculation of the amount due to us, ie the payments basis, even though we do not accept the figure that they put forward - because of its failure to compensate the UK for its share of German risk-sharing refunds.
- (iii) The Commission took the view that the figure for UK risk-sharing refunds adopted by the Budget Council was a political figure which did not itself correspond to any precise formula of calculation.

4. When I wrote to M. Thorn in January, we knew that it was unlikely that the Commission would, in practice, come up with proposals for the payment of the outstanding element of our refund. Our aim was to keep the issue under active review until the March European Council and either to dispose of it there or to take decisions thereafter on how to pursue our claim. Thorn's reply enables us to do that. At the same time, I think we must recognise that the chances of our getting agreement from our partners for the payment of the £42 million as part of an overall settlement are not good and that the choice is likely to be between our own readiness to drop the issue in the context of agreement on a wider settlement on the one hand, and action in the Court or withholding on the other. But we shall not be in a position to know where we stand until after the March European Council and we do not wish to have to take decisions before then.

5. My letter to Thorn, while not intended to initiate legal proceedings, was drafted so that it could be cited as an initial step if we did eventually decide to go to the Court. We now need to take the next logical step so that the Council has an opportunity to resolve the issue between now and 19 March; so that when it does not do so we have good grounds for pursuing the issue at the European Council and so that, failing a satisfactory outcome there, we have built up a position procedurally either to initiate legal proceedings in the European Court or to withhold, should we wish to do so.



6. I therefore now propose to write to M. Cheysson, as President of the Council, drawing his attention to Thorn's letter and asking him, in his capacity as President of the Council, to consider how the matter can now be taken forward and resolved in the Council. I enclose a draft of the letter I plan to send, with which the Chancellor agrees. There is a difficult tactical judgement to be made as to whether I should send the letter before, and raise the matter at, the next Foreign Affairs Council on 12/13 March in order to put our partners on notice that, unless resolved beforehand, the issue will have to be raised in the European Council. The issue to be judged is whether by doing so, we would jeopardise adoption by the Council of the 1983 refund regulations - which must be our top priority. This is something which we might discuss at our meeting on 7 March. But in the meantime it would be helpful to know if you and others to whom this is copied are content with the proposed text.

7. Once the letter had issued we should be able to say in response to questions that we have taken the next logical step, namely to bring Thorn's letter to the attention of the President of the Council and to ask for the matter to be resolved there. We may need to make it clear that we are ready to raise the matter at the European Council as well, if need be. I would expect some ritual criticism in the House at the lack of immediate action on our part to safeguard the sums due to us. But no-one seriously expects us to take any action before the European Council.

8. I am copying this minute and its enclosure to the Lord Chancellor, the Chancellor of the Exchequer, the Attorney General, the Lord Advocate and the Secretary of the Cabinet.

GEOFFREY HOWE

Foreign and Commonwealth Office  
5 March, 1984

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM

Reference

Sir Geoffrey Howe

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

TO:

Your Reference

Top Secret

Secret

Confidential

Restricted

Unclassified

HE M Claude Cheysson

Copies to:

PRIVACY MARKING

SUBJECT:

.....In Confidence

1982 RISK-SHARING REFUNDS

CAVEAT.....

On 3 January I wrote formally to the President of the Commission drawing his attention to the fact that the requirements of regulation 624/83 in respect of UK refunds on 1982 had not been met either by the gross provision for the UK's risk-sharing payment as proposed by the Commission or by the figure established by the Budget Council in July of last year.

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I enclose a copy of that letter and of the reply which I have now received from President Thorn, as to which the United Kingdom reserves its position. I would however like to draw your attention in particular to the passage in the President of the Commission's letter which acknowledges that the figure for the UK's risk-sharing payment established by the Budget Council was, in the Commission's view, "a political figure which did not itself correspond to any precise formula of calculation".

Enclosures-flag(s).....

While the Commission has concluded that it does not feel

/that

that it has any locus standi for taking a further initiative over this issue, the President of the Commission has expressed the hope that the matter will be satisfactorily resolved in the Council in the - context of the negotiations which are taking place concerning the future financing of the Community.

It is the British Government's hope too that the issue can be resolved in this way. I am therefore writing to ask you, in your capacity as President of the Council, to consider how the matter can now be taken forward and resolved in the Council of Ministers.

I am sending copies of this correspondence to our other colleagues in the Council and to the President of the Commission

*Budget*

CONFIDENTIAL

*Howe*



10 DOWNING STREET

*From the Private Secretary*

7 March 1984

1982 Risk-Sharing Refunds

The Prime Minister has seen the Foreign and Commonwealth Secretary's minute of 5 March and the draft of the letter which Sir Geoffrey Howe proposes to send to M. Cheysson as President of the Council.

The Prime Minister is content with the text of the letter.

I am copying this letter to the Private Secretaries to the Lord Chancellor, the Chancellor of the Exchequer, the Attorney General, the Lord Advocate and to Richard Hatfield (Cabinet Office).

A. J. COLES

R.B. Bone, Esq.,  
Foreign and Commonwealth Office.

CONFIDENTIAL

*The President*

Brussels, February 8, 1984  
n. 169

In your letter of 3 January, you informed me of your Government's view that the provision made in the 1983 Budget in respect of the risk-sharing entitlement embodied in the Council Agreement of 26 October 1982 and enshrined in Regulation n. 624/83 did not constitute a proper fulfillment by the Community of its legal obligations ; and you requested the Commission to take an initiative in the budgetary field in order to ensure that these obligations were fully discharged.

The Commission has taken careful note of your letter and has examined the issues involved again in the light of the considerations which you raised. It has reached the following conclusions as regards the possibility of further action by this Institution.

In presenting its Preliminary Draft Supplementary Budget N. 2 1983, the Commission had to be guided by the texts which the Council had adopted and by these texts alone. Thus, the Commission could see no justification, in terms of the dispositions made by the Council, for the mitigation of the United Kingdom's share in the financing of the additional risk-sharing payments to Germany to which you refer in paragraph four of your letter of January 3, 1984.

As regards the calculation of the basic risk-sharing entitlement of the United Kingdom, the Commission was guided by the relevant text of Article 1 of Regulation 624/83, which reads :

"If the actual figure is higher than 1730 million ECU, the net compensation is increased by 75 MioECU plus 75% of the difference between the actual figure and 1730 million ECU".

and by the foot-note on page 2 of the Conclusions of the Foreign Affairs Council of 26 October 1982 which stated that

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H.E. Sir Geoffrey Howe

"The gross amounts have been calculated on the basis of the VAT shares contained in the Budget of the relevant budgetary year. They will be adjusted so as to reflect the actual VAT figures of the years in question."

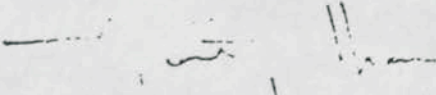
The Commission recognised, when preparing its Preliminary Draft Supplementary Budget n.2, that more than one interpretation of how to calculate the gross amount of risk-sharing entitlement was possible. The figure which the Commission presented in its Preliminary Draft (384.55 MioECU) was calculated following the interpretation (the so-called "payments" method) which the Commission had followed in the past. But the Commission drew attention at the same time to the fact that figures based on a different interpretation (the so-called "assiette" method) would only be available later in the year. The Commission itself did not express, and has never expressed, a view on which interpretation of the text was the correct one, on the premise that it is for the Council itself to decide on the proper interpretation of a Council agreement.

At the Budget Council on 22 July 1983, an amount of 307.5 MioECU was entered into the Draft Supplementary Budget established by the Council by a qualified majority vote. This figure resulted from a compromise between the views of certain Member States who considered that the "payments" interpretation was the one to be followed and others who advocated the "assiette" interpretation. It was thus a "political" figure which did not itself correspond to any precise formula of calculation.

The decision of the Budget Council in establishing its Draft Supplementary Budget n.2 was taken in accordance with the budgetary procedures prescribed under the Treaty, as was the final adoption of this budget on 24 October 1983. On several occasions since then, British representatives in the Foreign Affairs Council have argued that the risk-sharing figure in this Supplementary Budget did not properly fulfill the obligation which the Foreign Affairs Council had entered into on 26 October 1982. But the Council as a whole has not shared this view.

In these circumstances, the Commission does not feel that it has any locus standi for taking a further budgetary initiative over this issue. I hope however that your concern can find a satisfactory resolution in the Council in the context of the negotiations which are taking place concerning the future financing of the Community.

Sincerely yours,



Gaston E. Thorn





Foreign and Commonwealth Office

London SW1A 2AH

*From the Secretary of State*

3 January 1984

1982 Risk Sharing Refunds


I wish to draw your attention to the following issue relating to the risk sharing element of the UK refunds in respect of 1982.

The Council conclusions of 26 October 1982, state that compensation for the United Kingdom in respect of 1982 should be 1092 mecus gross, 850 mecus net, on the basis of a reference figure of 1530 mecus (the Commission's estimate of the UK's net contribution in respect of that year). If the UK's net contribution (the reference figure) turned out to be higher or lower than 1530 mecus, risk sharing arrangements were provided to come into operation. These conclusions were given juridical effect in Council Regulations 624/83 and 625/83.

When these conclusions were reached it was agreed that the UK should receive refunds in respect of 1982 which would effectively be net of the cost to the UK of the UK refund itself and of the UK's share of the payment of 210 mecus to Germany subsequently given effect under regulation 625/83. Regulation 624/83 expressly stated that the sum due was net. The basic refund of 1092 mecus gross in respect of 1982 was duly paid.

/After

M. Gaston Thorn



After the end of 1982, the UK's uncorrected net contribution for that year was calculated by the Commission to have been 2036 mecus. This calculation was correctly based on the payments basis which has always been used for the calculation of net balances. The Commission therefore proposed in draft supplementary and amending budget No 2 for 1983 that a further 385 mecus should be paid to the UK under the risk sharing provisions of Regulation 624/83. Contrary to the 1982 agreement, which provided that the United Kingdom refunds be effectively net of its share of German refunds, the risk sharing payment proposed by the Commission (385 mecus) did not compensate the UK for its share of the further German refunds.

At its meeting of 22 July 1983, the Budget Council established a figure for risk sharing refunds to the UK in respect of 1982 of 307.5 mecus. The United Kingdom formally recorded the following objections:

"The United Kingdom declares that the appropriations entered in draft supplementary and amending budget no 2, 1983 in respect of risk sharing payments to the UK do not discharge in full the obligation entered into by the Council in paragraphs 1, 3 and 5 of its conclusions of 26 October 1982. The United Kingdom recalls that paragraph 5 of these conclusions specified that the risk sharing adjustments should be entered in the budget for 1983, and accordingly calls upon the Community institutions to take the necessary action as a matter of urgency to ensure that the UK receives its entitlement in full."

The United Kingdom raised the matter again in similar terms at the Foreign Affairs Councils of 19 September and 17/18 October and at the Special Councils of 9-11 and 28-29 November. Nonetheless, the supplementary and amending budget no 2, 1983 was adopted by the Parliament on 24 October 1983

/without



without further amendment to the figures established by the July Budget Council.

The United Kingdom considers that neither the gross provision proposed by the Commission, nor that established by the Council, fully discharges the requirements of Regulation 624/83. In the view of the United Kingdom, the correct figures which ought to have been established and entered in the 1983 budget on the basis of the Commission's calculation of an uncorrected net contribution by the UK in respect of 1982 of 2036 mecus are 408 mecus gross for the UK and 87 mecus gross for the FRG. The figure of 370 mecus established by the Council to cover both the United Kingdom and the Federal Republic was arbitrary and insufficient.

In the light of the above, I wish to inform you that my Government considers that the failure to make the required provision in the 1983 Budget in accordance with Regulation 624/83 constitutes non-fulfilment by the Community of its legal obligations. I therefore request the Commission to initiate the budgetary action to discharge in full the requirements of regulations 624/83 and 625/83.

I shall be grateful if you would inform me of the action you propose to take.

GEOFFREY HOWE

✓ NO  
PC



Secretary of State for Foreign and  
Commonwealth Affairs

N.B. P. R.

Mr  $\frac{8}{3}$

1982 RISK-SHARING REFUNDS

I have seen your minute of 5 March to the Prime Minister and the Attorney General's minute of 6 March.

h.a.

I also agree with the line taken in your draft letter to the President of the Council of Ministers.

Copied to the Prime Minister and to the other recipients of your minute.

MACKAY OF CLASHFERN

Lord Advocate's Department  
Westminster

7 March 1984

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*With the compliments of  
the Attorney-General*

*Attorney General's Chambers,  
Law Officers' Department,  
Royal Courts of Justice,  
Strand. W.C.2A 2LL*

01 405 7641 Extn. 3201



SECRETARY OF STATE FOR FOREIGN AND  
COMMONWEALTH AFFAIRS

A.S.C. 7/3

f.a.

1982 Risk-Sharing Refunds

*with ASC?*  
Thank you for sending to me a copy of your minute  
of 5 March to the Prime Minister.

I am content with the draft letter to the President  
of the Council, enclosed with your minute.

I am copying this minute to the Prime Minister and  
to the other recipients of your minute.

M.H.

Law Officers' Department  
Royal Courts of Justice

6 March, 1984

ECON POC : Budget : Pt 23.

7 MAR 1984

