



CONFIDENTIAL

Prime Minister

Qz.03642

MR COLES ✓ A.J.C. 29/3

BRIEF FOR THE PRIME MINISTER FOR CABINET, 22 MARCH

I attach the separate brief which we have promised on the question of "withholding" Community funds.

I am sending a copy to Sir Robert Armstrong.

D F Williamson

D F WILLIAMSON

21 March 1984

CONQUEROR

CONFIDENTIAL

Qz.03642

WITHHOLDING COMMUNITY FUNDS

Brief for the Prime Minister for Cabinet, 22 March

1. Cabinet will need to consider the United Kingdom response to the continued blocking by France and Italy of the regulations necessary for the payment of the United Kingdom's 1983 refund of 750 million ecu net (about £450 million) agreed at Stuttgart. We do not consider the claimed link with the wider post-Stuttgart negotiation to be justifiable. The European Parliament has still not given an opinion on these regulations but may do so this week and has put the financial provision in the reserve chapter 100 of the budget.

2. There is no legal entitlement to the refund before 31 March but there are good precedents for the receipt of the bulk of the refund by that date. The Council, Commission and the Parliament all recognise the importance of the date to us. Council agreement on this point was entered in the Council minutes of 27 October 1980. This provision was honoured in respect of UK refunds covering 1980, 1981 and 1982. At no stage, until the last week, has any member state challenged this provision. The extent to which it is an accepted provision of the refund agreements is borne out by the Resolution adopted by the European Parliament at its session on 15 December 1983 in which the Parliament expressed the view that a final decision on the question of 1983 refunds "must be made before 31 March 1984 to avoid discrimination against any of the member states".

3. The first question to consider is whether withholding is the right response to the present situation. Withholding would create the sharpest conflict within the Community since the French withdrawal from the negotiating table in 1965. The consequences for our relations with other member states are unforeseeable

but will certainly be difficult. Withholding would be illegal in Community and (until we legislate) in domestic law. It would probably make it harder to get a satisfactory settlement in the short term. The first reaction in the Community might be the withdrawal of the Presidency's document which was on the table at the European Council. On the other hand, it would demonstrate clearly the Government's determination not to allow the present inequitable situation to continue and, domestically, it would demonstrate the Government's determination to secure both the refunds we have been promised and an end to the present inequity.

4. Secondly, if the Government does decide to withhold, it will need to make its intentions clear both as to the purpose of withholding and as to the amount that it intends to withhold. In order to reduce the reaction, the Government would need to make clear that withholding is a measured response to the unjustified blocking of the 1983 refund and not a decision to retaliate in general against Community policies; that we are in effect doing no more than putting the transfer of funds into suspense in the same way as both the European Parliament and the blocking member states have put our 1983 refund into suspense; and that the action is necessary to avoid the possible transfer of the Community's financial provision for our refunds to other uses such as the spiralling agricultural payments. The United Kingdom would be taking "offsetting" action because of the blocking of the 1983 refunds. On the amount, the Government could announce that it intends to secure the suspension of transfer of funds equivalent to the full gross amount outstanding on ¹⁹⁸³ refunds (about £570 million). This will, in any event, take some time and would not be completed before the June European Council. It would not seem necessary, therefore, to speculate now on what might happen later if there were no agreement in June. A subsidiary point would be whether the Government announces that it is also withholding the disputed element from the 1982 refund (the £42 million). In order to achieve the withholding of the amount equivalent to our 1983 refund, the United Kingdom would in any event be withholding all the own resources (other than those spent in the United Kingdom itself) for many months. It may not therefore be necessary to comment /publicly

CONFIDENTIAL

publicly at this stage on whether the £42 million will or will not be covered in due course by continued withholding when the 1983 refund has been accumulated.

5. Thirdly, there is the difficult question of the timing of legislation. The Foreign and Commonwealth Secretary, who will be supported by some other Ministers, continues to take the view that there would be substantial advantage if legislation at the outset can be avoided because the act of legislating would be seen in the Community as considerably more provocative than the act of withholding itself. It might seem to other member states to mark a definitive change in our relations with the Community since it would involve the partial setting aside of the application of Community law. If the Government were to decide to withhold but not to legislate immediately, they would need to make clear that they would not hesitate to legislate if challenged in domestic law. Other Ministers may favour immediate legislation. In the view of the Law Officers withholding without legislation would be illegal in domestic law as well as in Community law. It was also argued in OD that legislation at the outset would signal the Government's firmness of purpose.

6. If the Government does decide to legislate at the outset, the business managers will need to decide how quickly legislation could be taken through both Houses of Parliament. The Foreign and Commonwealth Secretary has alerted the Lord Privy Seal and the Lord President of the Council to the possible need for legislation in the week beginning 2 April. The draft bill and its handling in Parliament could be considered at a meeting of the Legislation Committee on 28 March.

7. You will also wish to decide what further consideration may be needed by Cabinet, even if a decision of principle is taken on 22 March. It is recommended that the Foreign and Commonwealth Secretary (in agreement with the Chancellor of the Exchequer) should submit a paper on all the associated issues for the Cabinet next week.

/8.

8. A relevant but less important point is the Commission's request for advance payment of own resources on 30 March. A decision is desirable tomorrow on whether the Government should now refuse the Commission's request for advances.

Cabinet Office

21 March 1984

When the Defence and Overseas Policy Committee (OD) considered withholding at OD(84)3rd Meeting it provisionally concluded that:

- (i) if the Government were to decide to withhold Community funds, withholding should be limited to restricting payments out of the Commission's account (to prevent them transferring money overseas, but to allow them to continue to make payments to United Kingdom recipients of Community funds), but should hold in reserve the possibility of restricting payments in to the account in order to allow the Government to counteract any retaliation by the Commission;
- (ii) when legislation was required a single Bill should be brought forward allowing the Government to suspend transfers of Community funds and ousting the jurisdiction of the Courts to consider whether the Government was in breach of its Community obligations as a result of withholding, and that it would probably be appropriate for the Secretary of State for Foreign and Commonwealth Affairs and the Attorney General to be responsible for its passage through the House of Commons;
- (iii) the Government should be prepared to defend itself vigorously before the European Court of Justice but should not itself initiate legal proceedings;
- (iv) while the Government should seek to dissuade the Community from retaliating against United Kingdom recipients of Community funds it should be prepared to take over the Commission's role in the event of retaliation.

It should be noted that the effect of (i) above (restricting payments out of the account by suspending payments across the exchanges) would allow some £100M a month to accumulate in the account in addition to normal balances. At this rate it would take about six months to accumulate the agreed 1983 refunds in the account.