



Treasury Chambers, Parliament Street, SW1P 3AG

*Answer reaction  
of Mr. [unclear]  
[unclear]*

The Rt Hon Sir Geoffrey Howe QC MP  
Secretary of State for Foreign and  
Commonwealth Affairs  
FCO  
Downing Street  
LONDON  
SW1

19 October 1984

*Dear Secretary of State*

**1984 SUPPLEMENTARY BUDGET, IMPLICATIONS OF INTER-GOVERNMENT AGREEMENT**

Following the agreement in the Foreign Affairs Council on 2 October to establish the Draft 1984 Supplementary Budget, and to provide under an Inter-Government Agreement 1003.4 million ecus, I have been considering the Parliamentary implications of the agreement.

As you noted in your minute of 4 October to the Prime Minister, we shall not seek Parliamentary approval of the Inter-Government Agreement until the two conditions we laid down have been met ie until we have been paid our refund (which in practice means 90 per cent of it) and until the future budgetary discipline arrangements have been agreed. We should receive the bulk of our refunds within the next fortnight but the budget discipline arrangements may take longer to conclude. Procedures for seeking Parliament's approval for the extra financing required under the Inter-Government Agreement will therefore presumably have to be in the new session beginning 6 November.

The options for seeking Parliament's approval are:

- i) a section 1(3) Order under the European Communities Act;
- ii) a Contingencies Fund payment with a subsequent Supplementary Estimate;
- iii) a special Consolidated Fund bill;
- iv) using the Winter Supplementaries.

... The pros and cons of each are set out in the attached annex. In practice, I think the choice of procedure lies between using a Section 1(3) Order or taking a special Supplementary Estimate in the new session of Parliament. The former would require a debate, the second could involve a Treasury Minister's appearance before the TCSC as well as a debate. I understand that the Law Officers are being consulted about the legal aspects. Subject to their views, my own preference is for the Section 1(3) Order which is the route we will probably use later when we seek Parliament's approval of the New Own Resources Decision.

I would be grateful if you could also confirm your agreement to the use of this procedure.

I am copying this to the Prime Minister, members of OD(E), the Leaders of both Houses, the Chief Whip, Solicitor General and Sir Robert Armstrong.

*Yours Sincerely  
T.M. Stubbington*

PP IAN STEWART

*(Approved by the Economic Secretary & signed in his absence.)*

INTER-GOVERNMENT AGREEMENT: OPTIONS FOR SEEKING PARLIAMENT'S APPROVAL

This note considers the options for seeking Parliament's approval for the extra financing required under the Inter-Government Agreement

Procedure under Section 1(3) Order

2. It would be possible to pay the supplementary finance from the Consolidated Fund under the European Communities Act 1972 as we do with our normal revenue payments. To do so, the payment would have to be regarded as "required to meet a Community obligation to make payments" under the terms of the Act. To meet this requirement, the Inter-Government Agreement would have to be designated as a Community Treaty "ancillary" to the Treaty of Rome and other Community treaties by Order in Council under Section 1(3) of the European Communities Act 1972.

3. Such a draft Order would have to be laid in both Houses and the Joint Committee on Statutory Instruments would be required to report on it. The order requires approval by resolution of each House. This would involve debates which, given the importance of the subject, would in the case of the Commons probably have to take place on the floor of the House.

4. The order could either be laid in advance of our two conditions being met or after they had been agreed. If the former, it would be possible for the Joint Committee to report on them but for the moving of the resolutions to be delayed until the conditions had been met. The Joint Committee could take a week or so to report and this time-saving is the advantage of the first course over the second. There is a possibility that officials but probably not Ministers, would have to appear before the Joint Committee. Once the order had been debated, it could go to the Privy Council for approval. Their next meeting is scheduled for 15 November.

5. The disadvantages of this course are:

- (i) the need for debate;

(ii) Ministers might run into some criticism in the House of Commons for adopting a procedure which has the effect of converting into an inescapable obligation under the Communities Act an Inter-Government Agreement by the Member States which the UK deliberately entered into outside the Treaties. (Ministers may also be criticised for entering a commitment before the House has had a chance to express a view, as is normal with international agreements. But this possible criticism would be common to all the Parliamentary procedures discussed in this note.) A further criticism in adopting the Section 1(3) procedure may be that effect should be given to the agreement by primary legislation on the grounds that the agreement is not "ancillary". During the passage of the European Communities Act the then Solicitor General acknowledged that primary legislation might be more appropriate in significant or substantial cases. Although Treasury Solicitor's view is that the Section 1(3) procedure is appropriate in this case, they consider it would be desirable to obtain the Law Officers' confirmation of this view.

#### Contingencies Fund/Vote Procedure

6. A second possibility would be to arrange for a Ministerial statement shortly after the House of Commons reconvenes on 22 October announcing the Government's intention to contribute to the supplementary budget as part of a wider settlement of Community budget issues. If our two conditions have been met and budget discipline is agreed at the Foreign Affairs Council on 22-23 October, then it might be possible for the Foreign Secretary to report orally to the House on 24 October and cover the matter then. But if, as is more likely, Finance Ministers have to consider budget discipline at the end of October or early in November, then the statement would probably have to be made in the new Parliamentary session which starts on 6 November. Depending on the reaction of the House, the necessary funds could in theory be made by a repayable advance from the Contingencies Fund with formal Parliamentary approval of the supporting supplementary estimate following at a later stage. But if there was a strong adverse

reaction in the House there would have to be a debate. The statement would have to say explicitly that an advance from the Contingencies Fund was contemplated

7. This second course of action has the advantage that it could, all being well, avoid a full scale debate on the supplementary budget before the money is made available. Debate would eventually be necessary when Parliament was asked to approve the supporting supplementary estimate but that estimate would probably cover other items as well as the Inter-Government Agreement, and criticism could therefore be diffused.

8. There are, however, several significant snags to this procedure:

- (i) while the TCSC have approved the use of the Contingencies Fund for payments of advances of own resources to the Community, they strongly criticised its use for payments towards supplementary budgets (Annex B);
- (ii) the Treasury Accounting Officer for the Contingencies Fund would only be able to authorise the use of the Fund if he felt sure the subsequent supplementary estimate would be approved by the House (but see (iv) below);
- (iii) the House of Commons might feel that the Government was trying to slip through a major and controversial item of Community business. This could provoke a serious row in which those opposing the Inter-Government Agreement on substantive grounds could expect to get the support of MPs objecting to the procedure adopted by the Government;
- (iv) the Government could have difficulty justifying the urgency criterion which payments from the Contingencies Fund must meet if some other Member States have not yet paid their share of the supplementary finance.

#### Special Consolidated Fund Bill

9. A third option would be to take a special supplementary estimate to obtain Parliamentary authority for payment without recourse to the Contingencies Fund. This was the route recommended by the TCSC in the earlier case. It has the advantage of meeting the

TCSC's concerns, being possible to complete in just over a week and unlikely to require a debate because of standing orders if taken in the present session of Parliament. Standing orders are that there shall be three estimates days a year but that they should take place before 6 August. Although the Opposition could ask for a debate in their own time, standing orders say that no debate on special Consolidated Fund Bills is allowed. But the TCSC would have to be involved since they receive supplementaries before they are presented. In addition, the convention is that a Consolidated Fund Bill is usually followed by a day-long adjournment debate on private members' business. This would eat into the limited time available for other Parliamentary business and would not therefore be welcome to the Whips or Leader of the House. It might be possible to avoid this but the opposition would no doubt cause a fuss.

10. A variant on the third option is to present a special Supplementary in the new session of Parliament if Winter Supplementaries (see paragraph 11) would take too long. In this case there is scope for an Estimates day debate.

#### Winter Supplementary

11. A fourth option would be to include the payment in the Winter Supplementaries. This might be the simplest solution but it will probably not be possible to present the Winter Supplementaries before 19 November. It might nevertheless be possible to complete all the stages including the adoption of the Consolidated Fund Bill early in December. But again this might mean imposing constraints on other Parliamentary business. Our judgement is that this course of action would take too long.



22 OCT 1984

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FCS/84/282

ECONOMIC SECRETARY TO THE TREASURY

1984 Supplementary Budget, Implications of Inter-Governmental Agreement

1. Thank you for your letter of 19 October.
2. I agree that, for the reasons set out in your letter and its annex, an Order under Section 1(3) of the European Communities Act 1972 would be the appropriate course to follow in seeking Parliament's approval for the inter-governmental agreement. I understand that the advice of the Law Officers is that a Section 1(3) Order would be appropriate in the circumstances.
3. In paragraph 4 of the annex to your minute, you raise the question whether the Order under Section 1(3) should be laid in advance of our two conditions being met or only after they have been agreed. I recognise that laying the Order in advance would speed up Parliamentary procedures, and that this would be desirable given the urgency with which the money is likely to be required. However, once the Order was laid it would have to go to the European Legislation Committee of the House as well as to the Joint Committee on Statutory Instruments. We would not want the Scrutiny Committee to report, and almost certainly recommend a debate, before we ourselves were ready to move the Order and to hold the debate which will anyway be required under the Section 1(3) procedure. I therefore favour laying the Order only when our conditions have been met. However, if





it looks as if the timetable requires it, I would be prepared to review the position.

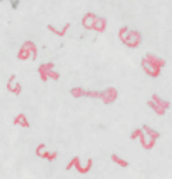
4. I agree that, given the importance of the subject, debate on the draft Order would probably have to take place on the floor of the House. I assume you would agree that it would be appropriate for the Treasury, as the lead Department, to open, perhaps with an FCO Minister winding up.

5. I am copying this minute to the Prime Minister, members of OD(E), the Leaders of both Houses, the Chief Whip, the Solicitor General and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office  
25 October 1984

01/10 pa: budget



25 OCT 1994

MR. POWELL

A Mr. Taylor from the European Parliament in Strasbourg telephoned with the following message about the 1984 Supplementary Budget:

"The Plenary Session of the Parliament has just voted to reinstate two amendments on the revenue side of the 1984 Supplementary Budget, one of which alters the heading of Article 302 to call it an estimated surplus from the current financial year. The other amendment which they have voted adds 260 million ecu to the estimated receipts in the current year from customs duties and reduces the estimated surplus by 234 million ecu. Neither of these amendments affects the amount which needs to be provided under the inter-governmental agreement."

Debbie  
25.10.84