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Mr SinclairThe Legal Advisers have helped me in redrafting the opening passage of that draft and IThe above listed Cabinet document(s), which was/were enclosed on this file,

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Signed Margaret Shatwell Dated 21.12.00

TMr Logan

FACTSHEET ON SOVEREIGNTY

1) You will wish to show Mr Royle Mr Rippon's minute below.

2) Meanwhile I submit a draft let ter from you to the Lord President's Private Secretary. I hope I have not gone too far in voicing our continued worries about question and Answer No 16. EID feel it would be better to leave this out.

W.J.Adams

European Communities Information Unit 1st July 1971

Copy to:

Mr Pakenham

Mr Statham

Mr Watts (Legal Advisers)

LETTER

PLP Davies Esq

Office of the Lord President Mr Logan

I enclose a draft on Sovereignty for inclusion in the Factsheet series “Britain and Europe”. It has been cleared with the Minister and with the Law Officers. You will recall that we are committed to a Factsheet on Sovereignty.

We are rather worried about the impact on Parliamentary opinion of Question and Answer No 16. There is no way so far as we can see of softening the wording. The fact of the primacy of community legislation cannot be disguised. But I feel that there is a case for omitting it altogether.

If the Lord President agrees with this view, we shall however have to go back to the Law Officers. The Legal Advisers consider that this is a central question and that MP’s would be bound to ask why we had dodged this matter.

As usual, time is very short. The absolute deadline for getting a text to the COI is not later than Monday, 5th July, if we are to achieve our publication target of Thursday/Friday, 15/16th July. The proposal is to issue this Factsheet in a join edition with the new Factsheet on the Free Movement of Labour which, as you know, the Department of Employment want us to publish urgently.

SOVEREIGNTY

Sovereignty is a complicated subject which can be debated at length. Such a debate would be out of place in this Factsheet. It is thought to be more helpful for the Factsheet to single out some of the practical questions which arise in this context and to answer them as simply as possible.

1) Would the position of the Monarchy be affected? Joining the Common Market would not affect the

position of the Monarch. Three of the existing members of the European Communities are Monarchies, and two of the other applicant States are also Monarchies.

2) Would the constitutional position of the Crown Parliament be affected by entry into the European Communities?

Entry into the European Communities would not in itself have any effect upon the constitutional position of the Crown in Parliament.

3) By entering the European Communities would the United Kingdom cease to be regarded as a sovereign independent State in International Law?

No. There has been no question of the present members of the European Communities ceasing to be regarded as sovereign independent States because of their membership of the European Communities and they continue, for example, to participte in international organisations such as the United Nations whose membership is open to sovereign States.

4) Would our international influence be affected?

Yes, it would strengthened.

Inside the Community, the United Kingdom would have influence both on its own account and on its ability to sway decisions of the EEC which, in certain fields, e.g. trade, is developing the influence of a super-power. Outside the Community, the United Kingdom would have no influence in determing the Community's policy and would therefore be less important in the eyes of the third countries more concerned about the large impact of the EEC on their interests.

5) Would the United Kingdom retain its freedom of action in matters of foreign affairs and defence?

The United Kingdom would, by entering into the European Communities, be undertaking certain international obligations in the fields covered by the European Treaties. These obligations would, like obligations in other treaties which are biding upon the United Kingdom, affect the United Kingdom's freedom of action in the fields covered by the treaties. The treaties establishing the European Communities are, however, limited to certain economic and commercial affairs and closely related matters: these do not include defence.

6) Would the United Kingdom's existing treaties with other countries be affected?

There are some existing treaties in economic and commercial matters the continuation of which would be inconsistent with obligations under the European Treaties. The United Kingdom would need to, and

intends to, secure, with the agreement of the other parties concerned, the termination of these agreements so far as they conflict with the obligations under the European Treaties (and, where appropriate, intends to negotiate new agreements in their place). Article 234 of the Treaty of Rome takes account of this situation.

7) Would the United Kingdom remain free to enter into future treaty commitments with other countries?

As with any international treaty, the United Kingdom would not in future enter into treaty commitments which were contrary to obligations contained in the Community Treaties to which the United Kingdom would be bound. These treaties, however, only impose obligations within their limited fields, and outside those fields the United Kingdom's freedom to conclude treaties with other States would not be affected by membership of the European Communities.

8) Are the Treaties establishing the European Communities intended to last forever?

The Treaties establishing the EEC and Euratom are concluded for an unlimited period. The Treaty establishing the ECSC is concluded for fifty years.

9) Is it possible to withdraw from the Treaties establishing the European Communities?

These treaties contain no provision expressly permitting or prohibiting withdrawal. Nor do some other important treaties to which the United Kingdom is a party e.g. the United Nations Charter. The Community system rests on the original consent, and ultimately on the continuing consent, of Member States and hence of national Parliaments.

10) Would the procedures of Parliament be affected by membership of the European Communities?

Nothing in the Treaties establishing the European Communities requires member States to change the procedures of their legislative bodies.

11) Would Ministers continue to be responsible to Parliament?

Yes. Parliament would continue to exercise control over the actions of ministers; and moreover Ministers would be answerable to Parliament for the paret they and their officials play in the formulation of Community policy.

12) Would Parliament's freedom to legislate how it chooses be affected?

In legislating, Parliament would need to take account of the obligations assumed by the United Kingdom under the Treaties. Parliament would have to refrain (as it does in connection with other treaties) from

enacting legislation contrary to those obligations.

13) Would legislative acts made by the European Communities in Brussels have effect as law in this country?

Yes, Certain provisions of Community Law, primarily regulations made by the Council and the Commission, apply directly as law in each member State; but by far the greater part of our domestic law would be unaffected.

14) What control would Parliament have over the preparation and making of Regulations and other Community instruments, such as Directives and Decisions?

Where instruments are made by the Council of Ministers, the United Kingdom will be represented by a Minister of the Crown who will be responsible to Parliament for his actions. Members of the United Kingdom Parliament will of course be represented in the European Parliament which is required to be consulted before Community Regulations and Directives involving new policies are adopted.

15) When a Regulation has been made, would Parliament be able to reject its application to the United Kingdom?

This would not be consistent with the treaty obligations which the United Kingdom would have assumed.

16) If a Regulation made by a Community organ conflicts with a statute enacted by Parliament, would the Regulation or the statute prevail.

Parliament would have to be willing to give effect, or enable effect to be given, to the Regulation so that it prevailed over the statute: but see the answer to the next question.

17) To what extent would the law which at present applies to the United Kingdom be affected by membership of the European Communites?

By far the greater part of our domestic law would be unaffected. The European Treaties are concerned with economic, commercial and closely related matters.

18) Would the common law still apply?

Yes.

19) Would the procedures of our courts be affected by entry into the European Communities?

Our courts would in certain cases need to refer matters to the European Court of Justice for rulings on points of Community Law. But otherwise the workings of our courts would be unaffected.

20) Would there be British representatives in the various institutions of the Communities?

Yes. A British Minister would be on the Council of Ministers. There would be British Parliamentarians sitting in the European Parliament. There would be a British Judge on the European Court, and British officials on the staff of the Commission, on much the same basis as in other international organisations.

21) Would decisions be taken in the Communities which run counter to our national interests?

All major decisions are taken by the Council of Ministers, on which we should be represented. Although the European Treaties provide for majority voting on most matters, the member States recognise that it is not in practice possible to force another member State to act contrary to its vital national interests. As the Prime Minister said in the House of Commons after his meeting with President Pomidou…"The maintenance and strengthening of the fabric of co-operation in the Community requires that decisions should in practice be taken by unanimous agreement when vital national interests of any one or more members are at stake."

CONFIDENTIAL

SOVEREIGNTY AND THE EUROPEAN COMMUNTIES

1) I submit a Planning Paper on a question of entry into the European Communities and its effect on British Sovereignty.

2) The paper, which has a full covering summary, analyses the problem from a political standpoint and ventures some recommendations. In order to tackle it properly, however, it was necessary first to examine the formal and legal aspects of the subject, again from a political viewpoint. In undertaking this, our Legal Advisers have taken full account of the views of the Law Officers and believe it to be in accord with them; but the Paper is a Foreign and Commonwealth Office paper and has not been cleared outside the Office.

3) I also submit a draft paper on the same subject drawn from the Planning Paper but in briefer form; you may consider that this should be circulated to members of the DOP for information and as background to their wider consideration of European issues. Attached to the draft is an Annex setting out the areas in which HMG's freedom will and will not be significantly restrained.

4) I hope that the draft for the DOP, together with the main Planning Paper, meets the requirement for advice on Sovereignty which both the Secretary of State And you yourself expressed during May

Dennis Greenhill

21 June 1971

c.c. Ssir V Evans, Mr Bottomley, Sir T Brimelow, Sir C.O'Neill

CONFIDENTIAL

SOVEREIGNTY AND THE EUROPEAN COMMUNITIES

1) The object of the paper is to examine the implications for British Sovereignty of entry into the European Communities, to clarify the meaning of the term and to suggest a number of conclusions.

2) Historically, sovereignty was originally invoked to describe the powers of the ruler within his State. External sovereignty, on the other hand, has been primarily a negative matter of denying the existence of any external sovereign authority, with consequent emphasis on equality and independence. Neither aspect of sovereignty should be confused with the realities of power (paragraphs 2-4)

3) The internal and external aspects of sovereignty can still be distinguished in the contemporary political system. Sovereignty in external relations still includes formal equality between states (e.g. voting in the UN General Assembly) and the absence of any formally superior source of authority external to the state. But all states are under some degree of external constraint and most have deliberately limited their freedom of action in pursuit of national interests, for example by military alliances. The limitations are reinforced by the increasing inter-dependence (especially economic) of modern states. Externally, therefore, sovereignty is a technical concept.

The range of subjects which may be affected by Community law is set out in an Annex (paragraph 12)

7) Political and public anxiety expressed over possible "loss of sovereignty" may in fact reflect wider concerns including fears of loss of national identity, fears of change, dislike of remote and bureaucratic government (especially by foreigners) and instinctive attachment to the independent exercise, as in the past, of national powers. Reference to "loss of sovereignty" have elicited strong response because of these quite different concerns (paragraphs 13-16)

8) It will be in British interests after entry that the Community should develop toward an effectively harmonised economic fiscal and monetary system together with a fairly closely coordinated foreign and defence policy. This would mean in the very long term major changes in the way in which British national relations with the rest of the world are managed and important implications for external sovereignty. It could only take place if there were a strengthening of the institutions of the Community with consequential weakening of national institutions, including Parliament. But the "last resort" Political power of Parliament

to assert national interest and renounce the Treaty is unlikely to be eroded in this century (paragraph 17-22).

9) To meet the public anxieties as concern for “loss of sovereignty” it aill be important

(i) Before entry to deal squarely with the problems of British power and influence by presenting the choice between the affect of entry and non-entry in a rapidly changing world; after entry to ensure that unpopular measures or unfavourable economic developments are not attributed to the remote and unmanageable workings of the Community;

(ii) to strengthen local and regional democratic processes and help develop effective Community regional economic and social policies;

(iii) to ensure that the British Parliament plays an effective part through its own processes and that British Parliamentarians acquire a position of influence in the European Parliament;

(iv) to ensure effective consultations between British representatives and negotiators on Community affairs and the British Parliament. A Select Committee on Community Affairs might be considered;

(v) to stress the gains through Community membership in real international influence and to contrast this with the highly formal and technical nature of the “sovereignty” will be eroded (paragraphs 23-24).

10) These conclusions are highly political but entry into the Community will blue the distinction between domestic political and foreign affairs. British officals, like those of other member states, will necessarily play a more political role over wider areas of public business. The task will be to adapt democratic institutions both in the UK and in Brussels to meet and reduce the real and substantial public anxieties over national identity and alienation from government, fear of change and loss of control over their fate which ar arouses by talk of “loss of sovereignty” Paragraphs 25-26).

SOVEREIGNTY AND THE EUROPEAN COMMUNITIES

1) The object of this paper is to examine the implications of entry into the European Communities for British Sovereignty. The subject is one which arouses widespread if somewhat vague public concern and which could become the central politcal issue in the national debate on entry to the Community. The paper does not seek to provide a comprehensive philosophical analysis of sovereignty but sets out to clarify the various ways in which the term is commonly used in present circumstances; to identify the relevant changes which will be involved in joining the European Communities; and to suggest a number of conclusions and implications for policy.

I. THE CONCEPT OF SOVEREIGNTY

(a) Historical Background

2. Historically the concept of sovereignty has been of major importance to both political scientists and jurists. The growth of its use was closely associated with the development of the system of national states in Western Europe: there was no mediaeval equivalent and the wider claims of the Holy Roman Empire and the temporal power of the Pope cannot really be considered in terms of national sovereignty or nation states. Sovereignty was initially invoked to describe the powers of the ruler within his State. When dealing with other States the ruler asserted his (internally) sovereign status, an attribute which, given the identification between the ruler and his State, attached also to his State. Since the other States similarly had sovereign rulers, and regarded themselves equally as sovereign States, the relationship between such sovereign States had to be formally one of equality and independence. On the international plane the sovereignty of the “sovereign” State is not a true international sovereignty, but a transposed internal concept of sovereignty – a description of a legal status possessed in some other (ie the internal) legal order.

3) Consequently, from the outset the antithesis between the connotation of “sovereignty” in its internal and external aspects has been evident. Internal sovereignty has been primarily a matter of positive possession of ultimate power in a hierarchically-structured internal legal framework, so that interest has lain in identifying the location of that power within the State; but external sovereignty has been primarily a negative matter of denying the existence of any external sovereign authority, with consequent emphasis on equality and independence as the legal framework for international relations. In the particular instance of the United Kingdom, the State, externally, is legally equal to and independent of all other “sovereign” states; the international personality is that of the United Kingdom as a State, represented internationally by the Crown as Head of State (a situation accurately reflected in our internal constitutional law by the Crown’s prerogative in matters of foreign affairs). Internally the sovereign power in the State (at least in matters of legislation) is usually considered to be located in the Queen in Parliament.

4) The technical legal aspects of sovereignty, both internal and external (particularly the latter), must not be confused with the realities of power. Ultimately it is the latter which count. There may be a tendency that, in proportion as the facts about the realities of power are unpalatble, so emphasis on and interest in the comforting and reassuring legal aspects of sovereignty increases.

(b) Contemporary Aspects of Sovereignty

5) In the contemporary political system we can distinguish the internal and external aspects of sovereignty.

External Sovereignty

6) Sovereignty in external relations still includes formal equality of status with other states. A striking

expression is in voting arrangements in the UN General Assembly, where, for example, Mauritius has the same vote as the US (but the realities of power are reflected by the veto in the Security Council, and by systems of weighted voting in many organisations, not least the European Communities). It involves also the absence of any formally superior source of authority external to the State. It does not mean equal power or influence, or freedom of action in the international scene, or even within the state itself, though these ideas naturally spring to mind in the context of sovereignty. To take an extreme example, while the Central American republics are sovereign states recognised as such by other states, in practice they are limited by their relations with the US Government, and perhaps more critically with private US interest, both in their freedom of international action andin their ability to regulate affairs within their own boundaries. All states are under some degree of external constraint and most have deliberately limited their freedom of action in pursuit of national interests, for example by military alliances, entry into international organisations or even by the conclusion of routine treaties. These limitations are re-inforced by the increasing interdependence of modern states and the development of economic and other links which cut across national boundaries. It is therefore generally recognised that sovereign states can lose some degree of independence of action in external relations without forfeiting their international legal status. But it is always a question of degree in each particular case whether the restraints are so extensive as to be incompatible with continued existence as an equal and independent member of the international community, with the capacity to conduct its own international relations.

7) The effect of the above is that, externally, sovereignty is a technical concept with in many ways only limited bearing on the questions of power and influence that form the normal preoccupation of foreign policy. As a result, much of the debate on entry into the Communities in terms of the power and influence we should gain or lose thereby and on the corresponding effect of non-entry, while a crucial debate in terms of policitcal decisions and British interests, is strictly not a debate on the legal issues of external sovereignty. It is, however, a debate which arises naturally from that issue and which is tied up with ideas of sovereignty in the public mind (see paragraph 15(iv) below).

Internal Sovereignty

8) Internally within the United Kingdom, the notion of sovereignty is bound up with the doctrine of Parliamentary Sovereignty, which in turnis the outcome of the battle between Crown and Parliament as to which should wield supreme power in the land. the formal compromise has been to accept that supreme power to legislate should rest with the Queen in Parliament. For present day practical and political purposes in the UK, the Parliamentary sovereignty may be taken to involve the exlusive power to make supreme law. This power has three essential features:

(a) a statute which has been duly enacted by Parliament and received Royal assent cannot be declared invalid by the courts on any grounds, for example that its provisions are contrary to constitutional law or to common law or to international law;

(b) Parliament may enact any law it wishes; consequently no Parliament is bound by the acts of its predecessors, and any prior statute may be amended or repealed by a later statute;

(c) there is no legislative power in the land save by the authority of Parliament.

9) To the layman those features mean that the Queen in Parlaiment has sovereign law-making power in the territory, unchallenged by any rival national or international source of authority and that its freedom to enact legislation is in law untrammelled by acts of its predecessors or otherwise. The purity of this doctrine is not absolute, particulary as regards the second feature mentioned. For example, Parliament has for all practical purposes limited the jurisdiction of its successors in a geographical sense, by granting independence to colonial and other territories. It is unthinkable that Parliament would attempt to repeal an independece act so as forcibly to regain legislative power over the territory in question. But there has been no comparable (and irrovocable) transfer of authority within the UK itself purporting to bind successor Parliaments; and although Parliament has occasionally enacted legislation which in terms purports to regulate the freedom of action of future Parliaments, in strictly legal terms such legislation does not prevent future Parliaments from legislating to the contrary.

II THE EEC AND BRITISH SOVEREIGNTY

10. If we have correctly identified the two major aspects of sovereignty then we are now in a position to consider how they will be affected by British accession to the Community. The first stage is to consider the Community as it will be upon enlargement putting on one side the prospective implications of any future development or “deepening” of the Community

External Sovereignty

11. Membership of the Communities will involve us in extensive limitations upon our freedom of action. In many respects these are essentially the result of a contractual arrangement, not dissimilar in kind from other international contractual arrangements which we have e.g. in the GATT: these constitute restraints upon the exercise of sovereign powers as a result of an act entered into by virtue of our sovereign status, and they do not amount to a restriction of that status. But it is not correct to regard the European Community Treaties as involving solely matters of a legal significance equivalent to that of other existing treaties. For example, in matters within the Community field (see Annex) we shall be accepting an external legislature which regards itself as having direct powers of legislating with effect within the United Kingdom, even in derogation of United Kingdom statutes, and as having in certain fields exclusive legislative competence, so that our own legislature has none; in matters in which the Community has already adopted a common policy, we shall be accepting that the Commission will jointly represent the Member States, who to that extent will have their individual international negotiating powers limited; and we shall in various fields be accepting a wide degree of coordination of our policy with that of the rest of the Community. All of this we shall be accepting “for an unlimited period”, with no provision for withdrawl.

But at the same time France or Italy for example as members of the Communties, have not come to be regarded internationally as less than sovereign states. This is particularly so since, despite the appearance of permanence of membership it is commonly recognised that the member states do still have the ultimate politcal option of renouncing membership and that the Community cannot at this stage impose its will against the firm opposition of a major member. In other words in practice, and in the final analysis it remains to date a cooperative venture of independent equal sovereign units and not some supernational and overriding authority. Membership would mean an increasing range of subjects on which Britain's policy was concerted with the remainder of the Community and also that in negotiations with the rest of the wordl on matters forming the subjec of common Community policies, there would be join representation by the Commission. The Community being exclusive in character and membership also means in practice giving up some of our important links with the remainder of the world (Commonwealth Preference for example). But overall it is clear that membership of the Community in its present form would involve only limited dimunition of external sovereignty in practice. If it is right to say that the question of the retention of the international status of a sovereign State is a matter of assessing in each case the degree to which a State's external independence, equality and capacity to condut its own international relations are restricted, we could nevertheless fairly conclude that although the implictions for our freedom of independent action are considerable, no substantial impairment of our international status would follow immediately upon our membership of the European Communities.The loss of external sovereignty will however increase as the Community develops, according to the intention of the preamble to the Treaty of Rome "to establish the foundations of an even closer union among the European peoples". We deal with the implications for sovereignty of such dynamic development below in paragraphs 17 to 22.

Internal Sovereignty

12. The implications of membership for Parliamentary sovereignty and for the legal system which is closely related to it, are more immediate.

(i) By accepting the Community Treaties we shall have to admit the whole range of subsidiary law which has been made by the Communities. Not only this but we shall be making provision in advance for the unquestioned direct application (i.e. without any further participation by Parliament) of Community laws not yet made (even though Ministers would have a part, through membership of the council, in the making of some of these laws). Community law operates only in the fields covered by the Treaties, viz. customs duties; agriculture;free movement of labour; services and capital transport; monopolies and restrictive practices; state aid for industry; and the regulation of the coal and steel and nuclear energy industries. Outside this considerable range there would remain unchanged by far the greater part of our domestic law (see Annex).

(ii) Community law is required to take precedence over domestic law: i.e. if a Community law conflicts with a statute, it is the statute which has to give way. This is something now implied in other commitments

which we have entered into in the past. Previous treaties have imposed on us obligations which have required us to legislate in order the fulfil the international obligations set out in the treaty, but any discrepancy between our legislation and the treaty obligations has been solely a question of a possible breach of those international obligations: the conflicting statute has still undoubtedly been the law to be applied in this country. But the cmmunities system requires that such Community Law as applies directly as law in this country should by virtue of its own legal force as law in this country prevail over conflicting national legislation. The Law Officers have, however, concluded that while the European Community will uphold the supremacy of Community Law in its application within the United Kingdom, our Courts, if faced with a statute intended by Parliament to override Community Law, are most unlikely in the immediately foreseeable future to be restrained from giving effect to the statutue.

(iii) The power of the European court to consider the extent to which a UK statutue is compatible with Community Law will indirectly involve an innovation for us, as the European Court's decisions will be binding on our courts which might then have to rule on the validity or applicability of the United Kingdom statute.

(iv) The Law Officers have emphasised that in accepting Community Law in this country we shall need to make it effective as part of a new and separate legal order, distinct from but co-existing side by side with, the law of the United Kingdom. They have referred to the basic European Communities Treaty provisions as amounting "in effect to a new body of "Federal" statute law".

III POLITICAL REALITY AND POPULAR CONCERN.

13. The account given sets out the technical case.

In lay terms we may say that if Britain joined the Community there would be many implications for both external and internal (particularly parliamentary) sovereignty. some of these would be wholly novel, and the general effect particularly in the longer term would be of more pervasive and wide- ranging change than with any earlier commitments. Largely this is because the Community treaties when drawn up were seen as arrangements not merely for collaboration but for positive integration of large parts of the economic and social life of the Member States. As a result the conventional theoretical line dividing internal from external affairs has become blurred, a process which as we have seen is already advancing with the development of transnational economic activity.

14. But public and political concern over "loss of sovereignty" cannot be allayed simply by setting out these technical considerations. In the public debate advocates of entry deny that sovereignty will be lost or transferred and argue that account should be take "of the effective ability of Britain's national institutions to protect and advance the interests, domestic and external, of the British people". They imply that sovereignty as defined above should be disregarded – considering it to have been eroded past usefulness by GATT, NATO etc and the powerlessness of the medium sized state acting alone. Although

this approach rides roughshod over “sovereignty” in its technical sense, it has the merit that in addressing the political rather than the legal reality it comes nearer to the sources of active public concern.

15 These public concerns clearly include:

(i) National Identity

We are all deeply conscious through tradition, upbringing and education of the distinctive fact of being British. given our island position and long territorial and national integrity, the traditional relative freedom from comprehensive foreign, especially European, alliances and entanglements, this national consciousness may well be stronger than that of most nations. when “sovereignty” is called into questions in the deabte about entry to the Community, people may feel that it is this “Britishness” that is at stake. Hence Mr Rippon’s pointed question “are the French any the less French for their membership?” There is another, less attractive, aspect of this national pride. This is the large measure of dislike and mistrust of foreigners that persists in Britain. Nancy Mitford’s Uncle Matthew was not alone in considering that: “Abroad is hell and foreigners are fiends”.

(ii) Change

However it is presented, entry to the Community will mean major change. It is natural and inevitable that this should be disliked and resisted by many. Even though the “loss of sovereignty” may be limited to fairly precise areas of Government and Parliamentary powers and be without significance for the lives of most of the country, still the phrase conjures up a spectre of major and uncontrollable change and of adjustments that will have to be made which are deeply distrubing. “Loss of Sovereignty” may be a euphanism for fear of change and of the unknown.

(iii) Remoteness of the Bureaucracy

It is generally acknowledged that in modern industrialised society the impersonal and remote workings of the Government bureaucracy are a source of major anxiety and mistrust. the operations of democracy seem decreasingly fitted to control the all-embracing regulatory activies of the Civil Service. In entry to the Community we may seem to be opting for a system in which bureaucracy will be more remote (as well as largely foreign) and will operate in ways many of which are already determined and which are deeply strange to us. This bureaucracyis by common consent more powerful compared with the democratic systems of the Community than is ideal. Yet the way to remedy this balance without reducing the Community to a mere standing association for negotiation between national Ministers is by strengthening the Community’s democratic processes which in turn means more change more “loss of sovereignty”

(iv) National Power

As explained in paragraph 6 above, questions of power and influence have a close popular connection with ideas of sovereignty. The British have long been accustomed to the belief that we play a mjor part in ordering the affairs of the world and that in ordering our own affairs, we are beholden to none. Much of this is mere illusion. As a middle power we can proceed only by treaty, alliance and compromise. so we are dependent on others both for the effective defence of the United Kingdom and also for the commercial and international financial conditions which govern our own economy. But this fact though intellectually conceded, is not widely or deeply understood; instinctive attitudes derive from a period of greater British power. Joining the Community does strike at these attitudes: It is a further large step away from what is thought to be unfettered national freedome and a public acknowledgement of our redued national power; moreover, joining the community institutionalises in a single, permanent coalition the necessary process of accomodation and alliance over large areas of policy, domestic as well as external. Even though these areas may be less immediately relevant to survival than defence, as covered by NATO, the form of the Community structure and the intentions explicit in the preamable to the Treaty of Rome emphasise the merging of national interests.

16) We do not suggest that these issues of public concern have any necessary connection with the technical meaning of sovereignty, but the debate hitherto has been conducted on two levels. On the one level there have been legal arguments defining the implications for external and Parliamentary Sovereignty of accession, implictions which are important but have been found politically acceptable. On the other level we believe that argument about the loss of sovereignty couched in more general terms has elicited a strong response because of the anxieties about national identity, power and change outlined above.

IV THE FUTURE DEVELOPMENT OF THE COMMUNITY

17. The account presented of the implications for sovereignty of membership has up to this point delat with the Community as a static institution. Its effective role now centres upon, though it is not limited to, the Common Agricultural Policy and the Common Commercial Policy based on but now going beyond the Common External Tariff. The Council of Ministers continues to be dominated by trade-offs between national interests and the principle of majority voting has been side-tracked. The European Parliament exercises little control over the processes of the Community while the Commision through committed to the “deepening” of the Community is hamstrung by the difficult of reaching agreement on major policy in the Council of Ministers.

18. That the Community within its present limitations should present little challenge to national sovereignty is perhaps inevitable; but it will be in the British interest after accession to encourage the development of the Community toward an effectively harmonised economic, fiscal and monetary system and a fairly closely coordinated and consistent foreign and defence policy. This sort of grouping would bring major politico/economic advantages but would take many years to develop and win political acceptance. If it came to do so then essential aspects of sovereignty both internal and external would

indeed increasingly be transferred to the Community itself.

19. If such a development took place, then over a wide range of subjects (trade, aid monetary affairs and most technological questions) Community policies toward the outside world would be common or closely harmonised. Although diplomatic representation would remain country by country its national role would be much diminished since the instructions to representatives would have been coordinated among member states. By the end of the century with effective defence and political harmonisation the erosion of the international role of the member states could be almost complete. This is a far distant prospect but as members of the Community our major interests may lie in its progressive development since it is only when the Western Europe of which we shall be a part can realise its full potential as a political as well as economic unit that we shall derive full benefits from membership.

20. Such positive development of the functions of the Community could probably only take place with concomitant development of the institutions of the Community. It is hard to envisage the necessary decisions being taken under the present organisation of the Community.; more effective decision-making at Community level would either require majority voting on an increasing range of issues in the Council or stronger pressures to reach quick decisions by consensus. In either case the role of the commission would become more important as the Community became responsible for the regulation of wider areas of the internal affairs of the member states and this would in turn increase the need the strengthen the democratic institutions of the Community, including perhaps a directly elected Parliament. In that event the development of a prestigious and effective directly elected Community Parliament would clearly mean the consequential weakening of the British Parliament as well as the erosion of “Parliamentary Sovereignty”.

21. The process outlined is an exceedingly long-term one, and depends upon the continuing progressive development of the Community. For a very long time – almost certainly until the end of the century – the major member states would retain the practical “last resort” political possibility of secession (albeit in probable breach of international obligations and with increasingly damaging economic consequences for the defector). So long as the member state’s participation is subject to national scrutiny and can in practice be withdrawn, it may be said that the nation’s status as an equal and independent state in the international community will be unaffected. Parliament’s power will likewise survive; if Britain can in practice renounce the Treat when the Community laws which are applied autotmatically within the member states are seen to depend upon the continuing (and pre-eminent) aquiescence of Parliament which may in the last resort be withdrawn.

22. Even with the most dramatic development of the community the major member states can hardly lose the “last resort” ability to withdraw in much less than three decades. the Community’s development could produce before then a period in which the political practicability of withdrawl was doubtful. If the point should ever be reached at which inability to renounce the Treaty (and with it the degeneration of the national institutions which could opt for such a policy) was clear, then sovereignty, external, parliamentary

and practical would indeed be diminished.

V CONCLUSIONS AND IMPLICATIONS.

23. We have examined the two main aspects of sovereignty external and parliamentary sovereignty will be limited, while in the case of parliamentary sovereignty it will be real and novel but not likely to damage British interests. There are in addition major aspects of public concern which are evoked by reference to sovereignty though that is not what they are about – national identity, opposition to change, mistrust of bureaucracy and a belief that Britain standing alone should control its destiny. these may be at the source of much anxiety about and instinctive opposition to British entry. Finally we have argued that in the longest term the progressive development of the Community could indeed mean the weakening of the member states' independence of action and in the last resort of their national institutions and their sovereignty.

24. If it is accepted, there are a number of implications to be drawn from this analysis:-

i. although public concern is not over technical soveriengty itself but over more generally national traditions, it is real and important and can be evoked by reference to sovereignty. Before entry it is important to deal squarely with the anxieties about British power and influence (masquerading under the term sovereignty) by presenting the choice between the effect of entry and on Britain's power and influence in a rapidly changing world. After entry there would be a major responsibility on HMG and on all political parties not to exacerbate public concern by attributing unpopular measures or unfavourable economic development to the remote and unmanageable workings of the Community. This counsel of perfection may be the more difficult to achieve because these same unpopular measures may sometimes be made more acceptable if they are put in a Community context, and this technique may offer a way to avoid the more sterile forms of inter-governmental bargaining. But the difference between on the one hand explaining policy in terms of general and Community-wide interest and, on the other, blaming membership for national problems is real and important.

ii. The transer of major executive responsibilities to the bureaucratic Commission in Brussels will exacerbate a popular feeling of alienation from government. To counter this feeling strengthened local and regional democratic processes within the member states and effective Community regional economic and social policies will be essential.

iii. Parliamentary sovereignty will be affected as we have seen. But the need for Parliament to play an increasing (if perhaps more specialised) role may develop. Firstly, although a European Parliament might in the longest term become an effective, directly elected democratic check upon the bureaucracy, this will not be for a long time, and certainly not in the decade to come. In the interval, to minimise the loss of democratic control it will be important that the British Parliamentarians should play an effective role both through the British membership in the European Parliament and through the processes of the British

Parliament itself. Few if any of the Parliaments of the Six make the most of their role in either respect. It would be clearly in the interest of the UK that British parlaimentarians should acquire a position of influence in the European Parliament against the day when it assumes effective powers.

iv. The process of consultation between the Commission, Government experts and the European Parliament is complex. The issues dealt with are neither “foreign affairs” nor wholly domestic to the member states. The form of the consultations is sich that they can hardly be watched over by the House of Commons as a whole – despite the flexibility of Question Time. The result in the present member states is that Community affairs are largely the prerogative of the executive to be endorsed after the event by the elected representative body as though in foreign affairs. To meet this new problem the creation of a Select Committee on Community affairs or some quite new Parliamentary device might be considered.

v. It will be recognised that the more the Community is considered, developed as an effective wide-ranging and democratically controlled organisation, the more Parliamentary sovereignty will be eroded and the less important external state sovereignty will become. The ability and the ultimate politcal right in the last resort to withdraw will remain for a very considerable time, though it may come to have mainly theoretical significance. In that last resort the ultimate sovereignty of the State will surely remain unchallenged for this century at least. Meanwhile, it will continue to be important to stress the potential gains in real international influence (albeit indirect) through participation in the Community’s policies and to contrast this with the highly formal and technical nature of the “sovereignty” that will be eroded.

25. The conclusions and implcations we have drawn are highly politcal and may be judged beyond the competence of the FCO to advise. Nevertheless the impact of entry upon sovereignty is closely related to the blurring of distinctions between domestic political and foreign affairs, to the relatively greater political responsbility of the bureaucracy of the Community and the lack of effective democratic control.

26. To play an effective part in the Community British members of the Commission and their staffs and British officials as negotiators will necessarily assume more political roles than is traditional in the UK. The Community, if we are to benefit to the full, will develop widers powers and co-ordinate and manage policy over wider areas of public business. To control and supervise this process it will be necessary to strengthen the democratic organisation of the Community with consequent decline of the primacy and prestige of the national Parliaments. The task will not be to arrest this process, since to do so would be to put considerations of formal sovereignty before effective influence and power, but to adapt institutions and policies both in the UK and in Brussels to meet and reduce the real and substantial public anxieties over national identity and alienation from government, fear of change and loss of control over their fate which are aroused by talk of “loss of sovereignty”

ANNEX

AREAS OF POLICY IN WHICH PARLIAMENTARY FREEDOM TO LEGISLATE WILL BE AFFECTED BY

ENTRY INTO THE EUROPEAN COMMUNITIES.

1. In general it should be noted that there are very few if any areas in which Parliament will be wholly free from restraint. It should also be noted that the boundaries which distinguish these areas are changing all the time, as Community policies develop.

2. Much depends upon the way in which the Community has taken action in any particular area. In the case of action by way of Regulation there is, once the Regulation has been made, no room for Parliamentary action (other than, possibly, to supplement the Regulation or mere debate). Generally speaking Parliament must take the Regulation as it stands, and while with Regulations made by the Council, a United Kingdom Minister (who is subject of course to Parliamentary pressure) will take part in the proceedings leading up to adoption of this Regulation, this is not the case with Regulations made by the Commission. Regulations made by the Commission are however essentially of an implementing rather than policy-making nature. Community action by way of a Directive leaves Parliament freedom of choice as to means but no freedom as to the result to be achieved. Recommendation leaves Parliament free to decide not only on the means, but also upon whether to comply with the Recommendation at all.

3. Given these major qualifications the lists below, which are by no means exhaustive, identify the areas of legislative action which will be principally affected and those which will not.

AREAS IN WHICH PARLIAMENT'S FREEDOM OF LEGISLATIVE ACTION WILL BE SIGNIFICANTLY RESTRAINED.

Customs duties and all other matters incidental to the formation of a customs union;

Agriculture;

Free movement of labour, services and capital;

Transport;

Monopolies and restrictive practices;

State aid for Industry;

Coal and Steel;

Nuclear energy industry;

Company Law;

Insurance Law;

Fisheries;

Value added tax;

Social security for migrant workers;

AREAS IN WHICH PARLIAMENT'S FREEDOM OF LEGISLATIVE ACTION WILL NOT BE SIGNIFICANTLY RESTRAINED.

The general principles of criminal law;

The general principles of the law of the contract;

The general principles of the law of civil wrongs (tort);

Land Law;

Relations of landlord and tenant;

Housing and town and country planning law;

Matrimonial and family law;

The law of inheritance;

Nationality Law;

Trusts;

Social services (other than for migrant workers);

Education;

Health;

Local government;

Rates of Direct Taxation;

FURTHER IMPORTANT AREAS IN WHICH MEMBERSHIP OF THE COMMUNITY MIGHT AFFECT HER MAJESTY'S GOVERNMENT FREEDOM OF ACTION.

In addition to the areas listed above, there are a number of important areas in which membership of the Community would impose obligations vis-a-vis the Commission of other member States. These obligations which will restrain our freedom of action in areas hitherto within the discretion of the Executive may be divided into two classes:

a) present obligations to consult; b) future obligations to consult, or to coordinate policies.

2. Present obligations to consult include:

i) Economic Policy : Articles 103-9 of the Treaty of Rom anjoin a wide measure of consultation and coordination on policy on current trends on balance of payment problems.

On exchange rates each Member State is required under the Treaty "to treat its policy …. as a matter of common interest". In practice the main common interest has been the need to allow the CAP to work smoothly; but this has not prevented member states changing parity sometimes with, sometimes without, consultation.

On balance of payments difficulties member states are allowed (under the Treaty) to pursue policies necessary to preserve or restore equilibrium, preferably with consultation beforehand. The Commisssion is empowered to investigate and to make recommendations but national freedom is not significantly restrained at this stage.

ii) Foreign Policy the Davignon report (1970) provided for six-monthly meetings of Foreign Ministers and quarterly meetings of Political Directors to coordinate foreign policies and Governments should consult on all important questions. Two such meets of Foreign Ministers have so far occurred. But no effective restraint exists upon national responsibility for foreign policy as such, and the obligations go no further than those we already have under WEU.

3. Future obligations, where we as members would of course have a full and equal voice in the creation of the detailed policy, include

(a) Economic and Monetary Union

The Council of Ministers adopted a programme of action on 9 February 1971 aimed at establishing economic and monetary union of the Six (and by implication of an enlarged Community of Ten) in ten years. Only the first stage is agreed: Central Banks are to coordinate their monetary policies; the Commission and member governments are to consult three times a year with a view to coordinating their

economic policies and are to produce a joint annual report on short term economic policy; arrangements were to be instituted for a first step in narrowing the margins of fluctuation of members' currencies against each other. These measures are to remain in force for five years and then lapse if agreement has not then been reached on the second stage, which ought to begin on 1 January 1974. Althought the arrangements for narrowing the exchange margins have been posponed by the May currency crisis and the German Government's decision to float the D-mark, it is likely that on entry the UK will have to adhere to the agreement summarised above, assuming that current difficulties in implementing these agreements have been overcome by the time we join. We shall of course take part as full members in the discussions which must precede any move to the second stage.

(b) General provisions for harmonisation of legal practices

There are two relevant general provisions. Article 100 of the Rome Treaty, on the Approximation of Laws, and Article 220 on the negotitation of mutually beneficial agreements which could in theory both lead to encroachment in the future on areas where our freedom to decide on policy is not now significantly restrained. A large number of miscellanesou regulations of little political significance have already been made under Article 100.They are designed to facilitate intra-Community trade by the establishment of uniform standards and practices. After entry we shuold of course have a full say in the scope and application of future work in this field.

SOVEREIGNTY AND THE EUROPEAN COMMUNITY

1. Strictly interpreted, the term "sovereignty" has two principal applications. It originally described the powers of the ruler within his State. In the United Kingdom this internal sovereignty is bound up with the doctrine of Parliament's sovereign law-making power therein, unchallenged by any rival national or international source of authority and free to enact legislation, untrammelled in law by acts of its predecessors or otherwise. The term "sovereignty" on the international plane derives from this original, internal use. In dealing with other States each ruler asserted his own (internally) sovereign status and recognised the equality and independence of other sovereigns. (see Annex A).

2. In this strict sense joining the Community would have immediate implictions for internal sovereignty because:-

a. Community Laws, existing and future, will apply directly in this country as, in effect, a new body of "Federal" statute law;

b. Community law will take precedence over domestic law;

c. the European Court's decisions will be of United Kingdom statutues.

The range of subjects which may be affected is set out in Annex B.

3. At this stage in the Community's development, entry would, however, mean no substantial impairment of our international sovereign status, despite extensive limitations on our national freedom of action. If in the future, the Community were to develop on a broad political front and its institutions matched this development, then national sovereignty would progressively diminish; but member states would nevertheless retain for as long as can be foreseen both the power to prevent decisions against their vital national interest and the ultimate practical ability to renounce the Treaty.

POLITICAL REALITY AND PUBLIC CONCERN.

Public and political concern over "sovereignty" in this context goes wider than these technical matters, and the effects of membership will be more pervasive than with earlier commitments. The prospect of major commitments in the Community arouses keen concern which is often expressed as fear about sovereignty but may rather concern:-

a. National identity

People fear that to become more European we must be less British; a certain mis-trust of foreigners is persistent in Britain.

b. Change

Membership will mean major changes; talk of "loss of sovereignty" reflects fear that this will be uncontrollable and irrevocable.

c. Bureaucracy

Even in Britain, bureaucracy can seem remote. The Community democratic processes are inadequate and the Community bureaucracy will be largely foreign. Our own Parliament will find it more difficult to supervise important decision-making in Brussels and even in London.

d. National Power

The British people believe they order their own affairs; but their instincts derive from the past power rather than present realities. Membership involves the permanent merging of important national interests. HMG will find their freedom of action in many fields restricted by Community decisions.

IMPLICATIONS FOR POLICY

5. a. British Parliamentarians should be encouraged and assisted to play the most effective possible role in the European Parliament;

b. Ways should be found to adapt the processes of the British Parliament so as to minimize public feelings of remoteness and alienation from the decision-making in Brussels. To meet these new problems a Select Committee on Community Affairs, or perhaps other new machinery might be considered;

c. Special attention should be given to strengthening local and regional democratic processes.

6. More generally, apprehensions will arise from the reduction of British power and influence, real or imagined. Even those who concede intellectually that as a middle ranking power we must proceed by treaty, alliance and compromise, may not accept the implications of this fact emotionally or instinctively . Joining the Community will deeply affront many people. Before and after entry, we must therefore ensure that unpopular measures or unfavourable economic developments are not wrongly attributed to the unmanageable workings of the Community. We must also demonstrate the increase in our real international influence through our share in the formulation and execution of Community policies, contrasting this increase in influence with the highly formal nature of the “sovereignty” that will be eroded.

Mr Daunt (Received in registry no 37 – 5 July 1971

SOVEREIGNTY AND THE EUROPEAN COMMUNTIES

At the Planning Committee meeting on 8 June, it was agreed that the Planning Paper on Sovereignty should be prepared as quickly as possible for submission to FCO Ministers and the PUS asked that a shorter paper, suitable for DOP or Cabinet consideration, should be prepared for submission at the same time.

2. I now submit:

Flag A (i) an amended version of the Planning Paper. The principal changes are in

– the bowdlerising of reference to the development of supra-national tendencies;

– the addition of further section to the annex covering exchange rates and other subjects on which there will be some obligations.

– a qualifying phrase in paragraph 25 (iv) reflecting doubts in sir C O’Neill’s mind over the appropriateness of a Select Committee and

– a number of relatively minor changes to the legal arguments which are now in conformity with the views

of the Law Officers;

(ii) a draft based on the Planning Paper but cast in a form suitable for DOP (it is within the 700 word limit). the detail has been relegated to the Annexes, which contain (Annex A) a fuller discussion of the legal issues and (Annex B) an analysis of the areas in which our freedom of legislative or executive action will or will not be restrained;

(iii) a draft covering submission from the PUS to Mr Rippon and the Secretary of State.

3. The draft DOP paper at (ii) above has been cleared with the Legal Advisers and EID, and has been drafted to conform with the views of the Law Officers. We have also had the benefit of the Flag C helpful and penetrating draft put to the PUS by Mr Bottomley on 16 June, on which we have leaned heavily. Thus, our draft makes the points in the last sentence of Mr Bottomley's paragraph 3 and in his paragraph 4; and incorporates virtually verbatim his paragraph 5 and 6. The only essential differences are that:

(a) we have retained for DOP the important legal distinction between internal and external sovereignty (which is fundamental to the Planning Paper);

(b) in dealing with the issue raised by Lord Denning to which Mr Bottomley very properly draws attention (i.e. whether or not Parliament can lawfully go back on the Treaty of Rome once HMG has signed it), we have retained the approach adopted in the Planning Paper. We agree with Mr Bottomley that "it is not possible to state with any certainty what effect our "joining the European Communities would come to have on the sovereignty of Parliament". Much will depend on future developments both in Parliament and in the EEC. But what we do say represents the views of our legal advisers, who consider it to conform with those of the Law Officers.

4. The PUS should see these drafts before the weekend. I am, therefore, submitting them direct to you, with a copy to Mr Bottomley as regards paragraph 3 above. If Mr Bottomley sees grave objection to our draft DOP paper, I recommend that the Planning Paper shuld, nevertheless, go forward to Ministers forthwith, leaving the DOP approach to be finalised on the PUS's return from Mosow towards the end of this month.

17 June 1971. L. Fielding

Copied to: Mr Logan Planning Staff

sir V. Evans

Mr Bottomley

sir T Brimslow

Sir C O'Neill.

Sir C O'Neill

Received in Registry No 37 – 5 Jul 1971-

SOVEREIGNTY AND THE EUROPEAN COMMUNITIES

Under my minute of 9 June, i circulated a cockshy draft of a short paper on this subject, resulting from the Planning Committee discussion on 8 June.

2. The Legal Advisers have helped me in redrafting the opening passage of that draft, and I now circulate a revised version of the whole.

3. Since I redrafted to meet the Legal Advisers' points, I have seen an opinion bearing on this subject from the Law Officers. Their view on the ultimate sovereignty of Parliament, and the impossibility of any one Parliament binding its successors, is much closer to my original version than to the revised version which our own Legal Advisers have agreed to. In particular, the Law Officers ignore the Denning point quoted in my new paragraph 1. The Legal Advisors stick to their guns, nonetheless, and I do not feel that I have any option but to follow them. But it certainly does substantially increase the objections to circulating any paper at all – only fools rush in where angels fear to tread – or at least where archangels differ on correct route through the minefield.

J.R.A.Bottomley

16 June 1971

Copy to Sir V Evans

Sir C O'Neill

Sir T Brimelow

Mr L Fielding.

SOVEREIGNTY AND THE EUROPEAN COMMUNITIES.

It is not possible to state with any certainty what effect our joining the European Communities would

come to have on the sovereignty of Parliament. The question was mentioned in a judgement of the Court of Appeal on 10 May. 1971, but the court deliberately refused to answer it. Lord Denning, presiding said inter alia

“If HM Ministers sign this treaty and Parliament enacts enacts provisions to implement it, I do not envisage that Parliament would afterwards go back on it and try to withdraw from it. But, if Parliament should do so, then I say we will consider that event when it happens. We will then say whether Parliament can lawfully do it or not.”

2. So long as Parliament continued to exist in its present shape, it would no doubt be possible in the last resort for legislation to be passed and enforced to separate the United Kingdom from the Communities. But this is not a speculation we can indulge in or encourage.

3. the situation is also uncertain over external aspects of sovereignty. But it seem fair to conclude that, although the implications for our freedom of independent action would be considerable, no substantial impairment of our international status would follow immediately upon membership, and that membership of the Community as it at present exists could involve only limited diminution of external sovereignty in practice. Fuller account of these issues are at Annex A.

4. What is clear is that, regardless of the fundamental but uncertain problems touched on above, the “sovereignty” issue comprehends a number of real problems on which there is public uneasiness. These problems will need to be delat with and to be explained to Parliament and the public, both before we join and continuously thereafter. The most important of them are:

(i) Parliament will have to allow some its legislative functions to be carried out by organs of the Communities (see Annex B) – some of whose legislation will take precedence over Parliamentary legislation;

(ii) the Executive will find its freedom of action in many fields restricted by Community decisions (see Annex C): and

(iii) Parliament will have increased difficulty in carrying out its traditional function of supervising the activities of the Executive (“grievances before supply”) in fields in which the primary decisions will be taken in Brussels rather than in London.

5. Among the ways in which these problems could be dealt with are the following:

(a) British Parliamentarians should be encouraged and assisted to play the most effective possible role in the European Parliament;

(b) Ways should be found to adapt the processes of the British Parliament so as to minimize feelings of remoteness and alienation of the decision-makers in Brussels. The creation of a Select Committee on Community Affairs might be considered;

(c) Special attention should be also given to the strenthening of local and regional democratic processes.

6. More generally the fear of “loss of sovereignty” reflects apprehensions arising from the reduction of British power and influence. For many people in this country – even among those who concede intellectually that the days of splendid isollation are long past and that we are nowadays a power of the middle rank and can proceed only by treaty, alliance and compromise – it is not easy to accept the implications of this fact emotionally or instinctively. Joining the Community will affront the deep feelings of many people in this country. It will therefore be important – after as well as before joinig – to demonstrate the increase in our real international influence through our sharing in the formulation and execution of the Community’s policies.

Parliamentary Under-Secretary. Rec’d 5 July 1971 Lingholm

Keswick

Cumberland

30th June 1971.

The Marquess of Lothian

Parliamentary Under-Secretary of State

Foreign and Commonwealth Office

London SW1

Dear Lothian

Many thanks for your letter of 21st June in regard to the Treaty of Rome and discussing the question as to whether itn particular countries could or could not opt out if they so wished.

Whilst your answer is certainly most helpful, it does not really go quite as far as I would have hoped. However, I will use it as best I can in the context of the fear of irrevocability which I mentioned in my

original letter. Thank you for your trouble.

yours sincerely

Received 5 July 1971

From: Geoffrey Johnson Smith MP

Dear Sir

I should be most grateful if your Department would kindly comment on paragraph three of the enclosed letter.

I have been getting quite a lot of questions on this point from the better educated constituents. I have done some research and have, I think, quite a good answer. I think the time has come for me to seek the authoritative views from your Department, whose legal division must have given some considerable thought to this problem.

Anthony Royle Esq MP

Foreign & Commonwealth Office

Downing Street S.W.1

Nowplace

Framfield

Nr Uckfield, Sussex

28th June 1971

Geoffrey Johnson Smith Esq MP

House of Commons

London S.W.1

Dear Geoffrey

I am sure that you will be beginning to realise that individuals everywhere are starting to take action to ensure that we will not be led like lemmings into the Common Market.

I doubt that you made many statements, if any, that I could agree with at your talk in Framfield. You achieved your biggest cheer when you said something to the effect that 'it was necessary to get people together'. You hugged the air in front of you, but please when you say that again at other meetings, just remind the audience that you are going to force them to 'get together'. We have had happy voluntary relationships with Australia, New Zealand and many other countries, a relationship which is forced cannot possibly by harmonised.

You further answered another question to the effect that nothing in the Treaty of Rome gave anyone any power to be executive, judge and jury in their own case. You said you would 'run a mile'. I am not going to ask you to run a mile, but the nine Commissioners do have powers to make their own regulations and orders. They have the power to investigate company's books without a search warrant in any country. They have the power to convict. This conviction has to be passed on to the national court which has to obey it. There is no appeal. If the fine is excessive or cannot be paid, then the court will have to proceed to the next stage which must be gaol. I really believe you cannot possibly know what the Treaty of Rome is about.

I think it fair to ask you to refute my statement with the necessary quotation or to apologise and admit that you were wrong in the Framfield hall.

I do not think you can possibly realise the monstrosity that the agricultural and fishery legislation inside the EEC is producing. The cost has risen in four years from £250,000.00 to £1,500,000,000. For what purpose is this money to be paid and who is to gain? Food prices are to rise and there is this enormous tax.

It is easy to see the hideous dangers and vast cost of joining the EEC. Can you give me one certain advantage.

I am more and more certain that the Conservative Party if it heads for the Common Market, is going to destroy itself and it will also compound the economic difficulties in which we already wallow because the Party simply will not do that which is necessary both to stop inflation, to increase employment and put the country on a sound economic footing. I think you will become more and more aware that the British people do not intend to be led over the cliff like lemmings. For the umpteenth time in history a relativing few people are confusing and betraying a very great number. I am sure it will never happen. You are

using devious means to give away the sovereignty of Parliament in perpetuity. This is quite different to making a treaty which can be cancelled by a subsequent Parliament. From your talk in Framfield and communications with Geoffrey Rippon and other members of your Government, I am satisfied that the real dangers in the situation are not understood.

Yours sincerely

Antony Fisher.

Foreign & Commonwealth Office

Downing Street, London S.W. 1

Telephone 01-930 3440 23 June 1971

Chancellor of the Duchy of Lancaster.

Dear Robert

Albert Costain has passed on to me your letter of 10 June, with an enquiry from a constituent about the legal position if we join the European Community.

In general Community Law, whether embodied in instruments having direct internal effect or in instruments which require implementing legislation to be passed by the Member States, is applied through the municipal courts of Member States.

However, sometimes Community institutions and in particular the Commission, are given some powers to decide whether there has been an infringement of Community law and, in accordance with a quasi-judicial procedure, to impose penalties for the infringement. An example is in the field of restrictive practices, where Regulation 17 gives the Commission such powers. Where the Council or the Commission has the power to take such decisions, Article 173 of the Treaty of Rome provides a safeguard by allowing the decision to be challenged before the European Court of Justice.

yours

Geoffrey Rippon

To: Robert S. Redmond, Esq TD, MP

Foreign and Commonwealth Office

London S.W.1

21 June 1971

From the Parliamentary Under-Secretary

Thank you for your letter of 6 June about the question of sovereignty and the EEC.

I should first of all like to point out that membership of the European Communities would not affect the vast majority of the Government's powers to run this country. However, no country these days can really decide all its affairs by itself. Britain's actions in both the political and the commercial sphere are already greatly circumscribed by a nexus of international agreements such as the GATT and the UN. I firmly believe that our membership of the Community institutions, particularly the Council of Ministers will be of great benefit to this country when it comes to making agreements with countries outside Europe. The Community has already show that it can defend its members' interests far more effectively than they could individually.

The Community is, of course, committed to examining means of progress towards economic and monetary union, as a logical development from the present stage of economic and commercial integration. This policy is still, however, in its infancy and progress will be necessarily slow. Britain would be a member of the Community before any decisive steps towards economic and monetary union were taken, and would certainly ensure that no action detrimental to her national interest was taken.

J. Derrick, Esq

Little Orchard

Sudbrook Lane

Petersham

Richmond,

Surrey.

I have noted your request for tickets and I shall do my best to obtain one for you, although I should warn you that they will be in very short supply

Anthony Royle

Foreign and Commonwealth Office

London S.W.1

From the Parliamentary Under-Secretary of State 21 June 1971.

E.I.D.

Thank you for your letter of 8 June about the irrevocability of the Treaty of Rome.

The Treaty of Rome is not, of course, unique in that it does not have a time limit or contain a denunciation clause. The United Nations Carter, the Vienna Convention on Diplomatic Relations and the Anglo-Malaysian Defence Agreement of 1957 (to name only a few international agreements to which Britain is a party) could also be termed “irrevocable” if this were the criterion. There are no constitutional obstacles in the way of Parliament’s approving Treaties of unlimited duration if it so wishes.

the important point to make here, as I am sure you will realise, is that the Community operates on the basis of concensus, and that the obvious course of action to take in the event of problems would be to get together with our partners and to attempt to solve them within the framework of the Community. A Treaty only remains effective so long as the political and economic need for it is there; if internal problems and disagreements in the Community grew too strongly to be resolved by discussion, and its internal differences became irreconciable, then it would fall apart of its own accord. But I believe that the advantages of continuing membership will grow as integration within the Community proceeds. In fact, the course the Community has taken so far demonstrates this. The Community has been an outstanding economic success. It has had the collective strength to overcome all manner of obstacles to its development. There is no significant regional or political group in the Community which wants withdrawal or dissolution – let alone any member state.

The Viscount Rochdale O.B.E, T.D, D.L

House of Lords,

S.W..1.

There were plenty of people in the Six who expressed the doubts and fears you now hear from anti-

Marketeers in this country, before the Treaties were signed. These voices have long since fallen silent. The member states have lost none of their separate national identities; collectively they have gained, not lost, in influence.

It is difficult to find a succinct formula of words to cover this question, but I hope what I have written above will help.

(LOTHIAN)

Mr Statham

1. I submit a draft note of guidance on the ESBC entry fee for Mr Rippon's use in answering questions in Parliament.

I.T.Steven

European Integration Department

18 June 1971

EUROPEAN COAL AND STEEL COMMUNITY ENTRY FEE.

THE REASON FOR AN ENTRY FEE.

Our contribution, in 3 instalments, of an "entry fee" of 57 m.u.a (£24 million) to the ECSC has been accepted because this sum represents our participation in the accumulated funds to which we shall have access immediately upon entry and from which HMG, local authorities, the coal and steel industries and other industries related thereto will derive considerable benefits. The funds have been built up from levies imposed on the coal and steel undertakings of the existing member states since the ECSC was set up in 1952.

THE BASIS UPON WHICH THE ENTRY FEE WAS CALCULATED

It is a principle of the ECSC that, unlike the funds of other Communities, levies will be imposed directly on the output of the coal and steel industries of the member states. The calculation of an entry fee was based on the last available valuation of the funds, at the end of 1969, audited in 1970. The proportion was taken as the amount of the levy, based on coal and steel output which the UK would have paid had we been members during 1969 compared with the levy paid by the Community in that year. This proportion amount to 37%

NEGOTIATION ON THE BASIS OF CALCULATION

Accumulated ECSC funds at the end of 1969 stood at 220 million and the sum which would have been payable, if book values had been strictly calculated, would have been 81.4 m.u.a (£33.9 million) The reduction to the present agreed figure was made after the Community had accepted that some parts of the accumulated reserves e.g. those consisting of loans for workers' housing, made at very low interest rate, could be written down in value. By this device the book value of the accumulated funds was reduced from 220 to 155 m.u.a with the consequential reduction in the amount of our entry fee from 81.4 m.u.a. to 57 m.u.a.

AN ALTERNATIVE BASIS FOR CALCULATION

Agreement by the Community on the basic calculation itself represented a considerable concession, since some of the Governments of the member states had argued that our participation in the accumulated funds should have been equivalent to the sum when we would have contributed to these funds had we been members of the ECSC since inception. Such a basis of calculation would have made us liable for a sum in excess of 100 m.u.a.

Mr Morland

Mr Logan

I submit for Mr Royle's signature a draft reply to a letter from on of his constituents, Mr J. Derrick.

G.E.Clark

European Integration Department

17 June 1971.

Mr Morland

Mr Godden

Mr Goodenough

I submit for Lord Lothian's signature a draft reply to a letter from Lord Rochdale about the irrevocability of the Treaty of Rome.

G.E.Clark

European Integration Department

17 June 1971

Mr Morland

Mr Pakenahm

I submit for Mr Rippon's signature a draft reply to a letter which Mr Costain has received from Mr R.S.Redmond MP.

the legal advisers agree.

G.E.Clark

European Integration Department

15 June 1971

Little Orchard

Rec'd and ack 10/6

I.R Department

for draft reply please

From Mr Royle

6th June 1971

Dear Mr Royle

Sudbrook Lane

Petersham

Richmond

Thank you very much for your letter explaining how you feel about British entry into Europe. Although I fully agree with what you said, I am sorry you did not raise the matter of sovereignty, since I wrote my letter to you last April, I have become increasingly worried about the loss of sovereignty which could result from the EEC's long term economic plans, such as monetary union. I would feel much happier about entry if the Government were to give an assurance that Britain veto any such plans if, and when we join. However I fully apreciate the potential economic advantages of entry on suitable terms.

However, the real urpose of this letter is to ask you whether you could get me Strangers Gallery tickets for Commons debates on entry after the Government has published the White Paper on the terms of entry. It saves spending all the time queueing! If you can get me tickets (or a ticket if you can only get me a ticket for one debate) I would prefer them to be for debates after July 9th. Incidentally, I should like to register my disapproval of any plans to have a Commons vote on entry before the Summer recess.

Yours sincerely

John Derrick.

Anthony Royle MP

House of Commons

London SW1

Perhaps you could say that Mr Royle has noted his request for tickets and that he will do his best to obtain one for him but they will be in very short supply.

I have taken a copy of his letter and will do what is necessary.

Anne

Mr Sinclair (legal Advisers K 166)

Mr Steven (European Integration Department E 204a)

1. Please see the attached letter from Mr de Winton about the procedures adopted by the Commission in imposing penalties. Before we can answer the various points put to us I think we shall have to do a bit of writing around.

2. On the first point, about the presumption of innocence, it is not true that all members of the Community have subscribed to Article 6 (2) of the European Convention on Human Rights: france is not a party to that cConvention. For convenience, Article 6 (2) reads: “everyone charged with a criminal offence shall be presumed innocent until proved guilty by law”.

3. I think that it would be a perfectly fair assumption to make in public, that the five who are parties to the Convention do in fact have laws which are in accordance with this provision. The Solicitor General, however, obviously would like to have this confirmed by quotations from authoritative works on the criminal procedures in some of the countries concerned. I think that there is no real alternative to asking the Embassies in the Six to provide appropriate quotations from authoritative works in their countries. I think this is particularly required in the case of France, given that France is not a party to the European Convention on Human Rights.

4. The other main question is whether there is any prior impartial hearing before the Commission imposes fines or penalties, it is cleared from Article 19 that before taking the decision to impose a fine or penalty under Article 15 and 16 there must be an opportunity given to the “accused” to express their views. Article 1 of Regulation 99 refers to this process as a “hearing”. Article 7 of Regulation 99 obliges the Commission on to provide an opportunity for written arguments to be developed orally. Article 9 of Regulation 99 provides that the hearings shall be conducted by persons appointed by the Commission.

5. I think from this procedure it can be safely said that there is a prior hearing before the Commission decides to impose a fine. What I am less certain about is the extent to which it can be said that the hearing is “impartial”. Simply as a matter of form, and irrespective of the possible impartiality of the procedure adopted in practice, it may be said that a hearing before a person who is appointed by the “proseceuting” authority can scarcely be thoroughly impartial. Whether that formal point is a good one or not, clearly a great deal depends on exactly how these appointees operate, and what kind of persons the Commission appoint for this purpose. I think we have no alternative but to ask Brussels about this. I notice that in paragraph 31 of the 1967 White Paper we did not actually say that the hearings were impartial, but merely reference to “quasi-judicial procedure”. There is perhaps further criticism to be directed at the procedure provided by Article 9 of Regulation 99, and this is the provision in paragraph 3 that hearings shall not be public. Quite apart from any general principles which might be thought to apply, it is worth drawing attention in this context to Article 6 (1) of the European Convention on Human Rights, which provides that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” It may be enought that the ultimate determination of a person’s rights or liability to a penalty under Regulation 17 can be determined by the European Court. Nevertheless, I think that Article 6 (1) could be used damagingly.

6. Article 17 of Regulation 17 confers upon the European Court full jurisdiction within the meaning of Article 172 of the EEC Treaty when adjudicating on appeals brought against decision by which the

Commission has fixed a fine or a penalty. Mr de Winton asks whether this has an bering on the procedure of the Commission, particularly the impartiality of the hearing. I am sure that the existence of Article 172 does have a bearing on the procedure of the Commission, in that the knowledge that there can be an appeal to the European Court is bound to make the Commission very chary of doing anything improper. I would doubt, however, whether this would enable somebody to question the impartiality of the hearing by the person appointed by the Commission solely on the grounds that, being appointed by the Commission, he could not be impartial. But I should have thought it very likely that, if, on some other grounds, it could be shown that the hearings were conducted impartially, this could be sufficient to enable the European Court to cancel or reduce the fine or penalty imposed. In this connection, it is worth noting that the European Court, in the Koster, Berodtand Company case (Affairs 25/70, judgement delivered in December 1970) decided that respect for the general principles of law is assured by the European Court.

7. Much the same can, I think, be said about the effects of Article 173 of the EEC Treaty, although in this case the European Court has power to declare the decision of the Commission imposing a fine or peanlty to be invalid.

8. Apart from Regulation 17, I think that other provisions providing for a person upon whom the Commission proposes to impose a penalty must have a prior hearing are probably only to be found in other particular Regulations. I am not aware of any general provisions to this effect. Other particular Regulations in this context are Regulation No 11 of the EEC Council, Articles 17 and 18 of which provide for the Commission to impose a penalty, and Article 25 of which provides for some kind of prior hearing. In this case it is specifically provided that the person to hear the explanations of the “accused” is to be an official of the Commission. Article 25 also provides for Article 172 of the EEC Treaty to apply. Another particular Regulation is EEC Council Regulation No 1017/68. Article 23 provides for the imposition of penalties, Article 26 provides for some kind of prior hearing, and Article 24 provides for the role of the European Court under Article 172.

9. I do not know how far it is possible to generalise (and again, perhaps we should ask Brussels) but I suspect that virtually every Regulation which allows of decisions to be taken imposing fines or penalties by the Commission also provides for a prior hearing (which may be written, or written and oral) and also for a reference to the European Court under Article 172. The real difficulty in being re-assuring about the point put to the Solicitor General is on the question of impartiality of this prior hearing. So far as this impartiality might be called in question, the fact that the European Court is available by way of appeal is a good safeguard.

A.D.Watts

Legal Advisers

W 44/4

01-405 7641 ext 20

The Legal Secretary

Law Officers' Department

Royal Courts of Justice

London W.C.2

Law Officers' Department

Royal Courts of Justice

London W.C.2

24 June 1971

Dear Arthur

The Solicitor-General has had in mind to take up the two brief points made in the attached note and spell out an answer to them in one of his forthcoming speeches, assuming that they can be refuted. The question of the procedure for imposing penalties may well have been fully studied during recent years, but we do not have any detailed official paper about it here. We would therefore be grateful for any advice the Foreign and Commonwealth Office can give us about the answers which the Solicitor-General might make in his speech.

The first point to be dealt with is that Continental systems of jurisprudence require an accused to prove his innocence. Since all Members of the Community have subscribed to the convention for the protetion of fundamental rights and freedoms, which provides in Article 6 (2) for a presumption of innocence in favour of the accused, it must be assumed that their laws fully reflect this position. It would, however, be helpful if this could be confirmed by quotations from authoritative works on the criminal procedures in some of the countries concerned.

The second point is that EEC regulations, such as regulation 17, authorise the Commission to impose penalties "without any prior impartial hearing" So far as regulation 17 itself is concerned the position seems to be fairly clear. Article 19 of regulation 37 requires the Commission to give undertakings or associations an opportunity to express their views on the acts or omissions of which they are accused before taking a decision to impose a penalty. Regulation 99 spells out the procedure for this; under which the Commission is required to specify the grounds of complaint, and enterprises or associations can submit written pleadings and also are entitled to an oral hearing by a person appointed by the Commission.

There are a number of questions on which we need clarification as follows:

(a) Are the persons appointed to conduct the hearing "impartial"

(b) Do the doctrines of “full jurisdiction as to the merits” within the meaning of Article 172 of the Treaty, or the grounds of jurisdiction of the court mentioned in Article 173 of the Treaty, have any bearing on the procedure of the Commission, in particular the impartiality of the hearing?

(c) Leaving aside regulation 17 (and also Article 36 of the ECSC Treaty) are there any provisions, of general or particular application, guaranteeing the person upon whom the Commission proposes to impose a penalty a prior hearing? Para.31 of the 1967 White Paper leaves the impression that a quasi judicial procedure would always be observed.

A.D.Watts Esq

Legal Advisers,

Foreign and Commonwealth Office

Downing Street

London S.W.1.

3 August 1971

Reference 104

Mr I.T.Steven

Presumption of Innocence

I have looked through the Constitutions of the six Member States of the European Communities. Though five of them contain some guarantees of a fair trial (for Belgium, see Articles 7 and 8; for FRG, Article 103; for Italy, articles 24 and 25; for Luxembourg, Articles 12 and 14; and for Netherlands, Articles 170 and 175). the Italian Constitution alone expressly refers to the question of innocence and guilt. “The person accused is not considered guilty”,it says in the second paragraph of Article 27, “until final sentence has been passed upon him”.

This does not prevent, however, the presumption of innocence from being a basic tenet in criminal proceedings in the other Member States of the Six. The principle in dubio pro reo prevails in all of them (for the FRG, see K. Neumann in the F.O. Manual of German Law, Vol II, p149, HMSO 1952). This is why five of the six could adhere, as far as its Article 6(2) is concerned to the European Convention of Human

Rights. And so could certainly France.

While this is the case, there is an important difference in the way in which the presumption is applied in criminal proceedings in the six Member States on the one hand, and in the UK on the other. In the UK the general presumption that a person is innocent until the contrary is proved, and that the more serious the crime, the more clearly it must be proved (see Halsbury's. Simonds ed., Vol.10, p.457) leads to an allocation of the burden of proof at the trial.

In the six Member States, on the other hand, the presumption has not the same function. Thus in the FRG, it is the duty of the Court to do everything necessary to ascertain the truth. This, in a sense, "does away" with the whole problem of buden of proof. Yet the presumption of innocence applies to the weighing of the evidence (cf K.Neumann, ibidem; J.E.S Fawcett, the Application of the European Convention on Human Rights, O.U.P 1969, p161). The same applies in France and Belgium and presumably in Luxembourg and the Netherlands.

Unfortunately, F.O. Law Library does not contain, nor was its very resourceful librarian able toproduce, the Codes of Criminal Procedure of the Six or text books on the subject. So I am not in a position to quote Chapter and Verse for the foregoing. But I am pretty certain that my recollection is correct. Moreover, a few years agao, I read an article by, I believe, Professor C. Hamson on the French law on the subject. His conclusion was that taking the pre-trial and trail as a whole the position in France was very much the same as over here. (I cannot locate the article now and there is no reply from Hamson's home in Cambridge.)

I would not generalise this conclusion. My own impression is that, while the presumption of innocence applies in the six Member States, their rules on the admissibility of evidence differ from those in this country where the rules are highly technical and, on the whole, limitative. This is one of the reasons for the general impression that the rule of law is more pronounced in this country than "on the Continent". The other reasons concern the pre-trial stage.

Alexander Elkin

KCS EID 347A

Ext.502

263 Written answers 12th June 1971

to amend the opertion of the Maintenance Orders (Facilities Enforcement Act 1920, so as to include

affiliation orders and to extend it to include foreign and Commonwealth countries, and if he will make a statement.

Mr Carlisle: Legislation for this purpose is being prepared and will be introduced when parliamentary time permits.

Downing Street Demonstration

(Police)

Mr Dempsoy asked the Secretary of State for the Home Department how many police officers and of what ranks on duty and standing by; and how many police vans were engaged in controlling the Clydeside workers, ministers of the religion and Scottish Members of Parliament during the recent demonstration at No 10 Downing Street; and what was the total cost involved of those police services.

Mr Sharples : Ninety four police officers were on duty on 16th June in connection with the visit of the shipbuilding workers in London.

Their ranks were 1 commander, 2 chief superintendants, 4 inspectors, 9 sergeants, 76 constables, one coach, five personnel carriers and one car were used.

There were no additional costs to police funds.

WEST MIDLANDS.

Q6. **Mr Carter** asked the Prime Minister if he will now make an early official visit to the West Midlands.

The Prime Minister: As I indicated in the reply I gave last Tuesday to a supplementary question from my hon Friend the Member for Brierley Hills (Mr Montgomery), I shall be visiting the West Midlands on 30th September and 1st October – (Vol 819 c 227-229)

FIRST LORD OF THE TREASURY

Q7. **Mr Douglas** asked the Prime Minister if he will introduce legislation to abolish the office of First Lord of the Treasury.

The Prime Minister: No

EUROPEAN ECONOMIC COMMUNITY

Q8. **Mr Biggs-Davison** asked the Prime Minister what requests he has received from the Prime Ministers of Canada and Australia in view of the difficulty of directly associating those Commonwealth realms with the European Economic Community to include in Her Majesty's Government's negotiations in Brussels provision for assured outlets for Australian and Canadian exports to the United Kingdom and the Community.

The Prime Minister: There is continuing close consultation with the Governments of Canada and Australia about the future of their trade with the United Kingdom as a member of an enlarged Community. In the negotiations on transitional arrangements, agreement has been reached on a number of products important in these countries.

Q9. **Mr Bruce-Gardyne** asked the Prime Minister whether he will co-ordinate a programme of public speeches by Ministers to ensure that the electorate is properly informed concerning the advantages which would result from the enlargement of the European Community.

The Prime Minster: My righ hon. Friends, and I will continue to provide this information both through public speeches and by other means.

Q16. **Mr Biggs-Davison** asked the Prime Minister what amendments of, or derogations from, the Treaty of Rome he discussed with President Pompidou in order that essential sovereignty may be maintained if the United Kingdom enters the European Economic Community.

The Prime Minister: As I told the House on 24th May, President Pompidou and I agreed that decisions in the Community should in practice be taken by unanimous agreement when vital nationalinterests of any one or more Members are at state – (Vol. 818. c 31-35)

HOMELESS PERSONS.

Q10. **Miss Lester** asked the Prime Minister if he is satisfied with the co-ordination between the Home Office, the

Date 22 June

COL 264

VOL 819

ADVICE FOR THE PRIME MINSTER

NOT YET APPROVED

SUBMITTED TO: Mr Rippon and Mr Royle

PARLIAMENTARY QUESTION The draft reply should

reach the Parliamentary Office through

for Oral Answer on Tuesday 22nd June your Under-Secretary by

*U. Mr John Biggs-Davison (Chigwell): To ask the Prime Minister, what amendments of, or derogations from, the Treaty of Rome he discussed with President Pompidou in order that essential sovereignty may be maintained if the United Kingdom enters the European Economic Community.

A.R.V.

Tuesday 22nd June 1971

Q. Mr John Biggs-Davison

(To be answered by the Prime Minister)

As I told the House on 24th May, President Pompidou and I agreed that decision in the Community should in practice be taken by unanimous agreement when vital national interests of any one or more Members is at stake.

Vol; 818

NOTES FOR SUPPLEMENTARIES

DISCUSSION OF AMENDMENTS TO THE TREATY OF ROME WITH PRESIDENT POMPIDOU

1. President Pomidou and I did not discuss amendments to the Treaty of ome, but agreed on the continuation in an enlarged Community of the agreement between European Economic members in 1966 (known as the Luxembourg Agreement) under which Community decisions must in practice be reached by unanimous agreement on issues where the vital interest of one or more Member State is at stake.

2. My right honourable Friend, the Secretary of State for Foreign and Commonwealth Affairs answered yesterday a question about this from my honourable friend the Member for Esher.

SOVEREIGNTY

3. The voting practices of the Community, as they have evolved, adequately protect the interests of Member States. As a member of our enlarged Community we would have appropriate voting rights in its institutions and similar rights for expressing our view.

GENERAL QUESTIONS ABOUT THE TALKS WITH PRESIDENT POMIDOU

4. The purpose of these talks was to establish a broad identity of view on European questions. I would refer honourable Members to my statement on the 24th May.

5. SECRET AGREEMENT IN PRIME MINISTER'S TALKS WITH PRESIDENT POMPIDOU

I gave the House an absolute assurance about this on the 10th June.

FRENCH LANGUAGE

6. The languages of all Member States are official languages of the Community. There is no question of any Member attempting to impose one language on its partners. But it is natural that with the prospect of enlargement of the Community existing members wish to be assured that there will be no overturning of day to day practices.

7. The Community has put to us a possible approach to resolving this question on the basis of certain principles. Briefly, the concept is that our contributions should be governed by the Community's decision on the providing of **ressources propres** from the outset of our membership, but that during the transitional period the contribution should be governed by a key and that the amount of our national liability which we should actually be called upon to pay would be abated over the transitional period by annually diminishing percentages.

EFFECT OF EUROPEAN ECONOMIC COMMUNITY ENTRY ON FOOD PRICES

8. The effect of entry on food prices tends to be exaggerated. The previous Government in the White Paper of February 1970 forecast an increase in the Food Index of 18 to 26 per cent over the transitional period. This would be 5 to 4 per cent, annually, or less than 1 per cent on the cost of living, of which food accounts for about one quarter. The increases might in fact be somewhat less because the gap between United Kingdom and European Economic Community prices has been narrowing. My right honourable Friend the Minister of Agriculture, Fisheries and Food will shortly be giving the House revised figures for the increase in the cost of food on entry and I am confident that they will show a maredly better picture than that presented in the February White Paper.

FOOD PRICES IN THE COMMUNITY

9. It should not be thought that food prices in all countries in the Community are uniform. Many factors, such as patterns of consumption and seasonal factors make for variations. Price levels for some kinds of fresh fruit and vegetables are lower in many countries of the Community. If we join, there is no reason to suppose that our prices would rise to the highest levels in the Community. On some products, for example milk, poultry,fish tea, coffee, cooking oils and fats, price rises would be very small indeed.

STERLING

I would refer honourable Members to my Statement on the 10th June.

MONETARY UNION AND “ALIGNMENT” OF STERLING

11. Progress towards monetary union may be difficult and there may be setbacks, but I am confident that there will be developments in this direction. It would therefore be appropriate and right to have discussion on the question of progressive “aligment” of policies after we become members of the Community.

QUESTIONS ABOUT MEETING OF DEPUTIES ON THE 16TH OF JUNE AND MINISTERIAL NEGOTIATING MEETINGS ON THE 21ST – 22ND JUNE

12. My right honourable and learned Friend the Chancellor of the Duchy of Lancaster will be covering these in a statement after the current meeting.

REFERENDUM

13. I have always made it plain that it is Parliament’s responsibility to decide this issue as it is to decide other issues in international relations.

BACKGROUND NOTE

DISCUSSIONS WITH PRESIDENT POMIDOU ON AMENDMENTS TO OR DEROGATIONS FROM THE TREATY OF ROME TO MAINTAIN SOVEREIGNTY.

The question relates to the Prime Minister’s agreement with President Pomidou on the maintenance of the Luxembourg Agreement, whcih was referred to in the Prime Minister’s statement on the 24th of May. The Luxembourg Agreement modifies the voting procedures in the Council of Ministers of the Community (laid down in Art 148 of the Treaty of Rome) in cases where vital interests of members are at issue. This modification of voting practices was arrived at, after the French withdrawal for six months from the Council of Ministers, in 1966. It enables member governments to maintain essentail sovereignty by requiring unanimity on key decisions.

ADVICE

FOR THE PRIME MINSTER

PARLIAMENTARY QUESTION.

PARLIAMENTARY QUESTION

for oral answer on Tuesday 22nd June.

*U. **Mr John Biggs-Davison** (Chigwell): To ask the Prime Minister what amendments of, or derogations from, the Treaty of Rome he discussed with President Popidou in order that essential sovereignty may be maintained if the United Kingdom enters the European Economic Community.

As I told the House on the 24th May; President Pompidou and I agreed that decisions in the Community should in practice be taken by unanimous agreement when vital national interests of any one or more Members are at stake.

Col 31-35

969 Oral Answers 21st June 1971.

The transistional period of for perpetuity, because this matter is of great importance to the inshore fishing community. To rever to the question under discussion –

(Hon. Members: "Too Long) – it has been said that if they enter the EEC, the Norwegians are prepared to surrender those eights they are now demanding for themselves on maintaining the 12-mile limited and that they will go back upon the pledge they have already made that they will ban trawling within that 12-mile limit. If that is so, is not the offer being made to the British deep fishing fleet: –

Hon. Members: Too long!

Mr Deputy Speaker: Order. The hon Gentleman should be as short as possible.

Mr McNamara: With the greatest respect, Mr Deputy Speaker, I am trying to be, but I am being interrupted by hon Members opposite. These points are of interest to those of us who represent fishing constituencies and they need further enlargement than we have had from the Government. The point I was trying to make was this ——-

Hon Members: Too long!

Mr Deputy Speaker: Order. I must ask the hon Gentleman to conclude his question in one sentence quickly.

Mr McNamara:

Does it not mean that the benefits offered to the deep-sea fleet of being able to fish within the 12-mile Norwegian limit will not exist?

Sir G. Nabarro: Garrulous old wind-bag.

Mr Royle: The six-mile proposal on the table for the discussions in Luxembourg this week. We are, of course, aware of the Norwegian proposals and have been studying them closely. The problems faced by the two countries are by no means identical but we shall continue to onsult the Norwegian Government closely, particularly on matters of common interest.

15. **Mr Mather** asked the Secretary of State for Foreign and Commonwealth Affairs to what extent amendment to the Treaty of Rome is now considered necessary by Her Majesty's Government.

Sir Alec Douglas-Home: Her Majesty's Government accept the Treaty of Rom and the decisions flowing from it subject to the agreements reached and to be reached in the negotiations. On enlargement of the Community, the Trety of Rome needs certain technical amendments necessary to provide for the additional membership.

Mr Mather: I thank you my right hon-friend for that reply. As the full implications if Britain is to join cannot be clearly foreseen, will he press for an amendment of Article 240 of the Treaty of Rome to limit the binding effects which may arise for us as a result of the passage of time and to protect our over-riding national interest?

Sir Alec Douglas-Home: Where matters of over-riding national interest are concerned, we have made it plain – as my right hon Friend. the Prime Minister did i his talks with President Pompidou – that decisions should be reached by unanimity. This, I think, is the big protection against an vital interest of a member country being overridden.

Mr Heffer: It is not clear that the harmonisition programme, particularly in relation to taxation, means that this country will have to accept the value added tax and that even if we dislike that tax and we have a Labour Government, we cannot, if we are in the Common Market, get rid of it because of the harmonisition programme?

Sir Alec Douglas-Home: That would be for the Labour Government to decide. If there ever is a Labour Government again.

17. **Mr Trew** asked the Secretary of State for Foreign and Commonwealth Affairs whether he will ensure that the White Paper on the terms for entry into the European Economic Community refers specifically to the degree of Great Britain's commitment to initatives that go beyond the scope of the Treaty of Rome.

Sir Alec Douglas-Home: I would ask my right hon.Friend to await the White Paper that we are about to issue.

Mr Trew: Does my right hon Friend agree that there are initiatives under way in Europe in respect of economic, monetary and political union which could have no less profound an effect on the future of this country than the Treaty of Rome itself? Will he ensure that these matters, particularly the questions of our commitments to them, are dealt with as clearly and as specifically as possible in the White Paper?

Sir Alec Douglas-Home: Yes, Sir. It is intended that the White Paper should be as comprehensive as possible so as to give the House and the country all the information we have.

Mr Molloy: Reference has been made to the West German growth rate. Will the White Paper say whether the effects on the British economy of joining the EEC would be as dynamic as the effects of membership on the Italian economy?

Sir Alec Douglas-Home: The hon. Gentleman will be able to make all the necessary comparisons, including the one he has mentioned.

Mr Scott-Hopkins: does not my right hon Friend agree that any further initiative in the political, monetary or defence sectors would be the subject of separate negotiations after our entry into the Community?

Sir Alec Douglas-Home: Questions relating to sterling are to be taken outside the context of the present negotiations. The only commitment which the EEC has undertaken in regard to financial matters is that there will be discussion to see how far economic and financial co-operation can be taken. So these will be outside the negotiations.

Mr Shore: I do not think the right hon Gentleman has quite got the point. There really is rather more agreement amongst the Six than just a kind of loose decision to make progress with economic and monetary union. Is he not aware that there is a substantial body of Community policy in the form of regulations and other directives which need to be published and made available to the House not later than the time that he introduces his proposed White Paper?

Sir Alec Douglas-Home: Yes, sir: but that was not the question I was asked. I was asked about

economic discussions which go beyond the scope of the present negotiations.

18. **Mr Lane** asked the Secretary of State for Foreign and Commonwealth Affairs whether he now expects to be able to publish a White Paper on the Common Market negotiations before mid-July.

Sir Alec Douglas-Home: I would refer my right hon Friend to the statement by my right hon. Friend the Prime Minister on 17th June:- (Vol 819 c 643-5).

Mr Lane: If things go well in Luxembourg this week, as may of us hope, and if the Giovernment then decide to recommend British entry, will my right hon Friend ensure that the White Paper devotes plenty of spece to the alternatives and makes clear that no practical alternative will offer such good prospects, both economic and political, as membership of an enlarged Community?

Sir Alec Douglas-Home: I have never made it a secret than I cannot see an alternative which would offer as good a prospect for this country as joining the EEC.

21. **Miss Lestor** asked the Secretary of State for Foreign and Commonwealth Affairs what progress has been made in discussions involving the acceptability of overseas workers in this country as Community workers with the European Economic Community in the event of Great Britain joining.

Mr Antony Royle: We are clarifying in discussion with the Community the definition of British national for the purposes of the provisions of the European Economic Community on freedom of movement of labour. Its reactions to our proposals are awaited.

Miss Lester: Bearing in mind that the answer is similar to the answer that we have been receiving during the last year from the Prime Minister and the Home Secretary during the passage of the Commonwelath Immigration Bill, may I ask the right hon Gentleman to confirm one thing: Namely, that Commonwealth and other workers from overseas in this country who are citizens of this country will be acceptable as Community workers, and that those who are eligible to take up citizenship if they wish to be accepted as Community workers would be well advised to do so?

Mr Royle: I never like to disappoint the right hon Lady and I am sorry that I should have disappointed her this afternoon. The facts are that we are waiting the details of our proposals to be agreed with the Community and until these are.

21st June 1971

*U Mr Peter Trew (Dartford): To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he will ensure that the White Paper on the terms for entry into the European Economic Community refers specifically to the degree of Great Britain’s commitment to initiatives for closer co-

operation which go beyond the scope of the Treaty of Rome.

No 17

SIR ALEC DOUGLAS-HOME

I would ask my honourable Friend to await the White Paper that we are about to issue.

PARLIAMENTARY QUESTION

for ORAL answer on 21st June 1971

The draft reply should reach the Parliamentary Office through your Under-Secretary by Noon Monday

*U Mr Peter Trew (Dartford): To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he will ensure that the White Paper on the terms for entry into the European Economic Community refers specifically to the degree of Great Britain's commitment to initiatives for closer co-operation which go beyond the scope of the Treaty of Rome.

Sir Alec Douglas-Home (his signature)

I would ask my hon Friend to await the White Paper that we are about to issue.

REFERENCE

Flag A	17 June	Vol 819	Cols. 643-645

NOTES FOR SUPPLEMENTARIES

INITIATIVES FOR CLOSER COOPERATION WHICH GO BEYOND THE TREATY OF ROME

These are, principally, our participation in moves by the Community towards economic and monetary cooperation and our participation in political consultations resulting from the Davignon Report.

ECONOMIC AND MONETARY COOPERATION

A decision of the Council of Ministers of the EEC of 9th February 1971 laid down the steps to be taken in the first of three stages towards eventual economic and monetary cooperation. These include technical

measures to reduce margins of fluctuation between currencies, consultations on economic policies and coordination of central bank monetary policies.

THE EFFECT OF THE DOLLAR/DEUTSCHMARK CRISIS

Owing to the Dollar/Deutschmark crisis at the beginning of May the implementation of measures to reduce margins of fluctuation between currencies has been postponed.

IMPLEMNTATION OF SECOND AND THIRD STAGE

No specific timetable has been agreed for the second and third stages. As a Member of the enlarged Community, we will be able to take a full and equal part in the discussions which must precede the introduction of these stages.

MONETARY UNION AND “ALIGNMENT”

Progress towards closer monetary cooperation may be difficult, and there may be setbacks, but I am confident there will be developments in this direction. It would therefore be appropriate and right to have discussion on the question of progressive “alignment” of policies after we become members of the Community.

ARTICLE 108 OF THE TREATY

If any member country of the enlarged Community (including the United Kingdom) were to require financial assistance under Article 108 for whatever cause, the case would in the first instance be examined by the Community institutions concerned. Assistance might then be furnished either through the facilities of the Community itself or internationally. There is no difference outstanding between us and the Community on this matter.

POLITAL CONSULTATION

As a result of the Davignon Report, Foreign Ministers of the Six meet at 6-monthly intervals with a view to discussing and coordinating their foreign policies. The applicant countries have been associated with this development in a parallel series of meetings of the Ten Foreign Ministers. As hon Members will know, I have taken part in 2 very successful meetings in the latter series. After enlargement we expect the 2 series of meetings to be merged.

PARLIAMENTARY QUESTIONS The draft reply should reach the Parliamentary

Office through your Under-Secretary by

Noon Monday 14/6

For Oral answer on 21st June 1971

*U Mr Peter Trew (Dartford): To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he will ensure that the White Paper on the terms for entry into the European Economic Community refers specifically to the degree of Great Britain's commitment to initatives for closer co-operation which go beyond the scope of the Treaty of Rome.

Sir Alec Douglas-Home (his signature)

I would ask my hon. friend to await the White Paper that we are about to issue.

REFERENCE

Flag A 17 June Vol 819 Cols 643-645

What is the significance of 108?

Under this article if any member state is in balance of payments difficulties the Community will decide how to help. There was some question at one time of our agreeing to forego this July.

21st June 1971

*U Mr Carol Mather (Esher): to ask the Secretary of State for Foreign and Commonwealth Affairs, to what extent amendment to the Treaty of Rome is now considered necessary by Her Majesty's Government.

NO 15

SIR ALEC DOUGLAS-HOME

Her Majesty's Government acepts the Treaty of Rome and the decisions flowing from it, subject to the agreements reached and to be reached in the negotiations. On enlargement of the Community the Treaty of Rome needs certain technical amendments necessary to provide for the additional membership.

REFERENCES

Flag A Cmnd 4401

NOTES FOR SUPPLEMENTARIES

ACCEPTANCE OF THE TREATY OF ROME

In our opening statement to the Communities in June last year we made it clear that we accept the Treaties of the Communities and the decisions flowing from them subject to matters to be covered in the negotiations.

WHAT AMENDMENTS TO THE TREATY ARE ENVISAGED?

It would, for example, be necessary to amend the Articles of the Treaty of Rome relating to the institutions of the Community to accomodate representation from new members.

PRESENTING THE RESULTS OF THE NEGOTIATIONS TO PARLIAMENT

I would refer hon Members to the statement last Thursday by my rt hon Friend the Prime Minister.

REFERENDUM

We have always made it plain that it is Parliament's responsibility to decide this issue as it is to deide other issues in international relations.

69 Written Answers 15 June

FOREIGN AND COMMONWEALTH AFFAIRS

European Economic Community

Mr Marten asked the Secretary of State for Foreign and Commonwealth Affairs whether, in view of the negotiations over the Commonwealth Sugar Agreement and Great Britain's entry into the European Economic Community, he will state what quantity of sugar was imported into Holland from the Dutch dependency of Surinam in 1968, and what is the quantity for 1971: and if he will make a statement giving the reasons for the reduction.

Mr Rippon: Figures from international sources show that the Netherlands imported 7,182 metric tons of raw sugar from Surinam in 1968. No figure can yet be quoted for 1971. Under arrangements agreed with the European Economic Community, it is understood that the Netherlands have the right to import, free of levy, 4,000 tons of raw sugar per year until 1974 from Surinam but reports indicate Surinam's exports of sugar may be seriously reduced in 1971 due to damage to cane by pests.

Mr Chichester-Clark asked the Secretary of State for Foreign and Commonwealth Affairs (1) whether he is satisfied by the Commission and the Six Member Countries of the European Economic Community are aware of the special problems which would arise in relation to Northern Ireland if the United Kingdom were to enter the European Economic Community: and if he will make a statement.

(2) what part of the special economic problems of Northern Ireland will play in the decision of Her Majesty's Government to accept or reject terms of entry to the European Economic Community.

Mr Rippon: The decision whether to enter the Community will be taken in the light of the advantages secured for the United Kingdom as a whole, having regard to the interests of all areas, inclduing Northern Ireland. In our negotiations with the Community, we are taking full account of those interests.

Mr Moate asked the Secretary of State for Foreign and Commonwealth Affairs what consultations have taken place on the constitutional and financial position of the Isle of Man if Great Britain should join the European Economic Community: and if he will make a statement.

Mr Rippon: There has been full consultation with representatives of the Isle of Man Government covering all the implications for the Island of United Kingdom entry into the European Economic Community. We expect to have discussions with the Six very shortly on arrangements which will best meet the wishes and needs of the Isle of Man.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs why, in the event of Parliament approving the instruments of accession to the Treaties of the Communities, he will not propose in the accompanying legislation that the House of Commons should be able to renounce membership on behalf of the United Kingdom at any future date.

Mr Rippon: In legislation to give effect to a treaty in this country, it is neither usual or appropriate to provide for the termination of our international obligations under the treaty.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether the present practice of proposals being made by the Commission and Ministers to the Council of Ministers of the European Economic Community being confidential and unquestionable by the House of Commons or its Members will continue on present known terms if Great Britain enters the Common Market.

Mr Rippon: Hon Members will continue to be free to question Ministers about proprosals in the European Economic community as they affect the United Kingdom.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether he will make a statement on the recent official visit to Great Britain of Mr Don Dunstan, the Prime Minister of South Australia: what discussion he had with him concerning Great Britain's entry into the European

Economic Community; and what was

Date 15 June

Col 70

Vol 819

14th June 1971

1a. Mr Arthur Lewis (West Ham, North): To ask the Secretary of State for Foreign and Commonwealth Affairs, why, in the event of accession to the Treaties of the Communities, he will not propose in the accompanying legislation that the House of Commons should be able to renounce membership on behalf of the United Kingdom at any future date.

NO 38W

MR GEOFFREY RIPPON

In legislation to give effect to a treaty in this country, it is neither usual nor appropriate to provide for the termination of our international obligations under the treaty.

14th June 1971

La. Mr Arthur Lewis (West Ham, North) : To ask the Secretary of State for Foreign and Commonwealth Affairs, why in the event of Parliament approving the instruments of accession to the Treaties of the Communities, he will not propose in the accompanying legislation, that the House of Commons should be able to renounce membership on behalf of the United Kingdom at any future date.

NO 32W

MR GEOFFREY RIPPON

In legislation to give effect to a treaty in this country, it is neither usual nor appropriate to provide for the termination of our international obligations under the treaty.

Reference

Flag A Article 240 of the Treaty of Rome

Mr Ford

Parliamentary Unit

I Submit a draft reply for the Chancellor of the Cuchy of Lancaster to use in answering a question from Mr Arthur Lewis which asks why, in the event of Parliament approving the instruments of accession to the Treaties of the Communities, he will not propose in the accompanying legislation that the House of Commons should be able to renounce membership on behalf of the United Kingdom at a future date.

The question is for oral answer on 14 June, but will not be taken orally.

The draft answer has been cleared with the Legal Advisers.

A.H.Brind

11 June 1971

71 Written Answers 15 June 1971

the attitude and view of the South Australian Prime Minister as expressed to him on this subject.

Mr Rippon: My right hon. Friend received Mr Dunstan on 25th May. In the part of their discussion which related to the European Economic Community, Mr Dunstan expressed fears for South Australia's export trade with the United Kingdom in certain goods and commodities. My right hon. Friend cited the overall buoyancy of the australian economy and explained that the effects of European Economic community entry (which could affect only a small proportion of Australia's export earnings) would be spread over five to eight years.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs to what extent, if Great Britain joins the European Economic Community, the implementation of Article 189 of the Treat of Rome will enable the British House of Commons to pray for the annulment of orders made by the Council of Ministers.

Mr Rippon: Article 189 of the Treaty of Rome defines the effect of regulations, directives, decisions,

recommendations and opinions of the Council of Ministers and the Commission of the European Economic Community in Member States. If Parliament approves an Instrument of Acession to the European Communities, its powers in relation to acts of the Council and Commission will be exercised in the light of this article.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs why he has agreed in principle to the European Economic community countries having the same freedom of capital movements as applied to the countries of the sterling area on Great Britain's entry into the Community: and whether he will make a statement.

Mr Rippon: We have proposed that we should comply by the end of the transitional period, with the obligations of the Community concerning movements of capital within an enlarged Community. I will report to the House on the outcome of the negotiations with the Community on this matter as soon as they are concluded.

India and Pakistan.

Mr Carter-Jones asked the Secretary of State for Foreign and Commonwealth Affairs how much financial help has now been given by her Majesty's Government towards supporting India with the cost of maintaining refugees from East Pakistan now in India: what additional help he proposes to give in the next six months: and if he will make a statement.

Mr Anthony Royle: I would refer the hon Member to my right hon. Friend's statements to the House on 8th and 9th of June. Her Majesty's Government made an immediate contribution of £1 million to the United Nation's Secretary-General's Appeal Fund for the Refugees. We are also contributing £750,000 in the form of food aid through the World Food Programme. We are making available a total of £250,000 to meet the cost of Royal Air Force and charter flights and the cost of saline solution, syringes and vaccines, which have enabled the British charities to give immediate help to the Indian authorities. Of this amount £177,000 has already been committed. supplementary provision for £250,000 will be sought in due course and, if necessary, an advance will be made in the meantime from the Contingencies Fund. This sum includes the amount of £18,000 which I notified to the House on 11th May.

We are ready to consider further contributions to the relief effort, but it is not possible yet to forecast what may be needed over the next six months. (Vol 818 c 862-4 1066-70; Vol 817 c 206-7.)

Mr Carter-Jones asked the Secretary of State for Foreign and Commonwealth Affairs how much financial help has been given by the United Nations in assisting India with the cost of maintaining refugees from East Pakistan now in India: what additional help he expects to be given by the United Nations in the next six months: and if he will make a statement.

Mr Anthony Royle: Our latest information is that about $30 million has been contributed by Governments to U Thant's appeal for the refugees. $500,000 has been made available by the United Nations High Commission for Refugees. £400,000 in kind by U.N.I.C.E.F and

*La. Mr Arthur Lewis (West Ham, North): To ask the Secretary of State for Foreign and Commonwealth Affairs to what extent, if Great Britain joins the European Economic Community, the implementation of Article 189 of the Treaty of Rome will enable the British House of Commons to pray for the anulment of orders made by the Council of Ministers.

Mr Geoffrey Rippon

Article 189 of the Treaty of Rome defines the effect of regulations, directives, decisions, recommendations and opinions of the Council of Ministers and the Commission of the EEC in Member states. If Parliament approves an Instrument of Accession to the European communties, its powers in rleation to acts of the Council and Commission will be exercised in the light of this article.

(Reference

Flag A27 May Vol 818 Col 220W)

Mr Ford

Parliamentary Unit

1. I submit a draft reply for the Chancellor of the Duchy of Lancaster to use in answering a Question from Mr Arthur Lewis which asked to what extent, if Great Britain joins the European Economic Community, the implementation of Article 189 of the Treaty of Rome will enable the British House of Commons to pray for the annulment of orders made by the Council of Ministers.

2. The Question is for oral answer on 14 June, but will not be taken orally.

3. The Question arises out of an answer given to Mr Lewis on 27 May.

4. The draft answer has been cleared with the Legal Advisers.

A.H.BRIND

11 June 1971

PARLIAMENTARY QUESTION The draft reply should the Parliamentary

for Oral answer on 17 June 1971 Office through your Under-Secretary by

Noon Monday 14/6

*II Mr Roger Moate (Faversham): To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he is satisfied with the co-ordination between Government departments in making the appropriate studies of those of the approximately 3,000 regulations issued by the Commissioner of the European Economic community that would need to become law in this country if Great Britain were to join the Community.

(Hand written comment)

This question has now been withdraw. We do not know why – possibly because Mr Moate realises that now it has been transferred from the PM's list to EEC, he stands no chance of getting an oral answer. It may therefore reappear at a later date.

From Robert S Redmond T.D., M.P.

House of Commons

London SW

10th June 1971

Dear Albert

I have had a query submitted to me from my constituency about the Common Market and the position of the law if we join.

This constituent asks that if he offended against Common Market law in connection with his business activites, would be be prosecuted under Common Market Law or under our own law. I do not know whether this point has been worked out but I should be grateful for your comments.

Yours sincerely

Bob

A.P.Costain Esq. M.P.

The duchy of Lancaster

Lancaster Place. Strand. W.C.2

Legal Advisors

M. de Winton Esq

Law Officers Department

Royal Courts of Justice

Strand WC2 8 June 1971

I am enclosing a fair draft of the Factsheet on Sovereignty, as it resulted from our meeting yesterday afternoon. We are submitting this draft to Ministers within the Foreign Office, and I should be grateful if you could at the same time seek the views of the Law Officers on it. As you will know from what was said at yesterday's meeting, the drafts must be finally cleared by the evening of 9 June, and I very much hope that it will be possible for this timetable, which is dictated by Ministerial requirements, to be kept.

A.D.Watts

Encl.

DRAFT FACTSHEET

SOVEREIGNTY AND THE EUROPEAN COMMUNITIES

WHAT DOES SOVEREIGNTY MEAN?

1. Sovereignty has different aspects. Internally it involves the exclusive power to make supreme law, and in the United Kingdom this power is vested in the Crown in Parliament. Externally, sovereignty involves the power of a State to manage its own affairs. This power is not the same as legally unlimited freedom of action. States may enter into legal comitments which limit their freedom of action, without prejudicing their sovereignty. Indeed States regularly limit their freedome of action – for example by military alliances, trading agreements, membership of international organisations, etc. – and do so in pursuit of their national interests. In any event the increasing interdependence of modern states and the development of economic andother links cutting across national boundaries impose limitations of their own on national sovereignty.

THE EFFECT OF MEMBERSHIP OF THE EUROPEAN COMMUNTIES.

2. Dealing first with the effects of membership in the sphere of foreign affairs, these are, in many respects, not dissimilar from those flowing from other international agreements into which we have entered, for example the General Agreement on Tariffs and Trade. It is true that in fields covered by the Community Treaties we should be required to co-ordinate our policy with that of the rest of the Communities, and that in some matters the conduct of international relations would be in the hands of the communities. (It must be remembered however that this Community system rests on the original consent, and ultimately on the continuing consent, of member States and hence of national Parliaments.) [If it were not so, the Communities would fall apart] No-one regards the existing Member States as being internationally less than sovereign States because of Community membership.

3. As for the domestic effects, Parliament would have to decide whether or not to approve the Treaty of Accession. If it did so, it would have to enact the legislation necessary to give effect to the Treaty It would thereby be endorsing the aims and principles of the Communities and would, inter alia, be agreeing to accept both existing and future Community Regulations as part of the law operating in the United Kingdom. But it would do so in the knowledge that the British represntatives would be playing a full and influential part in Community institutions. There would be a British judge in the European court (adjudicating on Community Law), and our elected represntatives would be in the European Parliament. Above all, a British Minister would be a member of the Council of Ministers which takes all the major decisions in the implementation of the Treaties. As the Prime Minister explained in Parliament on 24 May, after his discussions in Parish with the French President, the British and French Governments share the views that (while" there are certain administrative arrangements which are handled by the Commission and which are clearly defined under the Treaty of Rome,….. It is the Council of Ministers representing the member countries, who must take the decisions.) Where a country considers that an item is of major national interest to it, a decision (in the council) should be taken unanimously in other words, the member countries should not attempt to over-rule a single country on something which it considers to be of vital national interest."

4. Moreover, membership would not affect Parliament's power to legislate in matters not covered by Community law. In a few matters, the Communities have exclusive legislative competence and in any matter in which Community law operates in a member state it would take precedence over domestic law. Community law is however limited to the matters laid down by the Treaties, that is broadly, customs duties; agriculture; free movement of labour, services and capital; transport; monopolies and restricitive practices; state aid for industry; and the regulation of the coal, steel and nuclear energy industries. Outside this range there would remain unchanged by far the greater part of our domestic law including criminal law, the law of contract and tort, the law of landlord and tenant, family law, social services (other than for migrant workers), nationality law and property and inheritance law.

GENERAL CONSIDERATIONS.

6. The purpose and effect of joining the Communities is not to dilute our national identityor traditional way of life. It has not done so in the case of the very individual and different countries which are already members of the Communities. Membership of the Communites as it has developed is rather a way of trying to find ways of reaching decisions and sharing functions on a Community basis in fields where the member nations can with advantage do so. It is also a way of influencing and benefiting from Communities which exercise increasing international authorityin the interest of their members. In this way membership is a means of strengthening the influence of a nation, not weakening it.

7. Moreover there is a further way in which membership of the Communities tends to add to the real power in the outside world of its members. For example, France or Germany is important to third countries not only because of her power in her own right but also because of her ability to influence the Communities. In the same way, Britain's real power – and the influence of her Government or other governments – will tend to increase from membership of the Communities.

8. The Community system is well endowed with checks and balances. Indeed given the fact that the sharing of certain functions with other states is inevitable and desirable, joining the Communities is a method of doing so which gives members effective and continuing democratic control over that process.

Draft reply please W2 booth 8 June 1971

Dear Lothian

I write in regard to a point which I regard as of considerable importance. I spoke to you about it at tea this afternoon.

In the debate in the Lords on 19 January 1971 on Britain's entry into the EEC, Lord George Brown replying as much as anything, I think, to what Shinwell had said earlier, went out of his way, in no uncertain terms, to make the point that a decision by the U.K. to enter would not be irrevocable. He said that it was " …not in fact true that once in you cannot get out……" and he called in de Gaule's action in 1965 when he withdrew from the Council of Ministers and other Community Institutions etc.

I recollect that others speaking later in the debate reopened to the point, certainly were dissented and indeed you yourself (Col 474) when you wound up for the Government applauded his speech and hoped it would be widely read both in this country and by the Six.

The supposition therefore was that you also agreed with the particular point.

However I noted that on Monday of this week 7th January in Panorama (B.B.C.1) Alec Douglas-Home had this point put specifically to him in a question by Robin Day and he replied that we could not get out.

I sensed perhaps that he purposely said this rather quietly, obviously it would be difficult for a Foreign Secretary to do otherwise when we are trying to get in, but I really do think that it would not be left there, if at all possible.

As I understand it, there is no provision in the Treaty of Rome to bring it to an end, but neither is anything said about individual members coming out, so in theory I deduce that that course would be possible.

I appreciate that it is essentially a psychological point as in practice it might prove very difficult to come out particularly as Alec went on and one could hardly visualise it happening except in an extreme situation, but surely there would exist just that loophole?

The anti-marketeers make great play of this irrevocability and I believe they use the point with some success to persuade those who are lukewarm about entry, or sitting on the fence. Can this not be countered by some suitable formula of words?

I would be most grateful if you could let me now what is officially felt. I should mention that I raise this point in view of a correspondence in local press in North local to which I have felt constrained to contribute; it is however of far more than local significance.

You will I hope have gathered that I am very much in favour of our entry

Yours sincerely

Rochdale.

Mr Adams, (European Communities Information Unit E 120)

FACTSHEET ON SOVEREIGNTY

1. I attach a draft of the Factsheet on Sovereignty which incorporates amendments agreed during the meeting of the Sopwith Committee yesterday afternoon. Paragraph 7 of the draft, however, only reached me after that meeting had ended and was therefore not considered by the Sopwith Committee: It does however raise no legal issue and is primarily a political paragraph.

2. I am afraid that I cannot say the Sopwith Committee approved the draft. They did not like it and would not have drafted a draft Factsheet of sovereignty in anything like the terms of the draft. In view of time factor, however, there was no prospect of embarking on the preparation of a legally more acceptable draft. The general view of the Sopwith Committee was that from a legal point of view the present draft

could well give rise to trouble, particularly in the form of answering questions based upon points made, or rather glossed over, in the Factsheet. However, they accepted that this is primarily a policital exercise and were prepared to treat it as such. I feel the same way about this paper as did the rest of the Sopwith Committee.

3. However, we did not think that the propositions in it are actually wrong from the legal point of view and are therefore prepared for it to be submitted to the Law Officers. there is no guarantee that the Law Officers will be willing to clear this draft quickly, or indeed that they will agree to issuing it at all. If they do have reservations about the issue of such a Factsheet, they will doubtless wish to take it up from Ministerail colleague direct.

4. It may be that I have to go to a meeting before I can sign this minute or finally check this draft. I hope you will excuse this, in the interests of speed. I attach the original amended draft so that if anything has gone wrong you can see where.

A.D.WATTS

Legal Advisor. 8 June 1971

ECONOMIST

Cutting dated 24 april 1971

EEC

The issue of sovereignty:

creating the next Leviathan?

Ardent pro-Europeans have something in common with the seventeeth-century philosopher Thomas Hobbes. They can advocate an abdication of sovereignty – in their case national rather than personal- on perfectly selfish grounds. European law ill bring its own reward; without it the life of the British economy will be solitary, poor, nasty, brutish and short. But this perhaps overinflates the issue of sovereignty. There is also the line of argument taken in the constitutional argument taken in the constituional white paper* of 1967, which did its best to show that Britain would not actually be handing over sovereignty at all. In the present Government, Mr Geoffrey Rippon, for one, has treated the constitutional issue with something close to scorn. That is one way of coping with a question that is at least partly semantic. But it is more convincing to anticipate those like Mr Enoch Powell who will raise the boy of an impotent Parliament as the EEC negotiations proceed. Five constitutional questions need answers.

1. By Article 240 of the Treaty of Rome, the European Community was created for an indefinite duration: what happens if Britain, once in, wants to get out? This is a peculiarly groundless as well as fainthearted apprehension. The crude answer is that Britain is no less an independent power in the common market than out. And so, in the unlikely event of wanting to leave, could do so. As is often pointed out, Britain's much-prized sovereignty is limited anyway by geographical situations, mutual defence pacts, dependence on trade, international debt. A repeal clause is whatever treaty bound Britain to Europe, would neither add to nor subtract from its force. But the argument is not :- or should not be – just about power. It is about authority of legitimacy; and this is where the constitutionalists come in.

2. In Britain according to constitutional theory embalmed by Dicey in *Legal and Constitutional Implications of United Kingdom. Membership of the Economic Communities HMSO

The nineteenth century, no Parliament can bind its successor. So how can Britain commit itself to observe future community decisions?

There is a crude answer to this too. No nation can bind future generations inviolably. Other countries than Britain may revoke previous decisions by rewriting their constitutions (with or without a revolution) rather than merely, as Britain does, by passing another statute. Every European government can only hope that its successors will abide by the Treaty of Rome.

Britain lacks not so much a written constitution – there is more famous than correct; rights are enshrined in a multitude of written statues going back to the Bill of Rights and beyond, to the much repealeld Magna Carta. What Britain lacks is an effective check on its legislature. There is no judicial review of legislation. On joining the EEC, this will be a help as well as a hindrance. Britain will be free of the sort of legal tangles from which the Germans and Italians have suffered. But this does leave one question uncomfortably wide open.

3. Some community law is intended to have direct effect within member states. What happens when this conflicts with British law? To be enforceable in British courts, a treaty making Britain a member of the EEC must be put through Parliament. This means Britain would have to pass a monster statute embodying existing community law more or less. The fear that these laws, drawn up for countries with a Roman law tradition, will be unsuited to a common law country such as England, is a bogy; Parliament will manage to draw up reconciliable laws just as it now makes laws for the two different systems of Scottish and English law. What happens then? Under Article 189 of the Treaty of Rome, the principal law-making instruments of the Commission are regulations (intended to take effect automatically as law in member states) and directives (addressed to the governments which are then required to incorporate them into their internal law). These, according to the white paper, would "like ordinary delegated legislation" derive their force from the original statute joining Britain to the Six.

It is possible to pretend that regulations are like ordinary delegated legislation provided that they post-

date any domestic British law with which they may conflict. The white paper rather undermines this by suggesting that regulations, as well as directives, should be turned into British statute law to make everything quite clear. If this happened, either Parliament would be setting itself as a rubber stamp to each and every new community regulation; or if it wanted to keep its authority over every Brussels regulation, Britain's intentions to abide by community decisions expressed in the treaty making it a member, would have a hollow ring.

4. This really comes down to a simple question : Who is going to enforce community law?

The answer is of course the British courts. This would be plain sailing where each new community rule is enacted in turn into British statute law; it might be less plain sailing as regards regulations unless the original statute made it sufficiently clear in advance that these have to count as law. British courts will have to accustom themselves to a rather more interpretive role since community regulations are couched in more general terms than British statute law.

British courts will also have to accept the relevance of more foreign judgements, which is being made to happen to an increasing extent anyway. The water gets choppy when it comes to regulations with which subsequent parliamentary statutes conflict. On Dicey's analysis, Parliaments cannot prevent its successor from passing such laws. According to the white paper, Parliament would have to refrain from doing so – an unsatisfactory answer if there ever was one. Of course the constitutional image of an unfetterd Parliament passing statutes at will or whim has long since been laughable, (Received stamp obscures print)

There is another, more ambitious and less realistic answer. A number of eminent lawyers maintain that Parliament can in fact limit its legislative authority. Even Dicey believed that it could transfer its sovereignty to some other body. The example most commonly adduced is the 1931 Statutue of Westminster, destroying Parliament's right to legislate for Commonwealth countries without their consent. It is argued that Parliament is also constrained by the Act of Union with Scotland. This would theoretically mean that the courts could rule on whether a British law is valid.

But as things stand it is too much to expect a cautious British judiciary to reject new acts of Parliament without Government prompting. Parliament would first have to spell out in a bill that it would be a defence to an action brought under British law that it was inconsistent with a community regulation. The consequence of this would be that the courts would not uphold British statutes passed in contravention of European regulations. It is important that British courts are not in opposition to, but help tointerpret and develop community law. They would not be unaided in this. By far the greatest number of actions brought before the European court are not under Articles 169 and 170 (against member states for failing to fulfil their obligations) or under Article 173 and 175 (against the commission itself) but under Article 177, under which the European court gives rulings on the interpretation of community law. It does not enforce its interpretation; when the Germans imposed a compensatory turnover tax and the European court

indicated that it was contrary to Article 95, the ball was back in the German courts. But it has been under Article 177 that the lines of European law have been drawn out. This makes the European court sound like little more than a consultancy; but then “interpretation” of legal systems, rather than a new set of probably weak, community courts, is the best way for Eurolaw to grow.

5. If other institutions can pass laws for Britain and the courts will uphold them what sovereignty is left to Parliament? Put another way, how wide can community law range, and who makes it? At present EEC law covers economic and finance ; this gives a wider range than these dry terms imply, and – unanimously – member countries could decide to broaden it still further. Regulations have been made in the fields of restrictive practices ad monopoly, movement of workers, social security of migrant workers, agriculture, transport – and there are similar rules covering the coal, steel and nuclear energy industries. If non-tariff barriers are not to spring up where tariff barriers have been knocked down, a good deal of harmonisation of company law, for example, has to take place, just as it was necessary to harmonise some of the laws of Scotland and England. The 1967 white paper soothinly pointed out that there would be no effect on English and Scottish criminal law. The sanctions imposed under community law are of a civil rather than criminal character – which means money rather than prison.

The white paper also concerned to point out both the safeguards in the framing of community law and the new freedom it would open up to the ordinary citizen. But those who drafted the white paper were so concerned to anticipate critics, that they suffered from a failure of imagination. It is one thing to point out that most regulations have to be passed unanimously or at worst by a qualified (which means large) majority of the council of ministers, or to show how it will be open to an ordinary citizen to challenge say, a tax or customs demand on the ground, that it conflicts with community law. It is another to show how Britain will actually be part of the law-making and enforcing business. The European parliament gets scant treatment perhaps, until Article 137 is put into effect and it is directly elected, that is all it is worth, but it might also have been worth soothing parliamentarians by pointing out that about 5 percent of MP’s are likely to find their way to Strasbourg, and could form a bridge with Westminster.

The EEC will conform to Mr Heath’s recent picture of a united Europe as one in which governments “form the habit of working together”. This pragmatic view of the EEC has the advantage of deflating the constitutional issue, since in British constitutional theory the government is constrained by Parliament. But if Europe becomes federalist or supranational or “interpenetrated” , Mr Powell’s ilk might then argue that the British nation had been led into it blindfold. It is better that the constitutional argument should look ahead to a firmer European social contract and conquer straight away the wilder nightmares of an uncontrolled European Leviathan. Only governments will ever create the European Leviathan: it will not appear unasked.

111 Written Answers 12 May 1971

show to what extent housing costs per person in Great Britain would have to rise to match the countries of

the Six and whether he will consider doing this in order to facilitate Great Britain's entry into the European Economic Community.

Mr Channon: I do not find it possible to make reliable comparisons of total expenditure on housing between Britain and the E.E.C. countries, or to draw from any such comparison any valid conclusions.

Train Travel (Tickets)

52. Mr Wolrig-Gordon asked the Secretary of state for the Environment if he will give a general direction to British Railways to improve methods of preventing travel on trains without a ticket.

Mr Peyton: No.

QUESTIONS TO MINISTERS

36. Mr Ironmonger asked the Lord President of the Council if he will arrange for a revised order of Questions to be printed so as to indicate the dtes on or by which Questions must be tabled when the period covered by the revised order is interrupted by days of recess.

Mr Whitelaw: The Table Office produces before each recess, for the guidance of hon Members, a duplicated chart showing when notice may first be given of Questions for oral answer during the first two weeks after a recess. This might well meet my hon. Friend's point.

HOUSE OF COMMONS MEMBERSHIP (DISQUALIFICATIONS)

40. Mr Pardoe asked the Lord President of the Council whether he is satisfied that all the disqualifications for membership of the House of Commons are still necessary; and what steps he proposes to take to limit disqualifications.

Mr Whitelaw: There are no proposals for changes at the present time, but if the hon. Member has any particular category of disqualification in mind, perhaps he will let me know. The list of disqualifications is kept under regular review.

CANADIAN PARLIAMENT

Mr Arthur Lewis asked the Lord President of the Council whether he will arrange to visit his counterpart in the Canadian Parliament to discuss matters connected with exchange visits of Members of the two Parliaments.

Mr Whitelaw: I have no such plans at present.

Mr Arthur Lewis asked the Lord President of the council whether he is aware that Members of the Canadian Parliament are to receive a 50 per cent increase in their existing salaries, bringing these up to

$18,000 per annum: and that their existing tax-free expenses allowance is to be raised by 33 per cent, to $8,000 per annum: and whether he will obtain from the Canadian Government details of how these amounts are paid and on what basis and submit the details to the Boyle Committee.

Mr Whitelaw: I would refer the hon.Member to the written reply I gave him on 15th January.

(Vol. 809 c 138-9)

CATERING MANAGER
(SALARY)

Mr Arthur Lewis asked the Lord President of the Council why the Catering Manager is paid £3,600 per annum as against a Member of Parliament's £3,250: what expenses the Manager is expected to meet out of this salary: whether he receives free meals: and whether he has to pay his secretary's salary out of this amount.

Mr Whitelaw: The salary of the Catering Manager is fixed by the Catering Sub-Committee of the Services Committee, in the light of salaries paid in the trade for posts of similar responsibility. The Manager has to pay his normal living expenses out of his salary. He is entitled to free meals and he does not pay his secretary's salary.

EUROPEAN ECONOMIC COMMUNITY

Mr Arthur Lewis asked the Lord President of the Council to what extent before a decision is taken in the Council of Ministers of the Community, it is open to Parliaments of member States, including Great Britain, not only to debate such issues, but to refuse to agree to or implement any decisions arrived at by the Council of Ministers of the Community.

Mr Whitelaw: If we accede to the Treaty of Rome, it will be open to Parliament, as it is to Parliaments of other member States to debate, before their enactment, those Community instruments submitted by the Commission of the E.E.C to the Council of Ministers for approval. As members of the E.E.C we wouldbe represented in the Council and party to its processes of decision-making on Community legislation.

MINISTER (OFFICAL ENGAGEMENTS)

Mr Arthur Lewis asked the Lord President of the Council whether he will publish in the OFFICIAL REPORT a list of his official engagements for Saturday 5th June 1971.

Mr Whitelaw: It is not practice to do so.

REFRESHMENT DEPARTMENT

Mr Arthur Lewis asked the Lord President of the Council why the investigation into the administration of the Refreshments Department's administration is not yet complete: what recommendations have already

been made for the improvement of the service and its efficiency: and whether Members may make written or oral statements to assist in this investigation.

Dr Bennett: I have been asked to reply.

The investigation concerns many matters of considerable detail and this will require time. A number of recommendations have so far been made, and approved by the Sub-Committee , relating to the control of supplies and the checking of stores. The Sub-Committee will certainly consider suggestions for the improvement of the efficiency of the service to hon.Members.

BOYLE COMMITTEE

Mr Arthur Lewis asked the Lord President of the Council why he has not appointed the members of the Boyle Committee: when he expects to make these appointments: when he expects the Committee to hold its first meeting: how often it will meet: and whether he will make a statement.

Mr Whitelaw: I would refer the hon.Member to my reply to him on 21st April 1971. (C403) It will be for the Review Body to decide on the timing of its meetings.

SCOTLAND

Autistic Children.

53. Mr Alexander Wilson asked the Secretary of State for Scotlandhow many autistic children are in mental hospitals in Scotland: and in which hospitals.

Mr Gordon Campbell: The normal hospital statistics do not show the number of children in this complex diagnostic category, but a special enquiry is at present being carried out and I shall send details to the hon.Member as soon as possible.

54. Mr Alexander Wilson asked the Secretary of State for Scotland how many autistic children are being educated in day schools in Scotland.

Mr Gordon Campbell: I am asking the education authority to provide the hon.Member with up-to-date information.

Mr Alexander Wilson asked the Secretary of State for Scotland how many autistic children in Scotland are in special units of education.

Mr Gordon Campbell: The education authorities have reported to me that in January there were 14 autistic children receiving special education. It will however be appreciated that many children who are classifed under other handicaps also exhibit autistic symptoms.

High Seas Salmon Fishing.

Lieut-Colonel Colin Mitchell asked the Secretary of State for Scotland what steps the British delegates will take at the

UNCLASSIFIED

UK Delegation to the European

Communities

52 Ave des Arts

1040 Brussels

27 May 1971

S.W.Fremantle Esq

Department of Trade and Industry

1 Victoria Street

London SW1

Dear Sydney

IMPLEMENTING EEC DIRECTIVES

Thank you for your letter of 2 May

2. I have discussed this with a number of people here and with Ian Sinclair (Legal Counseller FCO) and we all agree that it is hard to answer your questions in very precise terms. Directives as you know, bind member States as to the result to be achieved, while leaving it to national authorities to determine how this is to be done. In practice statutory measures (legislation or subordinate legislation) are often used, although administrative measures may well be sufficient in certain cases. The type of sanctions varies from case to case: but I am told that civil sanctions are most often considered sufficient.

3. Since the objective of the Directives with which you and I are concerned is generally to ensure the free circulation of goods among the member States, exports to third countries are as a rule specifically exempted from the application of the directives.

4. I would have thought it best to deal with your question on “control” by reference to the motor vehicle type approval directives. As you know, these provide that member States may not prohibit the marketing of vehicles certified by another member state as confirming with the Community standard: except that sales may be suspended for up to six months where there is a demonstrable risk to safety. This is, of course, a question of type approval rather than individual certification. There have so far been no directives in the industrial field requiring compulsory certification of every production model.

5. Individual certification is the general rule in the agricultural field, where member States are called on, in principle, to recognise one another’s systems of animal and plant health certification: but they are allowed considerable latitude to carry out additional checks on or after importation, essentially to take account of the possibility that disease may have been contracted in transit. I do not think, though, that Verdiani would regard this as creating a precedent to be followed for industrial products.

Yours sincerely

Charles Cruickshank.

cc. I.M.Sinclair Esq. FCO

I.T.Steven Esq EID FCO

Written Answers 27 May 1971

fundamental problems will arise over transitional periods.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs, how man letters of cyclostyle format he sent to the hon. Member of West Ham North with his communication of 10 May; to what extent these were in reply to communications sent to him in favour or and against Great Britain’s entry into the European Economic Community: and in what numbers in each instance.

Mr Rippon: I wrote to the hon Member on 10th May enclosing replies to the identical unstamped postcards, over 300 in number, which he sent me under cover of a letter dated 3rd May. The postcards which bore no indication either of authorship or of publishers, made three points about the effect of British membership of the European Economic Community and asked the Member of Parliament

addressed to vote against British entry.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs on what dates in March and April he replied to the 200 to 250 written communications from members of the public about Great Britain's entry into the European Economic Community: and what was the nature of these replies.

Mr Rippon: the letters from the public referred to by the hon Member were received at various dates throughout the period in question and covered a wide range of questions and statements about our negotiations for entry into the European Economic Community. Some congratulating Her Majesty's Government on their conduct of the negotiations, were given a short reply thanking the writer for his sentiments. Others, seeking information or criticising the negotiations, were given more detailed answers. All were answered.

Mr Powell asked the Secretary of State for Foreign and Commonwealth Affairs what total sum he estimates will be expended in the current financial year out of his Vote for all purposes of informing the British public on the subject of the European Economic Community.

Mr Rippon: It is not possible to estimate how much time will be spent in the current financial year by members of the Foreign and Commonwealth Office in answering inquiries from the public on the negotiations, or in drafting ministerial speeches and statements on the British application for membership of the European Economic Community.

The production and distribution of the series of Factsheets on Britain and the Common Market is carried out on the direct sponsorship of the Foreign and Commonwealth Office, but their cost is borne on the Central Office of Information and Her Majesty's Stationery Office Votes. The entire operation, which was mounted to meet the demand for factual information, was originally planned to cost about £45,000. The heavy public demand for the Factsheets will involve extra costs. The latest estimate of the total cost based on the current level of demand is £62,000.

Mr Deakins asked the Secretary of State for Foreign and Commonwealth Affairs how his recent agreement with the European Economic Community will safeguard the interests of Commonwealth cane sugar producers after 1974, in the event of priority being given to sugar beet production within an enlarged European Economic Community.

Mr Rippon: I am confident that the sugar policy of the enlarged Community will be determined in accordance with the recent proposal by the Communities to safeguard the interests of the developing sugar-producing countries of the Commonwealth.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs if he will ensure that the instrument of accession, if Great Britain joins the European Economic Community, will enable the

British House of Commons to pray for the annulment of orders made by the Council of Ministers.

Mr Rippon: If we join the European Economic Community, the powers of Parliament in relation to acts of the Council of Ministers will be exercised in the light of the provisions of Article 189 of the Treaty of Rome.

Mr Deakins asked the Secretary of State for Foreign and Commonwealth

26th May 1971

La. Mr Arthur Lewis (West Ham, North) : To ask the Secretary of State for Foreign and Commonwealth Affairs, if he will ensure that the instrument of accession, if Great Britain joins the European Economic Community, will enable the British House of Commons to pray for the annulment of orders made by the Council of Minsters.

NO.39W

MR GEOFFREY RIPPON

If we join the European Economic Community, the powers of Parliament, in relation to acts of the Council of Ministers will be exercised in the light of the provisions of Article 189 of the Treaty of Rome.

Mr Ford

Parliamentary Unit

1. I submit a draft reply for the Chancellor of the Duchy of Lancaster to use in answering a Question from Mr Arthur Lewis which asks if he will ensure that the instrument of accession, if Great Britain joins the European Economic Community, will enable the British House of Commons to pray for the anulment of orders made by the Council of Ministers.

2. The Question is for oral answer on 26 May but will not be reached and no notes for supplementaries are required.

3. The Question in that it refers to orders of the Council of Ministers is vaguely expressed. If it referred to regulations the answers could be no. But Parliament could certainly pray against a directive or decision and, though probably ineffectually, it could attempt to resolve against a regulation. It is also suspected

that in using the term “instrument of accessions”, Mr Lewis intends not the Treaty of Accession (which would have to be negotiated with other States) but legislation giving effect to membership.

The draft answer has been cleared with the Legal Advisers.

A.Brind

European Integration Department

26 May 1971

copied to Mr Watts

Written Answers 24 May 1971

Mr Deakins asked the Secretary of State for Foreign and Commonwealth Affairs if he has negotiated safeguards to prevent any expansion of sugar beet production in an enlarged European Economic Community which would adversely affect the interests of commonwealth cane sugar producers after 1974.

Mr Rippon: Levels of sugar beet production in an enlarged Community will be governed by the Community’s regulations, as they are in the present Community. The relevant provisions are reviewed annually and it would be reasonable to expect the review to take account of the Community’s assurances on sugar from developing Commonwealth countries.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs what was the cost of the official luncheon held by the Chancellor of the Duchy of Lancaster in Brussels on 11th May for the Foreign Ministries of the Six and what was the purpose of the function.

Mr Rippon: The cost of the luncheon was £194.59. It provided an opportunity for valuableinformal discussions between the United Kingdom negotiators and their counterparts from the Six.

Mr Rippon: I made no public statement on 11th May but as is customary in the course of the day, I gave two briefings to journalists which covered developments during the day in the discussions on sugar. The full texts of my statements in the negotiating conference are of course confidential, but on 17th May on my return from Brussels and Reykjavik, I reported fully to the House on the previous week’s negotiating meetings with the European Economic Comunity (Vol 817 c 882-6)

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether he will publish in the OFFICIAL REPORT – full and detailed information showing to what extent the public proposals of the Ministers of the European Economic Community in Brussels on 11th May concerning Commonwealth sugar differed from those made by the Commission in November 1970.

Mr Rippon: No.

Proposals made by the Commission were to the Council of Ministers of the Community; they are confidential as are the details of the proposals put to Her Majesty's Government by the Community in the negotiating conference. The nature of the Community's proposals on Commonwealth sugar and Her Majesty's Government's reaction to them were dealt with in my statement to the House on 17th May (Vol 817 c 887-6)

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether he is aware that confidential information regarding the Brussel's negotiations is given to the Press, radion and television by representatives of Her Majesty's Government; and whether he will reconsider his metods of informing Parliament about these talks in the light of these leeks.

Mr Rippon: Arrangements for briefing Press, radio and television correspondents during the Ministerial negotiating meetings with the European Economic Community follow standard procedure.I am not aware of any leaks attributable to representatives of Her Majesty's Government. I see no reason to vary my practiceof making a statement to the House as I did on 17th May, as soon as it is possible after each Ministerial negotiating meeting – VOL 817 c 882-6)

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether, in the event of Parliament approving the instruments of accession to the Treaties of the Communities, he will propose in the accompanying legislation that the House of Commons should be able to renounce membership on behalf of the United Kingdom at any future date.

Mr Rippon : No

24th May 1971

La. **Mr Arthur Lewis** (West Ham, North) : to ask the Secretary of State for Foreign and Commonwealth Affairs, whether, in the event of Parliament approving the instruments of accession to the Treaties of the Communities, he will propose in the accompanying legislation that the House of Commons should be

able to renounce membership on behalf of the United Kingdom at any future date.

NO. 56W

MR GEOFFREY RIPPON.

No, sir.

Mr Ford

Parliamentary Unit

1. I submit a draft reply for the Chancellor of the Duchy of Lancaster to use in answering a Question from Mr Arthur Lewis which asks wheterh, in the event of Parliament approving the instruments of accession to the Treaties of the Communities, he will propose in the accompanying legislation that the House of Commons should be able to renounce membership on behalf of the United Kingdom at any future date.

2. The Question is for oral answer on 24th May, but will not be taken orally and no notes for supplementaries are required.

3. It would be possible:-

i. to give an answer viewing Articles 240, 208 and 97 of, respectively, the EEC, Euratom and ECSC Treaties in the light of the 1969 Vienna Convention on the Law of Treaties and customary international law; or

ii. to explain that, in the final analysis, no additional legislation would be necessary to permit Parliament voting in favour of renouncing membership of the Communities (formally, the actual renunciation of membership is not a matter for Parliament)

4. However, I think it is clear that a measure of the kind proposed by Mr Lewis is not contemplated, and that there is no reason why we should not say so.

A H BRIND

21 May 1971

21st May 1971

I attach for the purpose of discussion a first draft of a reply to Mr Elystan Morgan's Parliamentary question on accession to the EEC. I am copying this letter and the enclosure to Arthur Watts and Sir Charles Sopwith.

M. de Winton, Esq.

Mr Elystan Morgan (Cardigan) To ask Mr Attorney General if he will make a statement concerning the power of Parliament to repeal at a subsequent date any decision which was made by way of resolution or legislation directed to affecting the entry of the United Kingdom into the European Economic Community.

(For Written Answer – 25th May 1971

Draft Answer

There are no present constitutional restrictions on the power of Parliament to undo its own actions, but such a step would not consonant with the international obligations which the United kingdom would have issued.

NOTE

Mr Elystan Morgan is Labour Member for Cardigan

It is universally agredd that Parliament would have at least according to present constitutional doctrine, power to repeal any legislation passed to give effect to United Kingdom accession to the European Economic Community (See Lord Chancellor Gardiner Offical Report (Lords) 1967 vol. 282 no.148 cols 1202-3)

Lord Chancellor Dilhorne Offical Report (Lords) 1962 vol 243, no 115, cols 421-422.)

In the light of the development of Community jurisprudence and the possible effect of the absorbtion of corpus of Community law into our own law, the possibility of this constitutional doctrine being eroded in the course of time following United Kingdom accession to the European Economic Community cannot however be discounted.

The answer follows the line adopted by successive Lord chancellors in debate in the house of Lords, that, since repeal of the legislation implementing the Treaties would put the United Kingdom in breach of here Treaty obligations, nothing is to be gained from speculating on the theoretical powers of Parliament; It would be contrary to a moral obligation to refrain from acts which are inconsistent with the international obligations of this country.

Foreign and Commonwealth Office

London S.W.1

27 April 1971

K M H Newman Esq

Lord Chancellor's Office

House of Lords

London SW1

Dear Karl

SOVEREIGNTY IN THE EUROPEAN ECONOMIC COMMUNITY

Many thanks for your letter of 23 april about the planned factsheet on Sovereignty and the Community announced by Mr Rippon in reply to a question by Mr Elystan Morgan on 22 april.

I had not myself been aware that a specific factsheet on Sovereignty was in the wind, althought I knew generally that a number of factsheets were in the process of publication. I have now caused enquiries to be made and it appears that the proposed factsheet on sovereignty, which would be prepared in the first instances by the COI, is due to be published in about ten weeks time. I am also informed that, since the programme for the issue of this factsheet is not unalterable, we may be able to delay the publication of the factsheet on sovereignty if the views of the Law Officers are not by then available. In any event our

European Communities Information Unit have promised to let me see the first draft of the factsheet and I will ensure that you, and the other receipents of this letter, see it at that stage.

I am copying this letter to Mike de Winton and also to sir Charles Sopwith.

Yours ever

I M Sinclair

Legal Advisers.

Mr Sinclair

SOVEREIGNTY AND THE EEC

1. The answer to the question by Mr Morgan was prepared by ECIU who will be responsible for the first draft of the factsheet on sovereignty and will consult you, the Sopwith Committee, andthe Lord Chancellor's Office about it. This is one of a series of factsheets and is due to be prepared in about 12 weeks time although, since the programme for the issues of these publications is not unalterable, we can delay its publication if we do not have by then the Law Officers' opinion.

2. I am returning Mr Newman's letter to you as agreed.

I.T. steven

European Integration Department.

Lord Chancellor's Office

House of Lords

London SW1

2rd April 1971

Dear Ian

Sovereignty in the European Economic Community

I see that in written answer to the question by Mr Elystan Morgan (House of Commons Official Report, 22nd april 1971, Col.458) the Chancellor of the Duchy announced that a factsheet on Sovereignty and the Community is planned. We did not know about this and, nor do I understand, did the Law Officers, and in view of the complex and delicate problems to which the question of sovereignty gives rise, I am not altogether happy about a commitment to publish a survey in a simplified form. We shall now need to bear this in mind in connection with the matter placed before the Law Officers.

I am copying this letter to Michael de Winton and sir Charles Sopwith.

Yours ever

Karl

K M Newman.

to: I.M.Sinclair Esq.

May 1971

G.F.Hillier Esq.

British Embassy

Brussels

CONSTITUTIONAL AND LEGAL MEASURES TO IMPLEMENT THE TREATIES OF THE EUROPEAN COMMUNITY.

1. Will you please refer to your letter of 19 November 1970 enclosing a statement of the measures taken by Belgium to accede to the EEC and Euratom.

2. Your letter enclosed the Belgian law effecting accession to the EEC and Euratom, and I would be most grateful if you cojuld now obtain for us fairly urgently the equivalent law for the ECSC (ie between 18 April 1951 and 1 January 1952), This is required by the Law Officers for a study of the steps taken by each of the Six to give effect totheir accession to each Community.

I.T.Steven

European Integration Department.

Received in Registry No 37 26 May 1971

Mr Bried

Mr Statham

You will wish to see the attached note by Mr. Watts on the outcome of the appeal in the case of Blackhill v Attorney General.

The judgement given by the Master of the Rolls in bound to be taken into account in the opinion of the Attorney General upon the supremacy of Community Law . The commentary on sovereignty will also be useful.

T. Lewin 13/5

Sir Vincent Evans (Legal Advisers K 172)

BLACKBURN V ATTORNEY GENERAL

1. The appeal of this case was heard today. The Court of Appeal unanimously dismissed the appeal. Mr Blackburn had indicated during the hearing that he did not intend to seek leave to appeal to the House of Lords.

2. The leading judgement was given by the Master of the Rolls. After briefly introducing the history of the case, he went on to say that Mr. Blackburn was right, so far as he could judge, in saying that if the UK were to go into the Common Market, the signature of the Treaty would commit it irreversibly to the joinder of the market, and that furthermore, in some degree the sovereignty of these islands would be shared with others. Mr Blackburn referred to COSTA V ENEL. and to the fact that many Regulations would become automatically binding in the UK and that our courts would ave to follow the decisions of the European Court.

3. But (The Master of the Rolls continued) this was all a matter of negotiation at the moment. Even if the Treaty were signed our courts would take no notice of it until it was enacted by the laws of this country: this was so well established a proposition that it needed no authority, and the Master of the Rolls referred only to Rustomjee v The Queen. Mr Blackburn had argued that the Treaty of Rome was in a category by itself because it diminished the sovereignty of the United Kingdom. However, in the view of the Master of

the Rolls, the principle he had stated applied equally to all treaties. The treaty making power vests in the Crown acting on the advice of Minsters; prerogative acts of this kind cannot be questioned in the courts. The Master of the Rolls then turned to the question whether Parliament, in approving legislation for participation in a permanent treaty, could enact an irreversible statute. In his views, all laws were repealable. But this was legal theory; that one Parliament cannot bind its successors and that any Parliament can repeal a previous statute. But legal theory does not always march alongside political reality. He did not believe that anybody would say that Parliament would repeal the Statute of Westminster or Independence Acts for our former colonies. In any case, whatever might be the theory of Parliament's power to reverse itself, the matter could only be tested when the time came, i.e. if and when Parliament should seek to reverse the act allowing for our entry into the Common Market. Sovereignty was a political fact for which no purely legal authority could be constituted. While Mr Blackburn was right in asserting that one Parliament cannot bind another and that any Parliament has the power to repeal previous statutes, this court would wait until time came. Our courts will not impugn the treaty making power of the Crown, and so far as Parliament enacts legislation the courts will deal with it at the time that legislation comes before the courts.

4. Salmon and Stamp, L. JJ., delivered short concurring judgements, the general drift of which was that it was for the Crown to make treaties and for Parliament to enact the necessary legislation; the role of the courts were limited to applying and construing the legislation when once passed.

A.D.WattsLegal Advisers

W 44/4 Copy to Mr Sinclair, Mr Steven.

10 May 1971

Blackburn v Attorney General Law report May 10 1971 Court of Appeal.

Treaty of Rome declarations refused.

Before Lord Denning, Maste of the Rolls , Lord Justice Salmon, Lord Justice Stamp.

The court with no …….subject grant declaration which impign the Crown's perogative to enter into the Treaty of Rome, even though it may commit the executive irreversibly to joining the Common Market and mean some sharing of the sovereignty of these islands with others. The court's function is to interpret political decisions when they have been embodied in Acts of Parliament: and though the present accepted legal theory is that no Parliament can bind its successors, political treaties may not always necessarily acccord with that legal theory.

Their Lordships so stated in dismissing an appeal by Mr Raymond Blackburn of Cotney Road, Chiswick.

From the order of Mr Justice Eveleigh affirming the Master Jacob and striking out two statements of claim in proposed actions for declarations against the Attorney General representing Her Majestys Government on the ground in Order 18, rule 19 of the rules of the Supreme Court that they disclosed no cause of action.

Mr Blackburn in person: Mr Gordon Slynn for the Attorney General .

The Master of the Rolls said that once again Mr Blackburn had shown eternal vigilance in support of the law. His application concerned the Government's proposal to apply to sign the Treaty of Rome and to join the Common Market. Mr Blackburn sought declarations in his two statements of claim to the effect that in signing the treaty, Her Majesty's Government would surrender in part the sovereignty of the Crown in Parliament forever and that in so doing the would act in breach of the law.

The Attorney General had applied to strike out three actions on the ground that the statement of claims disclosed no reasonable cause of action.

As Mr Blackburn said, it was important to clear the air; and his Lordship thought that was a legitimate desire. Mr Blackburn was quite right so far as his Lordship could judge in saying that if this country shold go into the ommon Market, the significance of the treaty would commit at least the executive irreversibly to the jointler od the Market and further that in some degree the sovereignty of these islands would be shared with others.

The court had been referred to Costa v ENEL (1964 Common Market Law Reports concerning the Italian electrical industry, in which the judgement of the European Court was that member states albeit within limited spheres, had restricted their sovereignty rights and created a body of law applicable both to their nationals and to themselves.

Mr Blackburn pointed out that there might be many regulations which become automatically binding on the people of this country and that the courts of this country, in certain limited respects might have to follow decisions of the European Court. This was the basis of his application.

But it was right to point out at the outset that everything at the moment was at the negotiation stage. No treaty had been signed, even if one were signed, the courts took no notice of treaties made by the executive in this country until they were embodied in law enacted by Parliament! That was so well established that his Lordship needed only to quote from Lord Coleridge Chief Justice in Restomice v The Queen(1876 2 OBD69 -74) that she (The Queen) acted throughout the making of the treaty and in relation to each and every of its stipulations in her sovereign character and by her own inherent authority and by making the treaty and peforming the treaty, she is beyond the control of municipal law and her acts are not to be examined in her own courts.

Mr Blackburn accepted that but he said that the present proposed treaty was in a category by itself , in that it diminished the sovereignty of Parliament over the people of this country.

His Lordship considered that the principle applied in the proposed treaty as to any other. The treaty making power of this country rested not in the courts but in the Crown – her Majesty acting on the advice of her ministers: and when they negotiated for and signed a treaty, even one of such paramount importance as that proposed, they acted on behalf of the country as a whole, and their conduct and peregative could not be challenged or questioned in the courts in any way.

Secondly Mr Blackburn asked, could Parliament effectually or legitimately implement the treaty which was irreversible? He pointed out that lawyers from time immemorial had said that in England Parliament was supreme, so supreme that no Parliament could bind its successors and that any Parliament could reverse any previous enactment: and he had referred the court to Professor Mattland's statement in his Constitutional History (P.332) on the Act of the Union of England and Scotland that "we have no irrepealable laws" and that laws might be repealed by the ordinary legislature over the conditions on which the English and the Scottish Parliament agreed to merge themselves in the Parliament of Great Britain.

It was legal theory that one Parliament could not bind another and that no Act was irreversible: but legal theory did not always march alongside political reality. Take the Statute of Westminster. Could anyone imagine that anyone could or would reverse it or the Acts which had granted independence to the great dominions and territories overseas and say that we still had some degree of control over them? Most clearly not.

Whatever the theory of Parliament not being able to reverse itself, the matter could only be tested as and when the time came. His Lordship did not envisage that if we went into the Treaty of Rome, Parliament would reverse it: but the time to consider that was when Parliament sought to reverse it. It was certainly not a matter for consideration now.

Nor was it necessary to rule on the Crown's submission that Mr Blackburn had no standing to come before the court. Mr Blackburn said the matter was one on which he felt very strongly and with which many persons in the country were concerned. His Lordship would not like …….. out on that ground. The ground on which he must be ruled out was that courts would not impugn the treaty making power of Her Majesty on the advice of her ministers and in so far as Parliament enacted legislation the courts would deal with it as and when they saw it. The statement of claim disclosed no cause of action and the appeal should be dismissed.

LORD JUSTICE SALMON.

concurring said that while he recognized the undoubted sincerity of Mr Blackburn's views, he deprecated

litigation, the purpose of which was to influence political decisions which had nothing to do with courts. The Courts were concerned only with the effect of such decisions if and when they had been implemented by the legislature. Still less had the courts power to control the treaty-making power of the Sovereign.

LORD JUSTICE STAMP also concurring, said that he expressed no view whatever on the implications in this country becoming a party to the Treaty of Rome. Mr Blackburn had confused the separation between the powers of the Crown, Parliaments and the courts. The Crown entered into treaties. Parliament enacted the Laws. And it was the duty of the courts, in proper cases, to interpret these laws when made. The courts should not at the suit of one of her Majesty's subjects, make declarations regarding the doubted pregogative rights of the Crown to enter into treaties.

Mr Slynn asked for the costs of the proceedings

CONFIDENTIAL

Mr Watts (Legal Advisors)

SOVEREIGNTY

1. I mentioned to you, in connection with the paper on Sovereignty, the request from the Private Office for a short Annex and I undertook to make this request more explicit.

2. The Secretary of State had commented on the need for a paper to make clear "in what areas Parliament will not be able to determine policy". the paper as a whole is of course addressed to very much this problem but the Privat Office interpreted the Secretary of State's requirement as including the need to "identify areas such as tariffs which would be subject to Community control (and particularly control by the Commission) and rates of taxation which would not. It would be worth listing major areas, such as "criminal law, over which control would be retained by the House of Commons". they also commented that this section should be produced as soon as possible; this fits in with our wish to put the paper as a whole to the Planning Committee in June.

3. I hope this gives you enough to go on. As I see it, the requirement is for a relatively short and factual Annex setting out the present range of subjects covered by Community law, regulations and directives under general headings. indicating which subjects are not now covered bu might become subject to Community regulation with the progressive "deepening" of the Community; and which areas (as for example the criminal law) were unlikely to continue to be regulated on a national level.

4. I hope to have the paper ready for circulation to members of the Planning Committee by Thursday 27 May. If at all possible we should like to have the Annex ready at the same time.

W R Romkys

Planning Staff 17 May 1971

Copied to:

Mr P Cradock

Mr Morland (EID)

Written Answers 18 May 1971

Economic Community; and how many of these were in favour and how many against Great Britain's entry.

Mr Rippon: I have nothing to add to the reply which I gave the hon Gentleman on 10th May – (Vol. 817. c23)

Mr Clark Hutchison asked the Secretary of State for Foreign and Commonwealth Affairs if he will publish in the OFFICIAL REPORT, a list, subject by subject, of the regulations under the Treaty of Rome which will apply in the United Kingdom, if she joins the European Economic Community on preent known terms.

Mr Rippon: Examination of acts of secondary legislation is part of the current negotiations and has not yet been completed. When the process of agreeing the texts of the adaptations required is completed, texts of all regulations, in English, will be made available to the House.

Mr Clark Hutchison asked the Secretary of State for Foreign and Commonwealth Affairs how many regulations made under the provisions of the Treaty of Rome are now in force; and what number of these would apply in the United Kingdom if she joined the European Economic Community on the latest terms.

Mr Rippon: About 2,000 regulations are now in force. Regulations of the European Economic Community are of direct application in member States.

BLOOD SPORTS

Q8. **Mr William Price** asked the Prime Minister how many letters he has received since 18th June on the

subject of blood sports.

The Prime Minister: About 3,000.

MANAGEMENT EDUCATION

Q9. **Mr Douglas** asked the Prime Minister if he is satisfied with the co-ordination of responsibilites between the Scottish Office and the Department of Education and Science with respect to management education in relation to courses leading to national examiniations; and if he will make a statement.

The Prime Minister: Yes

SECRETARY OF STATE FOR WALES (SPEECH)

Q10. **Mr Roy Hughes** asked the Prime Minister if the public speech of the Secretary of State for Wales at Gateshead on 24th April on the Common Market, represents the policy of Her Majesty's Government.

The Prime Minister: Yes

SLOUGH

Q11. **Miss Lestor** asked the Prime Minister if he will pay an official visit to Slough.

The Prime Minister: I have at present no plans to do so.

SCHOOL MEALS

Q12. **Dr. Gilbert** asked the Prime Minister how many letters he has received supporting Her Majesty's Government's decision to increase the price of school meals.

The Prime Minister: I would refer the hon Member to the answer I gave on 6th May to a Question from the hon. Member for Newcastle-under-Lyme (Mr Golding) – (Vol 816. c44)

PRIME MINSTER AND PRESIDENT OF FRANCE (MEETING)

Q14. **Mr Arthur Lewis** asked the Prime Minister whether during his forthcoming discussions with President Pompidou, he will discuss the possibility of creating a new European Community, open to any country in Europe, without any restrictions imposed on monetary action by member countries.

The Prime Minister: I would refer the hon.Member to the answer I gave yesterday to questions from the

hon Member for Walthamstow, West (Mr Deakins) – (Vol.817 c.228).

17th May 1971

U. Mr Micheal Clerk Hutchison (Edinburgh, South) To ask the Secretary of State for Foreign and Commonwealth Affairs if he will publish in the Offical Report, a list, subject by subject, of the regulations under the Treaty of Rome which will apply in the United Kingdomif she joins the European Economic Community on present known terms.

MR GEOFFREY RIPPON

Examination of acts of secondary legislation is part of the current negotiations and has not yet been completed. Then the process of agreeing the texts of the adaptations required is completed, texts of all regulations in force, in English, will be made available to the House.

References:

Flag A 26 April Vol 816 Col 8

Flag B 22 February Vol 812 Col 10W

Flag C 22 February Vol 812 Col 13W

Parliamentary Unit

1. I submit draft reply for the Chancellor of the Duchof Lancaster, to use in answering a Question from Mr Michael Clark Hutchison which asks if he will publish in the Official Report a list, subject by subject, of the regulations under the Treaty of Rome which will apply in the United Kingdom if she joins the European Economic Community on present known terms.

2. The Question is for written answer on 17 May

P.R.T Dain 13 May 1971 (enc)

PARLIAMENTARY QUESTION

for written answer on 17th May 1971

U. Mr Michael Clark Hutchison (Edinburgh, South): To ask the Secretary of State for Foreign and Commonwealth Affairs, how many regulations made under the provisions of the Treaty of Rome are now in force; and what number of these would apply in the United Kingdom if she joined the European Economic Community on the latest known terms.

Signed Mr Geoffrey Rippon

About 2,000 regulations are now in force. Regulations of the European Economic Community are of direct application in Member States.

References

Flag A 22 February Vol 812 Col 13W

Flag B 22 February Vol. 812 Col 10W

Flag C 26 April Vol 816 Col 8

Mr Ford

Parliamentary Unit

1. I submit a draft reply for the Chancellor of the Duchy of Lancaster to use in answering a Question from Mr Michael Clark Hutchison which asks how many regulations made under the provisions of the Treaty of Rom are now in force and what number of these would apply in the United Kingdom if she joined the European Economic Community on the latest known terms.

2. The Question is for written answer on 17 May

3. It is not possible at present to give a precise answer. Flag A indicates that by February this year, of some 8,000 regulations issued, about 2,000 were in force. About 500 are self-extinguishing and have or will lapse after a finite period. As the process of attrition in the 2,000 regulations in force, in February will have continued, it is unlikely that there has been any great overall increase in the number of regulations in force. the February estimate need not therefore be adjusted.

P.R.T Dain 13 May 1971

Mr Steven

D. AGREEMENT ON SECONDARY LEGISLATION AND AUTHENTIC ENGLISH TEXTS.

Both the Group on Secondary Legislation and on Authentic English Texts will continue their work until the end of the year. On Secondary Legislation, technical adaptations are normally agreed within the Group, and reference to the conference is only made when requests for transitional periods of more than 3 months for Regulations and more than 6 months for Directives are needed. Outstanding cases in this category are our request for 5 years for the application of the Directive on Drivers' hours and the elimination of an intermediary stage for the application of tachographs to new commercial vehicles. About a dozen small problems of this kind may have to be resolved between June and the end of 1971.

No particular problem is likely to arise in connection with the agreement on Authentic English Texts, beyond the sheet magnitude of the task in terms of the number of documents to be re-translated.

E. NEGOTATION ON AN INTERIM PERIOD BETWEEN SIGNATURE AND RATIFICATION.

Officials in Whitehall, and independently, a Group within the Commission of the European Community are studying this problem, which arises for the need to provide the candidate countries with some say in what the Community does between signature of a Treat of Accession and its entry into force. One possible formula being considered in London is the creation of an Interim Council of Ministers, an Interim committee of Permanent Representatives and the extension of the mandate of the Secondary Legislation Group to study Community Legislation in draft. The Interim Council of Ministers should have the power to relegate Legislation unacceptable to one or other of the candidate countries to a special category, so that acts passed in such a category are reviewed within six months after the accession of new member states, or if they are not so reviewed, they would authomatically lapse.

F. NEGOTIATION ON THE PARTICIPATION OF NEW MEMBER STATES IN THE COMMUNITY

INSTITUTIONS.

This is likely to be a formal negotiation to review the proportion of places allocated to new members of the Community's institutions.

G. NEGOTATION ON THE DRAFTING OF THE INSTRUMENTS OF ACCESSION

ie the work of the drafting committee consisting of lawyers from each candidate state and the member states. Although the Community are divided on this point, it is possible that they may enquire, within the drafting Group, about the nature of domestic legislation which each member state proposes to enact to give effect to the Treaty of Accession.

Written Answers 12 May 1971

HOME DEPARTMENT

Probation Service

Mr Fowler asked the Secretary of State for the Home Department how many probabtionofficers were recruited in England and Wales in the years 1965,1966,1967,1968,1969 and 1970 respectively and how many probation officers resigned from the service prior to retirement in these years.

Mr Carlisle: 328 in 1965 and subsequently 311,365,396,419 and 430. The respective numbers for resignations were 142,119,132,132,167 and 190.

Buckoke and Others v G.L.C.

Mr Clinton Davis asked the Secretary of State for the Home Department if he has now considered the judgement of the Court of Appeal in Buckoke and Others versus the Greater London Council; if he will introduce amending legislation to enable drivers of fire appliances, ambulances and police vehicles to be exempt from prosecution when disobeying robot traffic signals while on emergency calls and when it is so safe to do; and if he will now make a statement.

Mr Sharples: My right hon. friendis considering the implications of the judgement in consultation with my right hon Friends, the Secretaries of State for Social Services for Scotland and for the Environment.

FOREIGN AND COMMONWEALTH AFFAIRS

European Economic Community

Mr Marten asked the Secretary of State for Foreign and Commonwealth Affairs whether, if Great Britain joins the Common Market, the residual national contributions will be replaced from 1975 onwards by up to 1 per cent of the receipts from a value-added tax or by a 1 per cent value-added tax.

Mr Anthony Royle: The present system calls on the present member states of the Community for a financial contribution from 1975 which may not exceed 1 per cent of the receipts from a value-added tax.

Her Majesty's Government will conform with the financial system of the Community by the end of the transitional period agreed in the negotiations.

Mr W.H.K Baker asked the Secretary of State for Foreign and Commonwealth Affairs what consultations he has had with the Governments of South Africa, Canada, Norway, Iceland and Denmark with regard to Articles 17 to 21 of R.2142/70 of the European Economic Community's fisheries policy; and if he will make a statement.

Mr Rippon: there have been no consultations with the Governments of South Africa and Canada on this subject. We have had contacts with the Governments of Denmark and Norway, who have also applied for membership of the European Economic Community on matters of mutual interest arising out of the European Economic Community fisheries policy generally. We are also in regular contact with the Government of Iceland as a fellow member of E.F.T.A.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether he is aware that the Danish Government have now agreed to hold a referendum on whether or not Denmark should enter the Common Market; and whether in view of this new information, he will reconsider the question of Great Britain holding a similar referendum and arrange to have discussions with the Danish Government to ascertain how and in what way they are to hold their referendum and to see to what extent a similar type of consultation with the people can be organised in Great Britain.

Mr Anthony Royle: Arrangements for referenda in other countries on entry into the European Economic Community have no relevance to the position in this country. In arriving at a decision on terms agreed in the British negotiations with the European Economic Community established constitutional processes will be followed.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether in addition to Parliaments of member States being enabled to debate issues for decisions in the Community before decisions are taken in the institution of the Community, the Parliaments of member States are also enable to debate and change their decisions after the Community and/or its institutions have reached a decision on any matter.

Mr Anthony Royle: It would be open to Parliament to debate Community legislation after it has been made by the institutions of the Community. If Parliament approves instruments of accession to the Treaties of the Community, these and accompanying United Kingdom legislation would determine the role of Parliament in relation to Community legislation.

Mr Elyston Morgan asked the Secretary of State for Foreign and Commonwealth Affairs if he will recommend the setting up of a Royal Commission to investigate the amount of money spent in Great Britain on advertisements in the Press advocating Great Britain's entry into the European Economic Community during the last 12 months.

Mr Anthony Royle: No.

North Atlantic Assembly (United Kingdom Representatives)
Mr Peel asked the secretary of State for Foreign and Commonwealth Affairs if he will publish in the OFFICIAL REPORT a list of representatives on the North Atlantic Assembly.

Mr Anthony Royle: The following represent the United Kingdom on the North Atlantic Assembly:

From the Government benches:

the hon.Members for:

Leicester, South East (Mr Peel)

Cheltenham (Mr Dodds-Parker)

Beckenham (Mr Goodhart)

Bute and North Ayrshire (sir Fitzroy Maclean)

Winchester (Rear Admiral Morgan-Giles)

Haltemprice (Mr Wall)

Baroness Elliot of Harwood

Lord St Helens

Lord Strathcona and Mount Royal

From the Labour Party:

The right hon.Member for Kettering (Sir G deFreitas)

The right hon.Member for Aberavon (Mr Morris)

The hon.Members for:

Newark (Mr Bishop)

Kirkdale (Mr Dunn)

Huddersfield West (Mr Lomas)

Lord Arwyn

Lord Wynne-Jones

From the Liberal Party:

The hon Member for Montgomery (Mr Hooson)

Viscount Norwich

SOCIAL SERVICES

Census

Mr Arthur Lewis asked the Secretary of State for Social Services whether in view of the information supplied to him by the hon.Member for West Ham, North, he will give an assurance that all persons living on boars, houseboats and other vessels moored on rivers, lakes, canals and the Norfolk Broads, have received and filled in their Census forms.

Sir K. Joseph: Returns from Census field staff are not yet complete. A report on the coverage achieved by the Census will be made to Parliament in the normal way.

Mr Arthur Lewis asked the Secretary of State for Social Services whether he will cause an investigation to be made to ascertain to what extent Census enumerators broke their oaths of secrecy in divulging to any unauthorised person or organisations details which should not have been passed on to any person or organisations other than the Census Office; and what action he has taken or intends taking, in each instance, except in the case in which proceedings have been issued.

Sir K. Joseph: Unlawful disclosure of any information acquired in the course of his employment as a Census enumerator would be a breach of the enumerator's undertaking. This is covered in the Census Regulations 1970, and does not require investigation. any such occurence would be dealt with under these regulations.

Hospital Advisory Service (Annual Report)

Dr Trafford asked the Secretary of State for Social Services when the first annual report of the National Health Advisory Service will be published; and if he will make a statement.

Sir K. Joseph: The Report is published today by her Majesty's Stationery Office and copies have been placed in the Library of the House.

PARLIAMENTARY QUESTION
for Oral (stricken through) Written answers on 11th May 1971

*La. Mr Arthur Lewis (West Ham, North): To ask the Secretary of State for Foreign and Commonwealth Affairs, whether, in addition to Parliament of member states being enabled to debate issues for decision in the Community before decisions are taken in the institution of the Community, the Parliaments of member states are also enable to debate and change their decisions after the community and/or its institutions have reach a decision on any matter.

signed Mr Anthony Royle

It would be open to Parliament to debate Community legislation after it has been made by the institutions of the Community. If Parliament approves instruments of accession to the Treaties of the Communities, these and accompanying United Kingdom legislation would determine the role of Parliament in relation to community legislation.

REFERENCES

Flag A	4 May	Vol 816 Col 362W
Flag B	10 May	draft submission in answer to Mr Lewis
Flag C	12 May	draft submission in answer to Mr Lewis

Mr Ford

Parliamentary Unit

1. I submit a draft reply for Mr Royle to use in answering a Question from Mr Arthur Lewis which asks whether, in addition to Parliaments of member states being enabled to debate issues for decision in the Community before decision are taken in the institutions of the Community, the Parliaments of member states are also enabled to debate and change their decisions after the Community and/or its institutions

have reached a decision on any matter.

2. The Question is for oral answer on 11 May but will not be reached.

3. The Question appears to arise out of an answer given on 4 May and is one of a sequence of Questions by Mr Lewis about the rights of Parliament in relaion to EEC legislation.

4. The draft answer has been cleared with Legal Advisors.

A.H.Brind European Integration Department 10 May 1971

Written Answers 10 May 1971

FOREIGN AND COMMONWEALTH AFFAIRS

European Economic Community

83. Mr Ronald King Murray asked the Secretary of State for Foreign and Commonwealth Affairs whether, in light of the conditional and permissive character of the provisions of regional policy contained in Article 92(3) of the Treaty of Rome, he will seek an explicit declaration by the Six, prior to British entry, about their future intentions in this field.

Mr Rippon: No

Mr Deakins asked the Secretary of State for Foreign and Commonwealth Affairs what steps he is taking in negotiations with the European Economic Community to ensure the continuance of the International Sugar Agreement in the event of the United Kingdom joining the European Economic Community.

Mr Rippon: The continuation of the International Sugar Agreement of 1968 does not depend upon Britain's negotations with the European Economic Community.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs when he expects to have the response from the European Economic Community on his proposals for some form of continuing arrangements, subject to review, so far as New Zealand's exports of dairy products are concerned: and whether he will publish this reply in the OFFICIAL REPORT.

Mr Rippon: We hope the Community will be in a position to reply in the near future. The details must remain confidential during the negotiations but I shall keep the House informed of developments.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether he will

explain in more detail the type of sheepmeat regulation affecting exports of lamb which would be unfavourable to New Zealand, and which would necessitate him reopening the matter with the countries of the Six.

Mr Rippon: We have consistently emphasised to the Community the extreme dependence of New Zealand on her exports of certain products, including lamb. I do not think it would be useful to speculate in detail on a future regulation. If, however, the Community proposed to introduce a regulation which would inflict serious damage on New Zealand's exports of lamb to an enlarged Community, this would have to be raised with them.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs whether he will make a statement giving details as to how Parliament will continue to exercise Sovereign powers in most areas of policy, except those delegated to the European institutions on Great Britain's entry to the European Economic Community ; on what basis of Parliamentary consent these delegated powers to European institutions will be arranged; and whether British members of Parliament will have the right to participate in the day-to-day work of all of these European institutions.

Mr Rippon: If we enter the European Economic Community, Parliament will, in most areas of policy, continue to exercise its powers in the same way as it does today.

After our accession it would be open to our Parliament, as it is to the Parliaments of other member States, to debate, before their enactment, those Community instruments to be submitted by the Commission to the Council of Ministers for approval. We shall be represented in all the Community institutions,including the European Parliament.

Mr Arthur Lewis asked the Secretary of State for Foreign and Commonwealth Affairs if he will seek to hold an official meeting with the Prime Minister of New Zealand so as to discuss with him the results of recent meetings between him and the governments of the European Economic Community countries, in particular France.

Mr Rippon: Neither my right hon.friend nor I have immediate plansto do so. The position was discussed in full with Sir Keith Holyoake during his recent visit to London and the process of consultation with the New Zealand authorities will continue.

10 May 1971

La. Mr Arthur Lewis (West Ham, North): To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he will make a statement giving details as to how Parliament will continue to exercise Sovereign powers in most areas of policy, except those delegated to European institutions on Great Britain's entry into the European Economic Community; on what basis of Parliamentary consent those

delegated powers to European institutions will be arranged; and whether British Members of Parliament will have the right to participate in the day-to-day work of all of these European institutions.

NO 29W

MR GEOFFREY RIPPON

If we enter the European Economic Community Parliament wiil, in most areas of policy, continue to exercise its powers in the same way as it does today.

After our accession it would be open to our Parliament, as it is to the Parliaments of other member States, to debate, before their enactment, those Community instruments to be submitted by the Commission to the Council of Ministers for approval. We shall be represented in all the Community institutions, including the European Parliament.

Mr ford

Parliamentary Unit

1. I submit a draft reply for the Chancellor of the Duch of Lancaster to use in answering a Question from Mr Arthur Lewis, which asks whether he will make a statement giving full details as to how Parliament will continue to exercise Sovereign powers in most areas of policy, except those delegated to European institutions on Great Britain's entry into the EEC; on what basis of Parliamentary consent will these delegated powers to European institutions be arranged; and whether British Members of Parliament will have the right to participate in the day-to-day work of all of these European institutions.

2. The Question is for oral answer on 10 May but will not be taken orally and no notes for supplementaries are required.

3. The draft answer has been cleared with the Legal Advisers.

A H Brind

European Integration Department

7 May 1971

c.c. M de Winton Esq

Law Officer's Department (Hand written)

K Newman Esq

Lord chancellor's Office I have sent a copy to the Lord President's Office

Foreign and Commonwealth Office

(All hand written) Private Secretary

The answer is long but will not be reached.

signed M Goldsmith 7 May 1971

PARLIAMENTARY QUESTION

by oral answer 10th May 1971

*La. Mr Arthur Lewis (West Ham, North) : To ask the Secretary of State for Foreign and Commonwealth Affairs whether he will make a statement giving full details as to how Parliament will continue to exercise Sovereign powers in most areas of policy, except those delegated to European institutions on Great Britain's entry into the European Economic Community; on what basis of Parliamentary consent will these delegated powers to European institutions be arranged; and whether British Members of Parliament will have the right to participate in the day-to-day work of all of these European institutions.

signed Geoffrey Rippon.

If we enter the EEC, Parliament will, in most areas of policy, continue to exercise its powers in the same way as it does today.

(The next paragraph is struck through)

In respect of those areas in which the EEC has powers under the Treat of Rome, HMG will, of course, if negotiations are successful, bring before Parliament the instruments of accession the Treaties and the secondary legislation relating to them will also be available to this House. There will then be a full debate and decision.

(End of striking through)

After our accession, it will be open to our Parliament, as it is to the Parlaiments of other member States to debate, before the enactment those Community instruments to be submitted by the Commission to the Council of Ministers for approval. We shall be represented in all Community institutions including the European Parliament.

7 May 1971

Mr I.T.Steven

“Ratification” of Community Decisions

(EEC Treaty, articles 108(2), 138(3), 201

I should like to draw your attention to an interesting Commission Reply to Written Questions No 479/70 by Mr Droscher (O) No. C 39/23, 24 April 1971). The text is enclosed.

2. The Reply deals with the powers of national parliaments and authorities in relation to the implementation of Community acts. The term “ratification” is used – wrongly, but as it is often used on the continent – in the sense of parliamentary approval.

3. It is interesting that according to the Reply intervention by national authorites is required in the case of credits to be granted under Article 108(2)(c) but not, it seems, of other forms of mutual assistance rendered under the last subparagraph of article 108(2)

Alexander Elkin

KCS Room 347A

Extn 502

c.c.

Mr A.D.Watts

Mr I.M.sinclair

Mr M.A.Marshall.

WRITTEN QUESTION No 479/70

from Mr Droscher

at the Commission of the European Communities

(27 January 1971)

Subject: (Ratification of Community Decisions)

During the course of the next few years the European Community will have to take decisions on the future development of the communities, in particular as regards the economic and monetary union, which will relate to a large extent to matters which until now have come within the legislative jurisdiction of the national parliaments (tax harmonisation etc). Measures taken by Community institutions will initially have to be ratified by national parliaments.

The uncertainty as to whether a Community measure should or should not be ratified could create difficulties and delays in the integration process, although the omission of ratification procedures could further jeopardise the parliamentary system of the Communities. Therefore, the European Parliament should be able to reach agreement in time on these matters with the national parliaments.

Is the Commission ready, in order to follow up this question, to compile a list of all the Community measures which will be subject to ratification by the national parliaments during the next two years?

REPLY

(6 April 1971)

Apart from rare exceptions (Article 108 (2) (c), article 138 (3) and Article 201 of the EEC Treaty) the legal acts which the Community institutions are empowered to adopt in pursuance of the Treaties do not require intervention on part of the national authorities in order to produce binding effects within the Member States. As a result, their entry into force is not dependent either on approval by the national parliaments or on ratification by the state authorities having the appropriate powers.

Doubtless, the enforcement of obligations arising for each Member State from measures adopted by Community institutions may call for internal implementing provisions, but when the national authorities

adopt such provisions they only possess limited powers which are very different from the extensive discretionary powers exercised by national parliaments when they authorise the ratification of treaties.

In theory, the implementation of Community measures in the Member States is entrusted to the competent state bodies having powers according to the alloction of powers under the national constituions. Since the constitutions of the various Member States do not allot legislative and executive powers in the same way it is very difficult to determine in an overall fashion for all the Member States which Community measures require ratification by Parliament.

Mr Steven

Mr Watts

I should be grateful for your urgent observations on the attached PQ. It follows Mr Lewis' earlier Questions in this field. I attach the draft submission for the Question answered on 4 May for reference.

The Question could possibly be answered as follows:-

"It is open to Parliaments of Member States to debate issues for decision in the Community before decisions are taken in the Community. Thereafter, HMG, as a member of the Community will be able to express views in the formulation of decisions. many decisions, including those in key areas, must be agreed unanimously. After membership, British Members of Parliament will take part in the proceedings of the European Parliament and Britain will be representated in the other Community Institutions."

I am aware that this provides only the flimsiest answer to the middle part of the Question about the basis of Parliament consent for the delegation of powers to the Community. This would possibly be covered by reviving as an additional second sentence in the answer the words (or a variation of them) proposed at one time by Mr Newman of the Lord Chancellor's Office viz:-

'But approval by Parliament of Instruments of Accession to the Treaties of the Communities necessarily implies a willingness on the part of Parliament to exercise certain restraints in the use of its constitutional powers.'

If formulae give away too much perhaps the following alternative answer might be a better basis.

'If the negotiations succeed and HMG brings before Parliament Instruments of Accession to the Treaties of the Communities, these will clarify the extent to which Parliament's prerogatives will be affected by membership and will be subject of full debate and decision in Parliament.

P.R.T.Dain 6 May 1971

(Handwritten)

Mr Dain The first draft answer is not altogether correct since only……. acts submitted by the Commission to the Council will be open for the Parliaments of Member States to debate. This excludes Acts by Commissions……. the whole of the jurisprudence of the European Court.

On the whole to prefit the final draft slightly amended and expanded as follows:

“If the negotiations succeed, HMG will bring before Parliament the instruments of accession; the Treaties and the secondary legislation relating to these will be available to this House. There will be a full debate and decisions by Parliament on the issues involved.

After membership it will be open to our Parliament as it is to the Parliaments of the member states, to debate before their enactment, those Community institutions to be submitted by the Commission to the Council of Ministers for approval. We shall of course be represented in all the Community institutions”.

Mr Adams

Subject: Conservative Groups’ Paper on Sovereignty.

You copied to me and to Mr Sinclair minutes of 29 april to Mr Morland. I have now seen Mr Sinclair’s thoughtful minutes of 30 April with which I entirely agree and to which I have nothing to add.

I.Steven

c.c. Mr I.M.Sinclair

Mr M Morland

Mr Adams (European Communities Information Unit)

1. Please refer to your minute of 29 April addressed to Mr Morland enclosing a copy of the draft paper on Sovereignty prepared by IRD for the eventual use of the Conservative Group for Europe.

2. I have a number of comments on particular passages which I will se out seriatim:-

a) I think that the argumentation at lines 6-11 on page 3 is a little bit dangerous. It is certainly going too far to indicate that the Community has not tried to deny that Member States have a right of withdrawal; the whole concept of the Treaty of Rome is to establish a permanent Community and any admission that there is a right of withdrawal for individual Member States would be inconsistent with this fundamental concept. I would suggest that lines 6-11 on page 3 be replaced by the following:-

“Its only basis is the provision that the Treaty of Rome is of indefinate duration and contains no provision for withdrawal. But there are other treaties which are likewise unlimited in time and confer no specific right of withdrawal (e.g. the United Nations Charter). The intention of the Treaty of Rome is of course to establish a permanent Community sharing common aims and aspirations and seeking common goals: to recognise any right of withdrawal would be inconsistent with this but of course it goes without saying that the Community could not compel a Member State to remain within the Community system if there was a change of circumstances so fundamental as to place in jeopardy the principles and purposes on which the Treaty of Rome is based.”

b) In the tenth line on page 4 I would suggest deletion of the words “by majority vote”. The internal deliberations of the Court of Justice are secret. It pronounces on single judgement with no dissenting judgements. It is indeed true that some judgements may be adopted by majority vote but the absence of dissenting judgements is such a feature ofthe Court’s procedure that it would be unwise to stress that the Court comes to its decision by majority vote.

c) I am dubious about the last sentence of the third paragraph on page 4 (lines 21-25). I am not sure what is meant by the phrase ” in reality they are strictly limited”. I would suggest, as an alternative, something on the following lines:

“Superficially these may appear far reaching powers but, in practice, they are, and can be, exercised only after a lengthy process of consultation with outside bodies and with other Community organs. In any event all basic regulations and directives have to be adopted by the Council of Ministers which, as already notes, consists of representatives of national governments who vote on all Community policies in accordance with their Government’s views.”

d) The first paragraph under the sub-head “Policy Voting Procedure” (bottom of page 4 and top of page 5) is not, I think, entirely accurate. The positionis not that the voting provisions of the Treaty have been virtually suspended; it is rather that the practice of unanimity has continued even although, on certain matters, the Treaty now provides for qualified majority voting. I wonder if I can suggest something on the following lines:-

“Although the original terms of the Treaty of Rom continue to apply, the voting procedure in the Council of Ministers does not at present accurately reflect those terms. In view of the predictions of immediate and irreversible losses of sovereignty made by opponents of Britain’s entry, it may be noted that, in this case,

the voting provisions of the Treaty have not been strictly applied since 1965 when one Member State – France – raised objection to the changeover on certain matters from unanimity to qualified majority voting."

I amy say that I am not entirely happy even with this alternative version: another possible alternative would simply be to delete altogether the paragraph which begins at the bottom of page 4 and continues at the top of page 5.

e) I find the phrase "while under a strictly legalistic reading of the Rome Treaty" at lines 9-10 on page 6 inaccurate and slightly objectionable; I would prefer it to be replaced by "while wholly inconsistent with the provisions of the Treaty of Rome."

f) The sentence beginning "many of our existing Treaty obligations….." at lines 11-14 of page 7 goes too far. Agreements like the GATT do not involve restrictions on the sovereignty of Parliament as Britain's sole law giver; rather they require Parliament to exercise restraint by not enacting provisions inconsistent with existing Treaty obligations. I would prefer the sentence to read:-

"There are other international agreements such as the General Agreement on Tariffs on Trades (GATT), the European Convention on Human Rights and the United Nations Charter which impose certain restraints on the powers of Parliament if Britain is to comply with the Treaty obligations which it has assumed".

g) I am a little dubious about the last two sentences in the first full paragraph on page 8 (lines 12 – 18). I would suggest an alternative on the following lines:-

"Moreover, these EEC powers are exercisable essentially in relation to industrial and commercial concerns, and/to individuals in their private capacities. so far as Community law directly affects individuals in their private capacities it confers rights rather than imposes obligations. Thus an individual or undertaking is entitled to challenge the validity of any Community decision addressed to him on the grounds that the Community institution has misused its powers".

I would like to omit reference to the possibility that a Member State can become a party to the proceedings in these circumstances; although this is true, it is in fact unusual for Member States to intervene in proceedings brought by an individual challenging the validity of a Community decision.

I.M.Sinclair

Legal Advisers

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copied to Mr Morland

Mr Steven 30 April 1971

Mr Morland (EID)

1. As you will see from Mr Tucker's minute below, the Conservative Group for Europe want to publish a pamphlet on Sovereignty. IRD have produced a first draft of this, and I should be grateful for your comments as soon as possible. I realise tht we do not want to falsify the Sovereignty issue or give our future Community partners the idea that we are frightened to commit ourselves in this respect. But Europe's wish to play down this issue as far as possible and reassure those people in Parliament and in the country who get emotional about loss of sovereignty.

WJ Adams

European Communities Information Unit

29 April 1971

copied to:

Mr Sinclair (Legal Advisor)

Mr Steven (EID)

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