

# **The Policy of Non-Cooperation with the EU**

**Research Paper 96/74**

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The British Government's current policy of non-cooperation in the European Union Council of Ministers began on 22 May 1996 as a result of the Commission decision of 27 March to impose an extensive ban on the export of British beef because of its suspected contamination with Bovine Spongiform Encephalopathy. This policy has been applied more or less consistently for a period of some three weeks and an end to the situation is not yet in sight. This paper considers some of the issues and other examples of non-cooperation in the EU.

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## I Introduction

Although the 1957 Treaty of Rome and subsequent amended versions of it expressed a determination to strive for "ever closer union" among the member states, there have been some notable attempts by individual member states to force their European partners to accept a particular national position by refusing to cooperate in an unrelated but important area of Community business. This strategy has met with varying degrees of success but has on each occasion given rise to heightened debate on the issue of the defence of national interests and use of the veto in the Council of Ministers.

This paper considers the recent British strategy of non-cooperation in the context of the beef crisis and looks also at previous examples of non-cooperation in the European Community/Union.

## II Background to the beef crisis

In March 1996 scientific research was published in Britain which suggested the possibility of a stronger link than had hitherto been thought between Bovine Spongiform Encephalopathy (BSE) in cattle and the human equivalent Creutzfeldt Jakob Disease (CJD). It was a Commission Decision of 27 March on emergency measures to protect against BSE which gave rise to the present crisis.<sup>1</sup> This imposed a ban on the export of live cattle, beef and bovine bi-products from the UK not only to all other EU countries but worldwide. The Decision was taken following a qualified majority vote in favour by the Commission's Standing Veterinary Committee (SVC).

At the end of April the Government submitted to the Commission proposals for a selective slaughter of cattle but the Agriculture Commissioner Franz Fischler warned against any hope of an early lifting of the ban. Both the Government and the National Farmers Union decided to challenge the ban at the European Court of Justice and the case for interim relief is to be heard on 19 June.

In May the Commission demanded tougher measures from Britain to control the production of beef bi-products, gelatine, tallow and semen, as a precondition for any easing of the total ban. The culling of certain categories of British cattle began on 8 May but there was still substantial opposition in the Union even to a partial lifting of the ban.

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<sup>1</sup> 96/239/EEC, *OJL* 78, 28 March 1996

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The unwillingness of some influential EU member states to lift the ban has led some British politicians and farmers to suspect that this was not (or no longer) an issue of health, but an attempt by other EU member states to eliminate a major competitor in the European beef market. There were calls for retaliatory action such as unilateral bans on products from other member states or the withdrawal of contributions to the EU budget, even if this incurred the payment of interest. The latter was ruled out by the Prime Minister on grounds of illegality.<sup>2</sup>

Matters reached a critical point following the SVC vote on 20 May against a partial lifting of the ban to allow for the export of beef bi-products (the voting procedures are explained in Appendix I).

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<sup>2</sup> HC Deb, 21 May 1996, c.106. Such action had not been considered illegal by Margaret Thatcher when Britain found itself in conflict with the EC.

### III The Non-Cooperation Strategy

On 21 May 1996 the Prime Minister announced to the House of Commons that, as a result of the European Union's refusal to agree to a partial lifting of the ban on the export of British beef products (tallow, gelatine and semen) and to a framework for the lifting of the general ban on British beef exports, the British Government would pursue a policy of non-cooperation in EU business and decision-making. Mr Major set out the Government's policy:

I have to tell the House that, without progress towards lifting the ban, we cannot be expected to co-operate normally on other Community business.

I say this with great reluctance, but the European Union operates through good will. If we do not benefit from good will from partners, clearly we cannot reciprocate. Progress will not be possible in the intergovernmental conference or elsewhere until we have agreement on lifting the ban on beef derivatives and a clear framework in place leading to lifting of the wider ban

We will raise the question of the ban at all Councils, including the Foreign Affairs Council. If necessary, we shall seek special Councils. I shall make it clear that I expect agreement on how to deal with those problems to be behind us by the time the European Council meets in Florence on 21 and 22 June. If it is not, the Florence meeting is bound to be dominated by the issue. It could not proceed with our normal co-operation unless it faced up to the crisis of confidence affecting not only consumers but also Governments throughout Europe.

That is not how I wish to do business in Europe - but I see no alternative. We cannot continue business as usual within Europe when we are faced with the clear disregard by some of our partners of reason, of common sense and of Britain's national interests. We continue to want to make progress through negotiations; but if that is not possible, we are bound to use the legal avenues open to us and the political means at our disposal.<sup>3</sup>

The Commission responded to Mr Major's announcement of non-cooperation in a statement on 22 May:

A solution can only be achieved through the proper functioning of the Union's institutions and procedures which it is all member states' interests to safeguard.

The Commission will continue to work towards a progressive lifting of the export ban in the light of available scientific evidence and eradication measures. The BSE problem affects all member states as is evidenced by the serious decline in the

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<sup>3</sup> HC Deb, 21 May 1996, c.100

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beefmarket prices throughout the Union. It is therefore a problem for the whole of the European Union.



## IV Defining "Non-Cooperation"

The British strategy would not be the "empty chair" policy used by President de Gaulle in the 1960s (see below). British ministers would attend Council meetings and raise the beef ban at all of them while objecting to other proposals requiring the unanimous agreement of the Council.

Community business was not interpreted strictly to mean only business under the main Community pillar, excluding the intergovernmental pillars of the Union, the Common Foreign and Security Policy (CFSP) and Cooperation in Justice and Home Affairs (JHA). Rather, it has included any matters requiring consensus or a unanimous vote: EC legislative instruments, decisions, directives and regulations, non-binding acts such as recommendations and resolutions, agreements on work programmes, agreements with third countries and intergovernmental measures such as common positions under the CFSP and JHA.

Any proposals in the context of the Intergovernmental Conference could also be obstructed by the British action. Ministers are currently still in the deliberative phase of the IGC and there have been no votes, but if non-cooperation continues, IGC negotiations could be affected at a more crucial stage. The Council agenda might also be affected by the British action. The provisional agenda is drawn up by the Council President but the inclusion of any item other than those on the provisional agenda requires the unanimous approval of the Council.

The British action has not been applied to matters subject to Qualified Majority Voting (QMV), nor has it been applied consistently in areas requiring unanimity. At the Development Council on 28 May, for example, three regulations requiring unanimity (on AIDS prevention, development and the environment, and refugees in Asia and Latin America) were not vetoed by the Government minister Baroness Chalker, although a further 8 other measures were. The absence of a veto appears to be due to the voting method for the three regulations. Their Treaty base was Article 130, which would normally imply QMV, except that following a disagreement over funding between the Council and the Commission, the Council was in fact required to act by unanimity in order to amend the Commission's proposal. The British Government appears to have acted as if the proposal were still subject to QMV rather than unanimity. Other examples of exceptions to the general rule were the Government's decision not to veto items at the General Affairs Council on 10 June on aid for the Bosnian elections, an Association Agreement with Algeria, a Europe Agreement with Slovenia and a declaration on Nigeria. The approval of the Slovenia agreement was described as a gesture of goodwill towards Italy because Italy had pressed successfully for a liberalisation of the law on foreign ownership of property in Slovenia.<sup>4</sup>

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<sup>4</sup> There was a significant Italian element in Slovenia before 1946 and the new EU-Slovenia agreement is seen as a step towards the restitution of Italian property.

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Non-cooperation has not been extended to cover the discussion of proposals but has applied to "A" points requiring unanimity. These are items for which Council approval is possible without further debate because they have been discussed and agreed informally at an earlier Council. Recent Council press releases have recorded the intention to adopt as "A" points at future Council meetings many of the measures which were discussed in the Council but which could not be adopted because of British non-cooperation.

Since 22 May, when the action started, there have been around 75 instances of British blocking tactics, many in areas where there would otherwise have been strong British support and in some cases where Britain had been the leading advocate. A list of all measures that the Government has blocked to date can be found in Appendix III, indicating examples of measures which the Government blocked and had earlier indicated that it would have at least partially supported or opposed.

## V Timetable and conditions for restoring cooperation

The Deputy Prime Minister, Michael Heseltine, reiterated in a speech to the DTI on 5 June that non-cooperation would continue until the partial ban had been lifted and a framework was in place for the total lifting of the ban. In the European capitals Foreign Secretary Malcolm Rifkind and Agriculture Minister Douglas Hogg set out to promote the Government's plans to eradicate BSE in an attempt to win support for a framework plan and a phased lifting of the ban to be in place by the Florence summit on 21-22 June. Mr Rifkind said that he had no intention of amending what the Prime Minister had said regarding non-cooperation.<sup>5</sup>

The Government has insisted that a reversal of its strategy is conditional upon the accommodation of both its demands: the lifting of the partial ban and agreement on a framework for a total lifting of the ban. Thus, when the Commission announced on 5 June that it would lift the ban on the export of beef derivatives, the Government rejected demands from the other member states to abandon or relax its non-cooperation policy. The Italian presidency has made clear, however, that Britain will have to be more flexible and pragmatic in its demands if progress is to be made on a framework for a gradual lifting of the ban by the Florence summit.

On 13 June, following talks between the Prime Minister and his Italian counterpart, Romano Prodi, Mr Major raised hopes of a possible imminent end to the crisis. Commission officials had studied the British framework proposals and more discussion was expected. However, at a foreign ministers meeting on 17 June further demands were made of the British Government before the lifting of the worldwide ban could be considered. These included an extension of the slaughter policy and an end to non-cooperation.

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<sup>5</sup> *Guardian*, 5 June 1996

## VI Earlier Examples of Non-Cooperation in the Community

Obstruction of Community business has varied over the years from actions which have brought the Community to a complete standstill to others which have prevented or delayed the adoption of specific measures.

### A. France, 1965: President de Gaulle's "empty chair crisis"

One of the earliest and most dramatic cases of non-cooperation was the "empty chair crisis" brought about by President de Gaulle in June 1965, which led to the adoption of the so-called "Luxembourg Compromise".<sup>6</sup> The French action concerned two distinct matters: one was the rejection of a series of proposals on the financing of the Common Agricultural Policy, the introduction of own resources and the widening of the budgetary powers of the EP; the other was the refusal to accept a widening of the application of qualified majority voting in 1966 after the implementation of the third stage of the transitional phase of the EEC's development. President de Gaulle instructed his ministers to boycott all Council meetings during the second half of 1965 which immobilised decision-making and obstructed moves towards closer European integration. It proved impossible to secure a compromise agreement during these months and it was not until de Gaulle failed to win an outright majority in the presidential election in December 1965 that any compromise solution came within sight.

De Gaulle was re-elected and two special Council meetings were held in January 1966. At the first one on 17-18 January the other five member states refused to bow to the French views on majority voting but some progress was made on the CAP financing issue. It was agreed that the own resources system should not be introduced until 1970 and with a greater EP involvement. At the meeting on 28-29 January the Council agreed a QMV formula in non-binding conclusions in its Minutes which became the Luxembourg Compromise. This solution suited France and was upheld by the British Government in its 1971 White Paper on British accession as a guarantee of respect for the "vital interests" of a member state.<sup>7</sup>

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<sup>6</sup> The Luxembourg Compromise is described in Library Research Paper 94/47, *Qualified Majority Voting and the Blocking Minority*, 15 March 1994.

<sup>7</sup> *The United Kingdom and the European Communities*, Cmnd 4715, 1971

**B. UK 1983: Withholding of EC budget contributions**

In 1983 at the Stuttgart European Council Mrs Thatcher made clear that proposals to raise the ceiling on VAT, which needed the unanimous consent of the member states, would only be agreed by the UK if a permanent solution to the British budget problem was found and new measures to ensure budget discipline were enforced. The issue was debated during 1983 and 1984 but a solution was not forthcoming. The Council of Ministers, meeting on 20 March 1984, failed to agree on regulations that would have enabled payment of the 1983 UK rebate by the deadline of 31 March and this led to calls for the Government to withhold a proportion of the UK's monthly contribution to the EC budget. In her statement to the House of Commons on 21 March 1984 on the outcome of the Brussels European Council, Mrs Thatcher, while maintaining that the Government would not do anything illegal, referred to two previous instances of the withholding of payments to the EC budget:

... there have been previous occasions when small amounts of money have been withheld. For example, in 1979, France, Denmark and the United Kingdom refused to pay full VAT contributions as they considered the 1979 budget to have been improperly adopted. In 1981, the French, German and Belgians similarly refused to pay in full in respect of the 1980 supplementary budget No 2. So there have been occasions on which some money has been withheld before.<sup>8</sup>

A week later Geoffrey Howe announced to the House that the Government would not co-operate with a Commission request for an advance own resources payment:

As the House knows, the Commission has made a request for an advance payment of the own resources due in April. The principle justification for that advance was to provide for the payment of United Kingdom and German refunds by the end of March. Since those refunds remain blocked, the case for the advances can no longer be sustained. We shall not, therefore, ask the House to approve the Supplementary Estimate for the advance payment that the Commission requested for 30 March.<sup>9</sup>

After twelve months of negotiations, the UK budget abatement was agreed at Fontainebleau on 26 June 1984. Under the revised Own Resources system the VAT ceiling was raised from 1.0 to 1.4 per cent but with a one-off abatement for the UK for 1984 and thereafter a two-thirds reduction in the difference between the British contribution to VAT-based revenue and the amount of Community expenditure in the UK.

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<sup>8</sup> HC Deb, 21 March 1984, c.1053

<sup>9</sup> HC Deb, 28 March 1984, c.295

### C. France 1994: New EP Building/EP Elections

In January 1994 a disagreement arose over the location of a new European Parliament building. A new building had already been built in Brussels and the French Government of Edouard Balladur was concerned that EP business should not move from its traditional seat in Strasbourg to Brussels. The French had campaigned for a new building for Strasbourg and in spite of some Belgian opposition, a contract was being drawn up for Strasbourg. At around the same time legislation had to be approved in each of the member states to authorise the increase in the size of the EP (this had been approved by the Brussels European Council in December 1993) and thus allow the EP elections to take place in June on the basis of the new allocation of seats.

There was an implicit threat from the French Government that it would not approve the legislation without a guarantee that the contract for Strasbourg would be signed. Mr Balladur suggested in a letter to the EP President Egon Klepsch that if the EP gave him a written assurance that the contract for the new building would be signed within a few weeks, then he would ask the French Parliament to vote on the legislation before the end of its current session. Without this assurance the vote would not take place until the beginning of the following parliamentary session, by which time it would probably be too late to hold EP elections on the new basis. The contract was approved and the elections were held.

### D. Italy and Spain 1994: Own Resources Decision

The proposal for an Own Resources Decision (ORD) to increase the Community budget was blocked for several months by Italy in 1994 over a dispute concerning milk quotas. The milk quota issue was not directly linked to the ORD and the Italian action in stalling progress on the latter was described as "hostage-taking in EU decision-making"<sup>10</sup>.

Italy did not agree with the Commission's view that it not done enough to comply with an agreement to cut its excess milk production from 11.5m tonnes down to its permitted quota of 9m tonnes, in exchange for which it would get a backdated increase in quota of 0.9m tonnes. According to the Commission, Italy was still 350,000 tonnes short of the approximately two-thirds reduction it had to make in its milk output.

Compromise proposals were put forward at the Agriculture Council on 21/22 June 1994. These were unacceptable to Britain, the Netherlands, France and Germany, and Italy's position continued to delay consensus on the text of a definitive ORD. While this remained the

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<sup>10</sup> *Financial Times*, 29 March 1994

position, the 1995 budget could not exceed the ceiling of 1.2 per cent of GNP, although the cuts made by the Council to the draft budget for 1995 made it possible to stay within the ceiling.

Italy objected to being fined by the Commission for exceeding its milk quotas. Although the Agriculture Council had not settled the problem of the previous year's fines on Italy, it agreed to increase Italy's milk production quota for the present and future and referred the matter to the "appropriate bodies", ie the General Affairs Council or ECOFIN. The Chancellor Kenneth Clarke described the history of the milk quotas issue in his statement on the results of the ECOFIN Council on 21 October 1994:

EC Finance Ministers met in Brussels on Friday 21 October to discuss the own resources decision and Italian and Spanish milk disallowances.

Italy, and to a lesser extent Spain and Greece, faced disallowance due to their failure to fine farmers who had exceeded EC milk quotas over the period 1989-93. Italy and Spain claimed that this was unfair, as their national quotas had been set too low to begin with. In 1992, it was agreed at a Council of Agriculture Ministers to increase Italian and Spanish milk quotas for 1993-94. Subsequently, in the course of clearing the EAGGF accounts for 1989 and 1990, the Commission decided to disallow only the amounts which would have been payable by Italy and Spain if they had had in those years the extra milk quota which had been awarded them for 1993-94. It indicated that it intended to do the same for 1991, 1992 and 1993. This would have resulted in Italy and Spain paying roughly half the amount for which they were liable at the outset.

The United Kingdom objected to this and brought proceedings before the European Court of Justice on the grounds that the Commission had exceeded its competence by backdating quotas, a power which could only be exercised by the Council of Ministers. Italy and Spain also began ECJ proceedings on the grounds that the disallowance decisions were still excessively harsh and claimed that they should make no further repayments at all.

Even had we ultimately won on all aspects of our ECJ cases, on which judgment was still two years distant, the level of the fine would have been a matter for the Council to determine on the basis of a proposal from the Commission. There is no reason to believe the Commission would then have produced any different proposal from the one they had originally made. Therefore Italy and Spain would only have paid roughly half of the penalties for which they were theoretically liable even if we had won our cases in the ECJ on all points.

I therefore negotiated a settlement which resulted in Italy and Spain agreeing to repay much higher sums to the Community budget than they would have paid if we had not brought our action in the European Court or if we had allowed our action before the Court to take its course to a possibly successful conclusion over the next two years.

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Ecofin on Friday agreed to increase total disallowance from the Commission proposal of 2.1 billion ECU or 16 billion to 3.2 billion ECU or £2.5 billion - an increase of 1.1 billion ECU or £860 million on the level of disallowance fixed by the Commission. This is the largest agricultural fine ever levied in the history of the European Community. Payment will start in 1995<sup>11</sup>.

The Spanish complaint also had no direct links with the ORD. The Spanish Government threatened not to ratify the EU Accession Agreement allowing applicant states to join the Union in 1995 unless the decision to raise the Union's revenue ceiling as agreed in Edinburgh was legally secure. This would also have delayed the appointment of the new Commission to include Commissioners from the new member states. Spain was particularly interested in securing substantial structural funding for its poorer regions from the Cohesion Funds provided by the Edinburgh decision.

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<sup>11</sup> HC Deb 25.10.94 cc510-511W



## VII Views on Non-Cooperation

### A. UK

The suggestion by opposition parties and the British and foreign press that the Government had declared "war on Europe" was rejected by the Prime Minister,<sup>12</sup> although the former Foreign Secretary Douglas Hurd considered the war metaphor appropriate when, in a television interview on 2 June, he commented:

It is reasonable as a short-term tactic but to settle down to some sort of trench warfare, particularly against things that we are in favour of, would of course be counter-productive.<sup>13</sup>

In a speech on 28 May the Shadow Foreign Secretary Robin Cook said that Labour would give the Government its support "in the national interest" but he has also insisted that "the veto should not be applied mindlessly as a blanket rule. We do not gain any leverage in negotiation by blocking measures which Britain wants more strongly than some other members".<sup>14</sup> In a speech in Brussels in mid-June Mr Cook suggested that if the Government did not obtain a credible timescale for lifting the beef ban, the non-cooperation strategy could not be justified "in view of the damage which it has done to Britain's standing in Europe".<sup>15</sup>

### B. Other Member States

On 24 May, shortly after the SVC vote against partially lifting the ban, the *Financial Times* summarised the positions of the other member states. The main points were as follows:

#### 1 Austria

Voted with Germany against lifting ban on beef by-products. Believes UK must take responsibility for the problem. If "appropriate steps" are taken, Austria will not oppose easing ban, but it "will not give in to blackmail". Attributes Mr Major's response to "domestic political concerns".

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<sup>12</sup> HC Deb, 4 June 1996, c.400

<sup>13</sup> London Weekend Television, "Crosstalk", 2 June 1996

<sup>14</sup> Speech to Royal Institute of International Affairs, 6 June 1996

<sup>15</sup> *The Times*, 14 June 1996

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### **2 Belgium**

Voted against partial lifting of ban. Has insisted from the start on a decent British identification and tracing regime for cattle. All details of selective slaughter plan should be presented to Council.

### **3 Denmark**

Favoured lifting ban on bi-products but believes Britain must implement measures to ensure beef safety before wider ban is lifted. Row can be solved in atmosphere of calm. Denmark would expect British sympathy in similar circumstances if pork or bacon exports were threatened.

### **4 Finland**

Favoured lifting ban on bi-products. Appears to have some sympathy for Britain's predicament. Foreign minister Tarja Halonen said that British action "may not increase sympathy, but could speed up the process".

### **5 France**

Favoured relaxation of bi-products ban. Tried to persuade Iberian and Benelux countries but believes Germany and Austria are immovable. Sympathy stems from Jacques Chirac's wish for better relations with Britain and for an EU plan on BSE, including money for French farmers whose herds have been infected by BSE.

### **6 Germany**

Led vote against Commission proposal to lift bi-products ban. Helmut Kohl indicated sympathy but in the absence of scientific consensus on beef safety, the embargo should stay. Mr Major accused the Chancellor of renegeing on promise of support. Bonn says Britain must impose strict measures to ensure beef safety.

### **7 Greece**

Supported lifting of bi-products ban after assurances that Commission would make Britain accept tough monitoring procedures for production of these products. Greece is expected to follow mainstream in its attitude to the overall ban.

### **8 Ireland**

Voted for lifting of bi-products ban. Sympathy based on its own dependence on beef sales.

**9 Italy**

Supported early lifting of ban on bi-products but not impressed with British approach, suggesting that "strong-arm tactics or blackmail" are not the way forward.

**10 Luxembourg**

Voted against lifting bi-products ban but believed embargo would soon end. Britain must prove that BSE is no longer a danger to health before total lifting of ban. Non-cooperation stance is "totally unacceptable" and linked to "internal concerns".

**11 Netherlands**

Voted against lifting bi-products ban and will stand by ban until Britain improves measures to combat BSE. Agriculture minister Jo Van Aartsen said the problem is British not European.

**12 Portugal**

Voted against lifting bi-products ban, though not unsympathetic to Britain. Accused by Mr Major of breach of faith. Condemned British use of ultimatum. Wants EU to help Britain but feels Britain has been slow to implement practical measures to address problem.

**13 Spain**

Voted against lifting of bi-products ban. Initially sympathetic but joined embargo out of fears of flood of imports from other markets. New centre-right government is more hardline than Socialists. Britain must provide sufficient guarantees to restore consumer confidence.

**14 Sweden**

Supported lifting bi-products ban. Has not taken definite position on whether Britain has done enough to merit lifting total ban. Sweden was one of the first to introduce embargo when it banned the use of animal remains in animal feed in mid-1980s, when the BSE scare in Britain began.

By mid-June opinion in the other member states had hardened against Britain. The German Health Minister Horst Seehofer announced that Germany would unilaterally refuse to lift the bi-products ban in spite of the Commission's decision. The British strategy was described as blackmail and it was suggested by some that perhaps the Union would be better off without Britain in it. Jacques Santer said in an interview in the *Observer* on 9 June:

We are coming to *l'heure de vérité*. We are going as far as the limit of our possible tolerance, and all the members' tolerance. It is not just governments, it is public

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opinion, consumer organisations and lobbyists. They are now not very happy in this situation. We have to say that it is the British Government that has triggered the crisis.

I am concerned about anti-British propaganda, but I am also concerned about the anti-European propaganda in Britain and, as President of the Commission, I have to say that the British Government has been responsible for mismanagement of the whole crisis.

The Government's proposed framework for the lifting of the ban has been described by the Irish Prime Minister John Bruton as a scaffolding on the basis of which the ban could be lifted, although the details could be filled in later. The *European* commented on 13 June:

The suspicion is that ... John Major will be offered a vague promise on a framework for the eventual ending of the embargo so that he can abandon his obstruction of Union business without losing face domestically.

Reports that Britain had exported suspect animal feed to France after its use had been banned in Britain in 1988 have given rise to attacks on the British Government by the French media. On 13 June *Le Monde* condemned the contaminated feed sales as an "industrial crime". The French Government has attacked the socialist government that was in power in the 1980s for allowing imports to continue after sales had been banned in the UK.

## VIII Is non-cooperation legal?

Addressing the European Parliament on 5 June, the Commission President Jacques Santer said that the British action was in breach of the spirit and the letter of the Treaty. He cited Article 5, which states:

Member states shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.

British ministers are in theory doing no more than exercising their right to object to proposals in the Council of Ministers. Under normal circumstances this might be considered no more than irritating by some member states but legitimate within the democratic process. In practice, and as the Government has confirmed, the action is one of "reluctant" retaliation, intended to obstruct or delay Council business until or unless British demands are met. This intention is what Mr Santer maintains is in breach of the Treaty.

Article 5 cases at the ECJ have not concerned strategies affecting the decision-making processes but specific legislative measures which member states have circumvented or not applied, thus undermining Community solidarity. One interpretation of Article 5 has been that it refers only to relations among the member states and between a member state and the EU. British ministers in the Council of Ministers do not represent an organ of state but one part of an EU body and Article 5 does not stipulate that there is an obligation for one member of an EU body to cooperate with others in that body.<sup>16</sup>

It is doubtful whether a legal case could be made against the British Government for its action, although this is not certain. After all, the second paragraph of Article 5 imposes on member states the obligation to bear in mind the Treaty objectives whatever they do, and the deliberate obstruction of proposals in areas in which the Community is bound to act might therefore be considered illegal.

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<sup>16</sup> Professor Dr Ulrich Fastenrath, *Frankfurter Allgemeine Zeitung*, 13 June 1996

## IX Conclusion

There is still some prospect that a solution will be at least within sight by the Florence European Council but as of 18 June, this is looking less likely and it was feared that the beef crisis would overshadow summit proceedings. Jacques Santer told the EP on 5 June that the British attitudes "have no place in a Union based on the rule of law and solidarity which by definition is reciprocal". On 17 June the Commission President took up the military metaphor, saying that "It is not just a question of starting a war, it is also important [for the British] to terminate the war".<sup>17</sup> The British Government insists that it is ready to agree to all blocked measures "as soon as a framework is in place for lifting the beef export ban"<sup>18</sup>. The Council has proposed a framework. The details have not yet been published but it appears probable that it would involve stages, each of which would require qualified majority voting in the SVC and the Council.<sup>19</sup>

The prospect of non-cooperation continuing to Florence and beyond is clearly worrying for the Council and for the member states. Its effect on progress at the IGC could have repercussions for objectives such as institutional reform and enlargement of the Union. It is in the interests of all parties to find an acceptable solution to the impasse but this will almost inevitably involve a compromise which some of the current players would find unsatisfactory.

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<sup>17</sup> *The Independent*, 18 June 1996.

<sup>18</sup> HC Deb, 11 June 1996, c.145W

<sup>19</sup> *The Independent*, 18 June 1996.

## Appendix 1

### Voting Procedures in the Standing Veterinary Committee

Voting in the Commission itself is by majority under Article 163 of the Treaty. However, the decision on whether to lift the ban was taken in the Commission Standing Veterinary Committee (SVC), where a qualified majority was needed. The proposal did not obtain a qualified majority in favour in the SVC and so the proposal was referred to the Council of Ministers. Under the voting procedure for matters that have been referred to the SVC the Council can amend the proposal by unanimity, accept it by QMV or reject it by a simple majority. If the Council fails to act after a period of 15 days, the Commission may adopt the proposal on its own authority under Article 17 of Directive 89/662/EC (OJL 395, 30 December 1989). In this case the Council failed to adopt the proposal by QMV or to reject it by a simple majority in a special Agricultural Council on 3/4 June. The Commission decided, in accordance with the above procedure, that it would adopt the proposal to partially lift the ban.

## Appendix 2

### Delays in Payments to EC Budget

Article 11 of EC Regulation 1552/89<sup>20</sup>, like its precursor Regulation 2891/77, imposes sanctions for late payments to the EC budget. It stipulates that interest must be paid at 2 per cent above the "interest rate applicable on the member state's money market on the due date for short-term public finance operations" and at a further 0.25 per cent for each month of delay. The Commission's annual monitoring reports on the application of EC law show that there have been a number of cases of late payments of both the monthly own resources contributions and/or interest on the late payment. Records of these over the last ten years are as follows:

- i. OJC 220, 1 September 1986, p. 6**  
Reasoned opinions sent to France and Greece.
- ii. OJC 338, 16 December 1987, p. 13**  
Reference to Court of Justice of case against Greece (see above).  
Infringement proceedings started against Belgium, France and Italy terminated upon payment.
- iii. OJC 310, 5 December 1988, p. 19**  
ECJ rulings on cases brought against UK (Case 93/85) and Greece (see above Case 70/86).  
Reasoned opinions to UK, Germany and Ireland.
- iv. OJC 330, 30 /December 1989, p. 23**  
ECJ case and reasoned opinion against Italy; case against Greece terminated with payment of sums claimed.  
Reasoned opinion to France; ECJ proceedings against Germany.  
Three infringement procedures against Ireland, the Netherlands and the UK terminated upon payment of sums claimed.
- v. OJC 232, 17 September 1990, p. 24**  
Cases 239/89 and 270/89 brought against Italy and actions withdrawn after requisite payments made.  
Reasoned opinions to France, Ireland and UK; ECJ proceedings started against France and Germany. Infringement proceedings against Ireland and Italy terminated upon payment.
- vi. OJC 250, 28 September 1992, p. 42**  
Reasoned opinion to France

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<sup>20</sup> OJL 155, 7 June 1989



- vii. **OJC 233, 30 August 1993, p.60**  
Reasoned opinion to Greece; proceedings against France terminated with payment.
- viii. **OJC 154, 6 June 1995, p. 56**  
Reasoned opinion to Spain.
- ix. **OJC 254, 29 September 1995, p. 54**  
Proceedings against Spain terminated with payment.  
Reasoned opinion to France.

In all these cases, payments were eventually made, although in some cases only after proceedings at the European Court of Justice. Cases 239/89 and 270/89, both against Italy, were removed on 22 May 1990 and 4 April 1990 respectively following payment of the debt by the Italian Government under Regulation 2891/77.<sup>21</sup>

According to the ECJ Reports for cases 93/85 and 70/86, the UK and Greece respectively were found to be in breach of their obligations under the Treaty and under Regulation 2891/77. The Greek case, brought by the Commission under Article 169, concerned the failure by the Greek government to pay its financial contribution for June 1983 on the due date (it was paid on 3 June, two days late) and the subsequent refusal to pay interest on the late payment. The Greek government argued that the payment order had been issued in good time but that the entry could not be made on time because of a strike by bank employees on 1 and 2 June 1983. It maintained that the delay should therefore be regarded as a case of *force majeure* and that it should therefore not be liable to pay interest. The Court rejected this plea. The case against Greece was terminated once the Greek government had paid the interest on the late payment, although this does not appear to have been done until December 1989, several years after the original default. Greece would also have had to pay costs.

In Case 93/85 the Court found the British Government in breach of its obligations under the Treaty and Regulation 2891/77 for failing to make an advance payment to the EC budget on time when requested to do so by the Commission and subsequently refusing to pay interest for the month-long delay which the Government maintained had been brought about by the dissolution of Parliament at a critical time. The Court rejected the arguments and referred to an earlier case against Germany in which it had been established that:

the very wording of Article 11 shows that interest is payable in respect of "any delay" in crediting the amounts to the Commission's account, regardless of the reason for the delay.<sup>22</sup>

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<sup>21</sup> *Proceedings of the Court of Justice of the European Communities*, 18/89, 18-22 September 1989

<sup>22</sup> Case 303/84.

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It might not be held illegal to withhold a payment, but it would be illegal subsequently to refuse to pay the interest incurred on late payments. If, as part of a policy of "non-cooperation", the UK were to withhold normal payments, the interest payable would become substantial quite quickly.

## Appendix 3

### Measures blocked by the British Government from 22 May to 17 June<sup>23</sup>

#### 22 May

IGC Working Group	Request for briefing meeting with EP
CFSP	Presidency initiative on Mongolian election observers
CFSP	Presidency proposal for EU statement on detention of pro-democracy activists in Burma

#### 23 May

	Signature of insolvency convention
Civil Protection	Community action programme Council regulation on research Council regulation on cooperation with CCEEs

#### 28 May

Development	Conclusions on emergency aid, rehabilitation and long term development Council Conclusions on operational coordination Council conclusions on decentralised cooperation Council conclusions on migration and development Resolution on environmental impact of development projects Decision to appoint member of board of Centre for Development of Industry EU/Mexico negotiating mandate and political declaration <sup>*24</sup> Decision on emergency travel document
Internal Market	Resolution on legislative simplification Resolution on administrative cooperation Conclusions on accounting standards Conclusions on European company statute Decision on action programme for EU industry

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<sup>23</sup> Based on Cabinet Office list.

<sup>24</sup> \* = example of proposal which the British Government blocked but which it had previously indicated that it would support.

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CFSP	Reply to UN General Assembly resolution 50/75 (strengthening security and cooperation in Mediterranean) Demarche to Israeli authorities on blocking of EU activities and personnel in West Bank and Gaza. Draft EU letters on Salman Rushdie Critical dialogue meeting on 19 June with Iran
<u>29 May</u>	Demarche in Skopje on FYROM participation in Peace Implementation Council working group
Telecomms.	Proposal for decision on adoption of programme to promote European linguistic diversity in the information society.*
<u>30-31 May</u>	Geographical directors (troika) visit to Beijing.
<u>3 June</u>	
ECOFIN	draft regulation protecting financial interests of the Community** <sup>25</sup> Proposal on VAT on cut flowers Joint action on aid for Bosnian elections Response to Prime Minister Hariri on Lebanon reconstruction assistance
Social Affairs	Decision on Year against Racism and Xenophobia** Resolution on transferability of vocational training qualifications* Conclusions on demography* Recommendation on balanced participation of men and women in decision-making
CFSP EU Mission	Proposed visit of Italian Foreign Minister to Israel on behalf of EU
External Fisheries (Working Group)	Competences for FAO committee on Fisheries Trade
<u>4 June</u>	
CFSP	Sending of Aide Memoire on prisoner transfers and related matters to Thai Justice Ministry Further circulation of Presidency statement on elections in Albania EU approach to US on Liberia visa restrictions EU demarche on civil rights in Belarus

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<sup>25</sup> \*\* = example of proposal which the British Government blocked and which it had indicated earlier that it did not support or did not totally support.

Justice and  
Home Affairs

Recommendation on trafficking in works of art  
Recommendation on fight against counterfeiting  
Draft 1997 budget on Europol  
Report on 1996 Europol budget  
Joint action on directory of counter terrorist competences\*  
Joint action on drugs liaison officers  
Decision on measures implementing Article K 1 of TEU  
Joint action on pre-frontier assistance and training assignments\*  
Recommendation on combatting illegal employment\*  
Work programme for Europol Drugs Unit July-December 1996\*  
Resolution on priorities for cooperation in JHA  
Common position on draft Hague Convention on Protection of Minors

5 June

CFSP  
Presidency discussion paper on IAEA 93 + 2 programme  
Draft EU contribution to nuclear supplies group paper

10/11 June

General Affairs  
Declaration on Great Lakes (especially Burundi)  
TACIS Regulation\*  
Common position for EU/Syria Cooperation Council 10 June\*  
Common position for 10 EEA Council  
Common position/joint action on biological and chemical weapons  
Political decision on resumption of aid to Niger\*  
Common position for ACP/EU ministerial meeting, 26-28 June  
Council conclusions on follow-up to Barcelona conference on Mediterranean  
6th VAT directive derogation for Neisse Bridge  
Common position on East Timor  
Joint declaration on political dialogue between EU and Andes Community  
Assent to Commission decision on ECSC and Kazakhstan on trade in steel products  
Appointment to Committee of the Regions  
EEA Joint Committee, ALTENER programme: decision on cooperation EU/Mexico negotiating mandate and political declaration\*\*\*<sup>26</sup>  
Response to Hariri on request for Lebanon reconstruction assistance\*\*\*  
Decision on emergency travel document\*\*\*

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<sup>26</sup> \*\*\* = measure which had been blocked already at an earlier Council.

## Research Paper 96/74

Fisheries                      Decision on implementation of Community action programme on competitiveness in industry\*\*\*

Cultural/audio-  
visual

Common position on ARIANE programme  
Common position on RAPHAEL programme  
Resolution on citizens' access to culture  
Resolution on access to electronic publishing and libraries

17 June 1996

Transport                      No new proposals requiring unanimity but several items which were not agreed at earlier Councils

A provisional list of measures requiring unanimity in Councils from 10 to 27 June can be found in a Commons parliamentary written answer on 11 June, columns 142-145.

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