



From the Minister for Trade

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*Jan Lynda*

#### EC DRAFT DIRECTIVE ON COMMERCIAL AGENTS

The UK has for a number of years been isolated in opposing this Directive on principle and in detail. We have of course been able to maintain this position as the Directive has been progressed under Article 57(2) and Article 100 of the Treaty. We now face the prospect that once the Single European Act is formally adopted, the Directive will fall to be settled by qualified majority voting. Moreover, some are anxious for early agreement and the Dutch have put it on the agenda of the last Internal Market Council during their Presidency. I am concerned that continued opposition might harm our wider efforts on the internal market during the Presidency; and that under majority voting we might be faced with the even more substantive text favoured by some delegations.

Officials have consulted interested parties in the UK; and have considered informally without commitment whether we might gain a derogation of substance from the Directive.

The UK parties have not changed their attitude to the Directive. The agents remain in favour of early adoption of a substantive text whilst the principals and lawyers (by far the greater in number) remain against this. Parliament has already stated its opposition and the Commons Scrutiny Committee can be expected to seek a debate on a revised Memorandum.

Positions in Brussels have been equally unhelpful, with the Commission and Member States refusing, at official level, to contemplate any substantial derogation for the UK because they consider that the Directive is already weak and that further concessions would either undermine it altogether or be technically difficult. All they have suggested is a time-limited derogation for

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certain articles. This would not be of real use in relation to the current text, which in any case incorporates extensive delays in implementation. But a number of detailed reserves are currently under discussion which could make the option more attractive.

In this situation, I recommend that we should continue to move towards adoption to help our wider objectives and forestall a potentially more difficult text. But I would first like to see whether the Council is prepared to take a more accommodating line towards a permanent derogation than Community officials have suggested. This would be necessary as background to UK Parliamentary consideration. I also wish to ensure that the detailed reservations are settled and disposed of so that they cannot embarrass us later. I am therefore proposing that at the 23 June Council I would move substantively from our objections in principle but would ask whether other countries would be prepared to envisage a derogation - either for the UK or more generally - along the lines adopted for the product liability directive, whereby certain provisions were made non-mandatory. I have it in mind that we would seek such exemption in respect of Articles 30, 31 and 31a. (These provide indemnity for agents in certain circumstances and are most bitterly contested by opponents).

I do not, however, expect that we shall gain such a derogation. The most likely we are to offered is further time for implementation. Once we have reached that position, and subject to any substantive changes in the text and to Parliamentary scrutiny, I anticipate that we should move towards adopting the text at the first Internal Market Council under the UK Presidency. But we should reserve a final decision until we submit the revised Explanatory Memorandum after the June Council.

I will write to you again in the light of the discussion at the June Council, but in the meantime I should be glad if you would agree to the position I propose to adopt then, and the strategy I have outlined.

I am copying this letter to members of OD(E) and Sir Robert Armstrong.

*Alan Clark*  
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