FCS/85/130

Secretary of State for Employment

Sex Discrimination Act: European Court Ruling

1. Thank you for your letter of 2 May. I agree that we should continue to voice our concern about the Court's ruling against the Sex Discrimination Act's derogation for very small firms. There appears to be little benefit to be gained from applying the SDA to very small firms which are often family concerns; and to remove the derogation would clearly run counter to our efforts to generate the right climate for small businesses to flourish.

2. As you recognise, this issue is linked to David Young's work on deregulation and the Prime Minister's initiative at the March European Council. As regards the Community aspect of this, we hope to be in a position in the next week or two to give the Commission a list of forty or so directives which we believe should be amended or annulled to reduce the burden they impose on business. The application of the Equal Treatment Directive to small firms is included in the proposed list.

3. I attach great importance to establishing a good working relationship with the Commission on deregulation. A good start has been made. To attain objectives we must avoid creating the impression that we are using deregulation as a means simply to block Community measures we dislike. I think the best approach in your letter to your Community colleagues will be to concentrate on the substantive issue - that it would be unnecessary and unproductive to apply the

/Sex

Sex Discrimination Act's provisions to small firms. The European Council's views on the need to reduce the administrative burdens on small businesses could then be cited in support of the main argument. I do not believe that this presentation would weaken your case for discussion on 13 June.

4. By the time of the 13 June Social Affairs Council we shall be in a position to take account not only of our further exchanges with the Commission but also of the results of David Young's proposed visit to some EC capitals to encourage others to deregulate domestically and support complementary action at the Community level.

5. I am copying this letter to the Prime Minister, to members of "H" Committee, Norman Tebbit, David Young, Michael Havers, John Gummer and Sir Robert Armstrong.

GEOFFREY HOWE

Foreign & Commonwealth Office
13 May 1985

MB

SECRETARY OF STATE FOR EMPLOYMENT

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NBPM

CDP 22/5.

The Rt Hon Sir Geoffrey Howe QC MP
Foreign Secretary
Foreign and Commonwealth Office
Whitehall
LONDON
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22 May 1985

Dear Geoffrey,

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

Thank you for your note of 13 May. I am glad that you agree that I should raise our concern about bringing small firms under the Sex Discrimination Act at the Council of Ministers on 13 June. I also take the point that we must avoid giving the impression that we are using deregulation as a means to block Community measures which we dislike. At the same time, it is important to present our case in a Community context and a reference to the European Council conclusions is essential for this purpose. I have therefore made certain changes to the letter to relate the argument mainly to the issues of substance (while keeping some of the references to the Council conclusions in support) and enclose the version I am sending to my Council colleagues.

I am sending copies of this letter to the Prime Minister, to members of "H" Committee, Norman Tebbit, David Young, Michael Havers, John Gummer and Sir Robert Armstrong.

Yours

NJ/OCR33

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Miss Grethe Fenger Moller
Minister of Labour Arbejdsministeriet
Laksegade 19
DK-1063 Copenhagen K

May 1985

Dear Grethe,

I am writing to you and to other members of the Council of Ministers for Labour and Social Affairs to raise an issue which I believe has important and serious implications for the work of the European Community in the employment field.

A recent judgement of the European Court of Justice (Case No 165/82), following proceedings brought by the Commission, found that the United Kingdom had failed to implement fully the Equal Treatment Directive on three counts. These concerned the application of our legislation to collective agreements, private households and small firms. On the first two, I intend to consult interested parties within the United Kingdom to establish how our legislation can most suitably be changed to give effect to the Court judgement. However, the third count - small firms - raises a serious difficulty for the United Kingdom, and I believe for the whole Community, on which I should like to seek your support.

Our legislation (the Sex Discrimination Act 1975) exempts firms with five or fewer employees. This reflects the view of successive British governments that it is inappropriate in situations of this kind (covering, for example, a small family business) to impose legal requirements and sanctions that are essentially intended to meet the circumstances of larger firms. I am not of course suggesting that other member states should not enact such legislation if it seems right in their particular national circumstances. But to impose a blanket requirement across the whole Community carries the risk of

frustrating other Community policies of major importance and of impairing public support for our work. As you know, at the last meeting of the European council on 29-30 March our heads of government laid emphasis in their conclusions on the need to encourage the creation and development of small and medium sized undertakings, particularly by significantly reducing the administrative and legal constraints to which they are subject. The Council went on to call upon the Commission to report to it on the problem in this sector and on the measures to be taken at national and Community level, particularly with regard to administrative simplification.

I believe these conclusions accurately reflected a growing consensus within the European Community that we must do everything possible to protect small firms, which represent a major source of economic growth and innovation, from legal and administrative constraints hampering their development. Against this background, it would in my view be seen as inconsistent for the Community to be taking steps to increase legislative burdens in a sector where the Council has called for them to be reduced. I would certainly find it extremely difficult to explain to public opinion in the United Kingdom why we were having to make such a change.

I recently discussed this issue with Commissioner Pfeiffer and am grateful to him for a clear and helpful explanation of the position of the Commission, which will feel obliged to take proceedings against the United Kingdom if we remain unable to implement the Court's judgement. Nevertheless, I would earnestly hope that before such a situation were to arise, we could take the opportunity in the Council of Ministers to consider this issue. I hope the Council might be able to conclude that whatever our differences on the substantial issues involved, the Commission should defer any legal proceedings until the examination of relevant legislation had taken place on the lines requested by the European Council.

I am writing to Gianni de Michelis as President of the Council to say that I should greatly appreciate an opportunity to raise this question at our next meeting on 13 June. I shall of course be very glad to know your views either then or beforehand.

May I say in conclusion that the United Kingdom takes its Community obligations very seriously indeed and that we have not taken this step without searching consideration of the issues involved. It is my concern that the policies of the

Community should be seen to work coherently and not to conflict with each other and it must surely be to our common advantage to secure this objective.

Budget: EUROPOL pt29.