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Note of Meeting between officials of the Department of Finance, the Department of Foreign Affairs and the Department of the Taoiseach concerning implementation issues relating to the North/South Ministerial Council on Friday, 29 May, 1998

Attendance:

Simon Hare, Department of the Taoiseach
Paul McGarry, Department of the Taoiseach
Nuala McLoughlin, Department of the Taoiseach
Tim O'Connor, Department of Foreign Affairs
Rory Montgomery, Department of Foreign Affairs
Ciaran Connolly, Department of Finance
Cormac Cronin, Department of Finance

~~YK~~, ~~JS~~

Introduction

1. Opening the meeting, Mr Hare indicated that its purpose was to identify and discuss the issues which arose in relation to the establishment of the North/South Ministerial Council and the associated implementation bodies - including budgetary issues, financial accountability, staffing/personnel issues, customer accountability, FOI and data protection. He suggested that it might be useful, by way of scene setting, to share with the Department of Finance the preliminary conclusions reached by his Department and the Department of Foreign Affairs as to the areas in which we should seek to have implementation bodies established.

Background

2. Mr O'Connor suggested that it might also be useful to provide a brief overview of the administrative arrangements envisaged for progressing follow up to the Multi-Party Agreement. He indicated that a Inter-Departmental Steering Committee, chaired by Mr Dermot Gallagher, had been established to co-ordinate at official level the Government's role in the overall implementation of the Agreement. A sub-group, chaired by Mr Walter Kirwan, would take forward North/South issues. This would involve the Department of the Taoiseach, the Departments of Finance and Foreign Affairs and the Attorney General's Office. An important purpose of this sub-group would be to examine the horizontal issues concerning the establishment of the implementation bodies. Mr O'Connor also indicated that it was intended to hold a high-level Inter-Departmental meeting -

chaired by Mr Gallagher - on 5 June, to prepare the ground for the work of the sub-group. The sub-group would then follow up on an individual basis with each Department.

3. Mr. O'Connor noted that there were essentially two categories of bodies which would need to be established and on which decisions would have to be made by 31 October. There would be at least six bodies set up to take decisions by agreement on policies and action on a cross-border or all island basis and at least six bodies which would take decisions by agreement on policies for implementation separately in each jurisdiction. Identifying these bodies was the specific work programme for the near future and the establishment of a shadow executive in Northern Ireland after the Assembly elections would bring an added dimension to these discussions.
4. There was a brief discussion on the process that would be involved in the establishment of these bodies. Mr Montgomery referred to Unionist concerns in this area, and also the political importance of this for the SDLP and Sinn Féin. On the issue of the Secretariat which would be provided for the North/South Council, Mr Montgomery indicated that at this stage, something analogous to the existing Secretariat was likely to emerge. This would involve staff from both administrations who would be located in the one place, probably in Northern Ireland.

Potential Areas for Implementation Bodies

5. The discussion moved on to the question of possible areas where implementation bodies might be established. It was noted that in addition to the twelve areas listed in the Agreement, the Taoiseach had written to Mr Trimble on Good Friday morning and had put forward four additional areas. These were the Irish language; training and employment; trade promotion and business development; and science and technological research. The area of arts, and local and community development had also been identified for inclusion. This brought the total number of areas identified to eighteen. Mr Montgomery mentioned that in a meeting which his Department had the previous night with Sinn Féin, the latter had suggested the area of inward investment. However, it had been made clear that there were difficulties with this area. Factors which would be considered in the decision to set up implementation bodies would include, existing co-operation; compatibility between the Agencies North and South; the extent to which obvious gain could be shown; the impact on the

ground on clients and customers; and the public profile of the area. A number of areas were mentioned which were viewed as "front runners" to become implementing bodies. These included tourism; trade promotion and business development; Irish language; animal and plant health; environment (research and public information, with some executive powers); and administration of certain EU programmes such as Interreg and the Programme for Peace and Reconciliation.

6. A second tier of areas were identified where there would be some merit in setting up implementation bodies. These included inland waterways (which already provided a model for co-operation and would have to be examined in the light of what value could be added); arts; inland fisheries; community development; agriculture and marine matters; science and technology; and training and employment.
7. Unionists had wanted education and social welfare and social security included. A balance had to be struck between what was necessary politically and what could practically be done. The bodies would have to be established, but there is an awareness that functions would be assigned over a period.
8. Mr Hare noted that the question arose as to whether different implementation bodies would take the shape of a State Sponsored Body or an Executive Agency or some other shape. He mentioned that in a preliminary discussion which he had held with Mr Kirwan, the following bodies had suggested themselves as being suitable for establishment as State Sponsored Bodies: - tourism, trade promotion and business development, Irish language, arts, (non-commercial State Sponsored Body), inland fisheries (possibly as a State Sponsored Body), community development (non-commercial State Sponsored Body), marine matters and training and employment. The animal and plant health, and EU programmes bodies might take the shape of executive agencies. The environment body might take the shape of an executive agency initially, developing in time into a State Sponsored Body, while the inland waterways body might be established as either an Executive Agency or a State Sponsored Body.
9. Mr O'Connor referred to the legislative basis for establishing the implementation bodies. The Attorney General's Office had proposed a model involving international agreements scheduled to legislation in both Westminster and the Oireachtas. The advantage of this model would be

that it would protect against a difference in approach between the two Administrations. It would be more difficult, in practical terms, to enshrine each body separately in legislation.

10. Mr Connolly commented that it was likely that these bodies would be established on a skeletal basis in the beginning, and would then develop in time. He mentioned that he had had contacts from the Northern Ireland Department of Finance and Personnel who had been looking for general information on our Freedom of Information legislation and our ethics procedures etc., with a view to preparing for the incoming Administration. The contact in that Department had also indicated that they were anxious to make progress on legislation concerning the cross-border bodies, and that they would like to exchange texts in relation to the audit of cross-border bodies which would be included in their enabling legislation.

Financing

11. Mr Hare raised the issue as to whether funding of the North/South Ministerial Council and implementation bodies would be treated as a supply service or Central Fund service. Mr Connolly noted that funding to Government Departments is usually voted each year, and that some areas are provided for from a Central Fund. The Central Fund operates by giving various Ministers authority to spend without additional approval from the Dáil. He said that an examination of files of discussions in this area 25 years ago, at the time of Sunningdale, showed that there had been a concern at the time that while voting was the most accountable method, it could be used to block progress. It was however unlikely that the Assembly would seek to use funding as a blocking mechanism, as they would have numerous other ways in which to block progress. It was also recognised that accountability was a key issue for Unionists. Mr Connolly mentioned that his Department did not have any particular wish to operate through the Central Fund. He also indicated that the Comptroller and Auditor General would prefer to operate through a vote system, and added that they would prefer for one new vote to be set up under the Department of an Taoiseach. He also added that both audit services, North and South, shared this view.
12. Mr Cronin noted that the Northern Ireland side were anxious to exchange texts on the question of auditings. The issue arose as to whether or not it would be wise to take the risk of doing this before the elections. Mr Montgomery pointed out that the UK were subject to time constraints in

this area as they would have to prepare legislation in the next few weeks. He also noted, however, that it was his understanding that the legislation for a North/South body and an East/West body was intended to be an enabling piece of legislation from the point of view of international relations, and that it was not intended to go into detail on how things would be done. Mr Connolly indicated that the UK side were looking for a text on audit arrangements at this stage. The UK side felt that it would be appropriate for a joint audit by the two auditing authorities, with the reports to go to the respective parliaments. This raised the question of who would the reports go to - would they go directly to the Dáil? The political aspect of this issue was recognised, namely that Unionists would be pushing for accountability to the Assembly while we would be pushing for accountability to the Council.

13. Mr Connolly pointed out that the corollary to our current system would be for an implementation body's accounts to go to the relevant Irish Minister in the North/South Ministerial Council, and for the Council to be responsible for putting them to the Dáil. They would then go to the Public Accounts Committee who would call on the accounting officer - who would presumably be the Chief Executive of the implementation body - to discuss the accounts. There was a brief discussion concerning at what stage a government department would be accountable for the moneys in question, and at what stage an implementing body would become accountable. It was felt that the accounting officer in the government department would be responsible for the funds up until the point where they were allocated to the implementing body.
14. Mr Connolly commented that the UK had raised the point that a joint audit would not involve joint certification. It was Mr Connolly's view that separate certification would be difficult in practice. It was acknowledged that there was a need for all of us to sit down and meet with our Northern Ireland counterparts very soon as they are in the position of having to take legislation in early July. It was explained that we are not yet in a position to make such specific calls but that we would hope to be in a position soon to give a tentative indication of our thinking on these issues. Mr O'Connor mentioned that there would be an all day session of the Liaison Group the following Tuesday, and that there would be an opportunity at this meeting to convey this point to the British side. He agreed to let Mr Connolly know on Tuesday evening if anything of importance emerged from the meeting. Mr Connolly agreed to reflect this position back to the UK, and

to suggest that they approach the legislation in a general manner as a broad enabling measure as opposed to dealing with these specific details.

Other Horizontal Issues

15. Mr Hare queried whether there would be any role for the joint committee on semi-state bodies, in terms of the accountability of the implementation bodies. Mr Connolly noted that the committee only deals with commercial bodies, but that if an implementation body was a commercial body then the Committee would, in the normal way, have a role.
16. Mr Hare also raised the question of whether or not we had the same budgetary cycle as the Northern authorities. It was explained that we do not, as the Northern Ireland cycle runs from April to March while our budgetary year is the calendar year. Mr Connolly did not see this as posing a problem. It would be up to the North/South bodies to decide which model they would use.
17. Mr O'Connor raised the issue of possible difficulties in the area of currencies. Mr Connolly noted that they had no indication at this stage as to how this would pan out. To use the euro would have the same practical effect as using the Irish pound as we would be locked into the euro at a rate. At this stage he did not know a way around it but was confident that a solution could be found.
18. Mr Hare raised the issue of whether the North/South Council would get a block grant or whether funding would go to individual bodies. It was recognised that this was a political issue.
19. The question of what Freedom of Information, Data Protection, and Ethics regimes would apply to the North/South bodies was also discussed. While this was not a controversial area, it was noted that it would seem to go against the spirit of the Agreement to have different personnel on different regimes in the same body. One possibility that was mentioned was that both administrations would be exempt from the relevant provisions of both administrations, and that they could then draw up their own code. It would also be necessary to look at how particular organisations operated in this area, for example, Bord Fáilte. Mr Hare suggest that it would be useful to obtain details of the relevant regimes currently applying in Northern Ireland. Mr Connolly indicated that this information might already be available in the Department of Finance.

20. Another area which was raised was the area of personnel and industrial relations. It was recognised that different areas had their own arrangements. Both sides would have to use ingenuity to address this issue. The initial model would most likely involve secondment from existing organisations. There would be political issues which would have to be considered in this, such as the appointment of a chief executive to each body. If it was decided to have one single chief executive as opposed to a joint chief executive, this would most likely be a political call.
21. Mr Hare raised the issue as to the implications, if any, of the establishment of the North/South Ministerial Council and implementation bodies for Ministerial portfolios and Departments. A preliminary view was that the establishment of the Council and bodies would not have any such implications, although in the event that the secretariat to the Council developed into a large-scale operation, this could have an impact on Departments.
22. Legal issues would also have to be addressed. The question of how somebody would sue a North/South body would have to be addressed, gives that two different court systems were involved.
23. There would be pressure to harmonise pay and pensions which would have spin off effects on the public sector. It was recognised that there was nothing that could be done at the moment. There was political pressure to have the bodies up and running and the details would take longer to come into place. Mr O'Connor clarified that it would be a developing process and reiterated the point that while these bodies might be set up on a skeletal basis initially, they would develop in time. It would be up to the Chief Executive of each body to handle the change and the details.

It was agreed that the meeting had been useful in terms of surfacing the issues and discussing them in a preliminary way and that there would be an opportunity to address the horizontal issues further at the meeting of the Sub-Group on the following Thursday in the Department of Foreign Affairs.

Proposed Circulation:

NI Division - Dept. of Taoiseach

Mr. Connolly - For appropriate circulation in Dept. of Finance

Mr. O'Connor - For appropriate circulation in DFA

Mr. Hamilton - Attorney Generals