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ROINN AN TAOISIGH

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To: Taoiseach

From: Walter Kirwan, Assistant Secretary

Memorandum for the Government on Implementation of
North-South Aspects of the Good Friday Agreement.

1. The essential points of this Memorandum are clearly set out in the Summary and the detail of the decision sought is set out in full in paragraph 1 of the main Memorandum and in the paragraphs to which it cross-refers. The approval of the Government is sought for a general approach to the negotiations but full flexibility is retained as regards their outcome, as seems necessary, given the obscurity about what the Northern Administration's position will be. This has yet to be negotiated internally among the parties that would form the Shadow Executive and there have been conflicting indications as to the Ulster Unionist position.
2. As indicated in paragraph 23 of the main memorandum, the first positions they took in discussions with the SDLP were extremely restrictive. Three of the Implementation Bodies they proposed were to delineate boundaries in Lough Foyle, Carlingford Lough and the territorial seas, while another was to arbitrate on disputes about regimes to attract inward investment- essentially a body to facilitate their making mischief about our 12 1/2 % tax rate! This ludicrous position was strongly influenced by Austen Morgan, the eccentric but ill-intentioned Derry-born barrister who acted as personal adviser to David Trimble on North-South matters. You will have seen the recent report in which Professor Paul Bew, who is close to Trimble, quotes the latter as saying that he had got Morgan involved "to drive those fellows in Foreign Affairs mad" but that he would be called off when serious negotiations began. Morgan may also have overplayed his hand by proposing the four bodies mentioned above, all of which related to Westminster competences, rather than devolved Northern Ireland competences, something which the Foreign Office were quick to point out to Morgan.

2

ROINN AN TAOISIGH

Uimhir.....

3. It may be that Morgan is already being pulled back. In two more recent meetings with the SDLP, the UUP have been represented at more senior level, including John Taylor and the areas they suggested were less ludicrous. At the last meeting, the following areas were agreed between the parties - on a non-exclusive basis - as ones they would ask the Northern Ireland Departments to give technical assessments of :

- Environment
- Inland Waterways
- Agricultural Research
- Food Standards and Safety
- Marine and Aquaculture
- Strategic Transport Planning

However, in a number of case, it was clear that the Unionists had in mind much more restrictive ambits than the Irish Government, the SDLP and Sinn Féin. For example, on the environment, the UUP focus on research "and possible monitoring", while on agricultural research, they restrict it to the animal and plant health field.

4. The proposals of the SDLP and Sinn Féin, apart from two or three ill-judged non-feasible areas - are essentially the same as those now proposed to the Government in the Memorandum. Given the wide divergence between the positions of the Northern parties or, it is very hard to assess what will be the outcome of the internal negotiation there that will have to precede that with the Government here. In one discussion we had with him, Seamus Mallon expressed the view that the internal negotiation could at worst, be quite crude, with Unionists and Nationalists each vetoing three Implementation Bodies, implying that the Northern negotiating position might contain only three "good" bodies, judged from the Irish Government's perspective, in addition, of course, to three less satisfactory bodies.

5. Given the present logjam blocking formation of the Shadow Executive, it may be some time before the Northern position is known. However, approval of the proposals in the draft Memorandum will place the Government in a position to negotiate straight away if the blockage is resolved, allowing the Northern position to be settled. In the meantime, matters are being advanced as far as possible, in the absence of political direction on the Northern side. This week, there will be 'clarification' or 'technical' meetings between Departments South and North, covering five of the ten areas now proposed in the Memorandum for Implementation Bodies, with more fixed for next week. These meetings will address the question, if there were to be a body to deal with XY, would it be like this or like that - what functions would be feasible, what structure seems most suitable, how would governance and financing, be handled? Meantime, parallel contacts and meetings between financial, personnel etc. and legal experts continue to advance legal and horizontal issues.

ROINN AN TAOISIGH

Uimhir.....

6. There is no controversy among Ministers about the proposals in the Memorandum. Ministers generally are supportive. The Minister for Education and Science may be disappointed that his own area does not figure in the top ten areas for Implementation Bodies but he does not challenge the proposals. The Minister for Finance is reasonably accommodating about (1) the proposal in paragraph 32 of the Memo for an implementation budget to ensure that staffing or resource constraints do not prevent Departments drawing up the founding charters for Implementation Bodies within the very short time available up to February/March next, and (2) the tentative proposal in paragraph 33, to be reviewed later, for a 'launch fund' to give fresh impetus to the substance of North - South co-operation.
7. As to (1), I would draw your attention to your suggestion, in the last sentence of paragraph 40, that retired civil servants with the necessary expertise might be employed on a temporary basis - financed from an implementation budget - so as to ensure there were no delays on Implementation Bodies. If there were any such delays, they would, under the scheme, of the Good Friday Agreement, hold up all the other institutions getting their powers. As to (2) above, the Minister for Finance is prepared to review the matter in the context of the 1999 Budget. But with this due on 2 December next, much will depend on whether the current impasse can be broken before then.
8. A general issue on which the Government may wish to focus is whether in cases where there are options for the structures of Implementation Bodies, they will wish to have the structure that maximises political control. For example, on the possible Tourism Marketing Body, our Department of Tourism, Sport and Recreation has identified three possible models for the structure of the all-island body :-
- (i) A limited company registered in either jurisdiction whose operations would be subject to the relevant existing law of each jurisdiction as circumstances required. (Its Memorandum and Articles of Association could be agreed within the North/South Ministerial Council, and be subject to amendment by the Council)
- OR
- (ii) A statutory agency set up under parallel legislation, North and South. In the South, sections of the Tourist Traffic Acts dealing with Bord Fáilte's broad international marketing and promotion functions (1939, 1952, 1955) would have to be amended and new legislation (with similar legislation in the North) would be required to set out status, functions etc. of the new body;

OR

ROINN AN TAOISIGH

Uimhir.....

- (iii) A hybrid of (i) and (ii) i.e. a statutory based limited company. Shannon Development might provide an example of such a company. Shannon Development, legally titled Shannon Free Airport Development Co. Ltd., (SFADCo), is a limited company with share capital, backed by statute (SFADCo Ltd Acts 1959-).

The first of these, a limited company without a specific statute might most easily facilitate tourism industry involvement, as in the case of the current OTMI where industry, not the Government or Minister, nominate a majority of the board, but this structure might make it difficult to build in a power for the Minister to give general directions as to policy. The latter would be much easier and more normal, with the structure of a statutory corporation, similar to Bord Fáiltes structure now but would sit less easily with a strong industry role - but statutory provisions could be made for the tourism industry to nominate a minority of board members. A SFADCo type structure, involving a company structure but backed by a specific statute is intermediate.

9. As indicated in paragraph 14 of the memorandum there are difficult judgements involved in placing different areas in the rough order of priority in paragraph 13 of the Memo. The following are some comments on the 'upsides' and 'downsides' of the ranking proposed and of the emerging concepts of the relevant bodies, as set out in Annex 2 to the Memorandum:

Tourism Marketing and Promotion

Upside:

This is a major economic area, where there is wide expectation that there would be an Implementation Body, where there is clear advantage and where it would build on strong existing co-operation on the 'Brand Ireland' campaign and where leading tourist interests in the North would welcome an all-island body

Downside:

There is a risk in putting this area first in the priority order, because there have been a number of indications that Unionists may resist it, because they feel it would smother Northern Ireland's distinctness and Britishness and feed the nationalist view that a single island should be united in a single state.

Points on Type of Model Envisaged

The focus on tourism marketing and promotion, leaving out product development, avoids the risk that the South might find itself paying the bills for the North's efforts to make up its lag in tourism product. The possible downside of this is that a feature that would attract the North would be omitted, perhaps reducing the incentive to the Northern Ireland tourism industry to press the Unionists to accept an Implementation Body in the tourism area.

The concentration on tourism marketing, leaving out also such areas as regulation of tourism accommodation could possibly lead to Bord Fáilte and the NITB remaining in existence, to discharge the residual functions. Northern Nationalists might see this as a less than fully serious approach to all-island integration.

The advantages and disadvantages of different structures for a tourism body are teased out in paragraph 8 of this note.

Trade promotion and Business DevelopmentUpside:

The final form of this to which we aspire - a full Enterprise Ireland on an island scale - would be widely seen as a body of major significance, looming large in major sectors of the economy - industry and services. Development of these sectors is a domain in which the South is generally perceived as having done well and this could act as an attraction to the Northern business sector to favour such a body.

Downside:

Again, as with tourism, there is a risk in putting this area so high on our priority list. The risk is of failing to get it, essentially because of likely Unionist resistance to this area, for the very reason that nationalists would want it i.e. the significance and substance of the area. Moreover, the Northern official side is also likely to resist it, because (1) there is no ready NI counterpart to Enterprise Ireland and (2) the Department of Economic Development fear they will lose too much of their present bailiwick to North-South bodies.

At official level in the South, there may be less than total enthusiasm for the proposal because (a) they have just finished the difficult merger involved in setting up Enterprise Ireland, which is not yet bedded down and (b) the second, more favoured option of starting with a Trade Promotion and Science and Technology Development Body would involve unbundling the functions just merged in Enterprise Ireland and going into reverse on the entire firm-focused one-stop-shop concept involved in Enterprise Ireland.

ROINN AN TAOISIGH

Uimhir.....

In spite of themselves, Southern Departmental officials might have a tendency to fail to give the strongest advocacy in the face of any Northern resistance to having a body in this area.

Points on Type of Model Envisaged

The points previously made about the advantages and disadvantages of different options for the structure of a Tourism Marketing body also have application in the area of business development (including S and T) and trade promotion. Time constraints may leave little choice but to go for the second of the two options set out in Annex 2 to the Memo. In this case, it would be very desirable - from a nationalist standpoint - to have included in the founding agreement for the body an agreed and clearly timetabled schedule for the transformation of the body into the full Enterprise Ireland model but practical reasons will make it quite difficult to nail down such clear stages of transformation.

Strategic Transport Planning

Upside:

This again is an area where there would be widespread expectation of an Implementation Body, against the background of the constant pressure from business for the better planning of transport links on the island and for major improvements in the transport field. Reflecting this there would be strong business support in Northern Ireland for such a body. The transport area reaches into very wide sections of the economy and of society.

Downside:

The strategic transport planning role would involve only a relatively small staff, while the ancillary operational areas proposed to be grafted onto the body, while not insignificant, are scarcely the commanding heights of the economy.

EU Programmes Body

Upside:

This again is an area where many groups and people would expect a body to operate under the North-South Ministerial Council. To have an all-island body dealing with certain EU programmes and initiatives would be going with the grain of European Commission thinking, especially about the management of INTERREG. As such, it

ROINN AN TAOISIGH

Uimhir.....

could help to advance our wider interests as regards the Structural Funds, particularly if the Government opt for the regionalisation approach.

Downside:

The staff employed in such a body would be relatively small. There is not a close congruence between the Peace Programme and INTERREG areas, which essentially are managed by Department of Finance personnel and LEADER, which is looked after by Department of Agriculture people, so that it would probably be necessary to have a separate division of the body handling LEADER.

The Northern side, at official level, were initially resistant to such a body but there has now been an indication that they could perhaps live with one.

Points on structure

The most appropriate structure is perhaps an Executive Agency, drawn largely from the relevant personnel in the two Departments of Finance and Departments of Agriculture and the development personnel currently attached to the EU programme. There would, however, be scope for having the social partners and the community sector, at grassroots level, involved in a consultative forum, as at present on the EU Peace Programme.

Training and Employment

Upside:

This again relates to an important area the economy, which reaches into society at grassroots level, including disadvantaged communities where, in Northern Ireland, Republican and Loyalist Paramilitaries have largely been recruited. It would build on existing co-operation between FAS and the TEA, for which a cross-border unit already exists.

In the longer term, a full-scale merger between FAS and the TEA would be a large organisation, looming large on the economic and political landscape, with a big budget and major employment.

Downside:

Pending the harmonisation of qualifications, North and South, that would be necessary for a full scale merger, the body would have to start off a good deal smaller. From the Irish Government perspective, it would then be necessary to try to include a timetabled phased schedule towards a full scale merger in the founding agreement but time constraints may make it hard to get the necessary specificity into such agreements.

Promotion of the Irish Language

Upside:

Sinn Féin attach great emphasis to a body in this area and the SDLP are also supportive although they consider having it as part of a wider arts body. The Department of Arts, Heritage , Gaeltacht and the Islands strongly disagree, as would I - the weak state of the language means that it requires a dedicated body. An Irish language body would thus have strong resonance for Northern Nationalists.

Downside:

It can be argued that much of the aspirations of Northern Nationalists for an enhancement of the position of Irish in the North could be attained on foot of the specific Irish Language provisions of the Good Friday Agreement and the subsequent UK announcement to sign up for Part III of the European Charter, as regards Irish in Northern Ireland - and thus that it is a waste of one of the six Implementation Bodies to devote it to the Irish language.

There is also a concern that the weaker regime as to Irish that will always apply in the North - since most Unionists will not embrace Irish - could 'contaminate' the stronger status of Irish in the South - but this can be avoided if the body's remit is purely promotional, planning and policy with policing functions as to the status of Irish and services through Irish (as envisaged in the South in the proposed Bille Cearta na Gaeilge) being functions of other bodies or persons.

Environmental Protection

Upside:

This is an area of great interest to a wide public, North and South. Many would see the environment as an integrated whole on an island such as Ireland - although unionists may be expected to argue that , say, river pollution in West Cork has no effects across the border. There is a significant block of functions that could be vested straight away in an all-island body.

Downside:

Because of the need to harmonise legislation and approaches, North and South, the initial form of the body would fall far short of an all-island Environmental Protection Agency and thus might not be seen by nationalists as very substantive. Certainly it would be more a planning, co-ordinating, monitoring and research body than an operational one, as many would understand the latter term.

ROINN AN TAOISIGH

Uimhir.....

It would be necessary to try to include a phased, timetabled schedule for transformation into a fully merged, full scale EPA over time and this would not be easy to negotiate - but perhaps less difficult than in some other areas where this issue arises.

Inland Fisheries, Inland Waterways

Upside:

Bodies in both these areas would employ reasonably large staffs and would command substantial budgets. Particularly in regard to inland fisheries, they would impinge on wide publics, North and South, and there is likely to be little popular opposition on the Northern side to the merger involved. The Northern Ireland Departments and authorities relevant at official level, appear to be very positive towards the idea of all-island bodies.

Downside:

Bodies in the these areas may be perceived by Northern Nationalists as soft options, far from dealing with the commanding heights of the economy.

10. The proposed approach to the 'second six areas' i.e. those for common policy decided in the North-South Ministerial Council but separate (nevertheless presumably closely co-ordinated) implementation through existing machinery in the two jurisdictions is set out in paragraph 25 of the Memorandum. It involves widening out from narrow headings in the Good Friday Agreement to clusters of issues in the same broad area e.g. widening out from teachers' qualification and exchanges to a much more substantive cluster of issues in the field of education. This is a sensible approach but there should be no illusions about the likely Unionist position. This is likely to be very restrictive and to stick to the narrow headings in the Agreement, while excluding Arts and Community Development altogether, on the ground that these areas are not mentioned in the Agreement.
11. I am available today or early tomorrow morning to give you oral briefing if required.



12 October, 1998