



15 December 1993

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Dear Adam

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DRAFT VANDEMEULEBROUCKE REPORT ON FAIR EMPLOYMENT

As promised I now forward detailed notes on the draft Resolution and Report, for your use in discussions with MEPS, the EP Secretariat and the Commission.

Of course our present priority must be to suggest that the Parliament would be well advised, at a time when it has a heavy legislative agenda, to drop a subject on which it has a flawed report, on a subject of great complexity, dealing with an area where there are delicate political developments. They should avoid wading in where angels fear to tread. I understand that there are several MEPS aware of this side of the argument.

I should also note that I have talked to Jim Nicholson, who in turn has been in contact with Tom Spencer. I have also talked to Tom Spencer's office and hope to talk to him directly. I have not sent him, or any others, this material, and leave this dissemination to you. We have written it in a form where it could be handed out to friend and foe, but you may wish to consider its contents and discuss. I have also talked to Belinda Pyke, and asked her to keep you and me informed if she heard of any approach to the Commission. She said that she thought that it was likely to go to the Flynns, because of its origins in the Social Affairs Committee, but maybe you could check up on this.

As you will see we have only commented in detail on Vandmeulebroucke's approach, and not given a general overview. If you feel that this is appropriate, our general view is that, while Vandmeulebroucke has covered much of the ground, his report has a fundamental weakness in that it does not understand the problems of Northern Ireland's demography and its labour market, and the real difficulties this causes to reducing the differential between Roman Catholic and Protestant unemployment. The higher rate of unemployment among Catholics is due to the interaction over time of a complex array of factors. In addition to direct and indirect discrimination - which the Fair Employment legislation tackles with what we believe is perhaps the most most powerful provisions in Europe - factors influencing unemployment include:-



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- (a) the relatively high proportion of Catholics in occupations and industries such as construction where unemployment is typically high;
 - (b) the mismatch between areas of Catholic population concentration and available job opportunities;
 - (c) the relatively high proportions of Catholics in the age-groups most affected by unemployment;
 - (d) the under-representation of Catholics amongst those with educational and vocational qualifications - particularly in scientific and technological subjects; and
 - (e) a reluctance among Catholics to seek employment in security-related occupations.

While Government policy can seek to deal with certain aspects of these factors, clearly it is a complex task, with no rapid or easy solutions.

Further, the unemployment differential - the ratio of Catholic and Protestant unemployment rates - is affected, in an arithmetic sense, by three factors which can vary with relative independence:-

- (i) the proportion of the economically active population who are Catholic;
- (ii) the proportion of those in employment who are Catholic; and
- (iii) the overall rate of unemployment.

All this takes place in the context of relatively rapid population growth, but also with swings between emigration and immigration, potentially varying between the two communities. Changes in any of the above factors can alter the unemployment differential. Awareness of this and of the range of factors which underpin the difference in the rates of unemployment such as those which I have described above, calls into question the meaningfulness of using changes in the unemployment differential as an indicator of progress towards employment equality. Yet it is this indicator which is central to the draft Report's thesis.

I apologise for the complexity of this, but the argument is difficult. The short answer is that there is no lever - other than forcing Protestants out of jobs and replacing them with Roman Catholics, thereby going against fundamental principles - that will suddenly change the situation. No country of which we are aware has found a rapid solution. In these circumstances to call on the Commission to examine how the EC funds for the next six years can be made conditional on significant improvements, through setting time frames and objectives, in the situation of the Catholic community, is totally unrealistic, as well as going beyond what we understand are the Commission's powers.

I hope this is of use. I would be very happy to discuss, and in particular examine how best to continue our work with the Parliament.

Yours
Laird

Best wishes
Chris

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COMMENT ON, AND SUGGESTED AMENDMENTS TO, THE RECOMMENDATIONS IN
MR VANDEMEULEBROUCKE'S DRAFT REPORT TO THE EP'S SOCIAL AFFAIRS COMMITTEE

1. The second indent of the preamble refers to the Directory of Discrimination. It is odd that this document receives such prominence in the report, even before any reference to the law of the land. The Directory was published by a small, completely unofficial group of MacBride activists in Northern Ireland and it needs to be read with this in mind.

Suggested amendment:

Either delete the reference to the Directory of Discrimination altogether from the preamble

Or at least put it after the two references to the laws currently in force in NI.

2. Point A. in the preamble does not acknowledge that the position of Roman Catholics in certain areas of employment (as opposed to those who are unemployed) has improved quite dramatically in the last 20 years.

Suggested amendment:

Amend "Whereas British fair employment legislation has not succeeded in bringing about any substantial improvement in the employment situation of Northern Irish Catholics"

by changing "employment" to "unemployment".

On point C amend to read "whereas Northern Irish Catholics are 2.1 times more likely to be unemployed than Protestants".

3. Recommendation 2 describes the fair employment legislation as "technically speaking" of a very high order. In English this sounds rather strange, and might even hint at a weakness in the implementation. The 1989 Act is very thorough and is being rigorously

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implemented by both the Fair Employment Commission and the Fair Employment Tribunal. The Act is in place on the statute book and it is working.

Suggested amendment to Recommendation 2:

Delete "technically speaking".

4. Recommendation 3 should be changed to "whereas anti-discrimination legislation over the last 20 years has not brought about any substantial improvement in the position of unemployed Northern Ireland Catholics".
5. Recommendation 4 regrets the failure by the Government to set objectives and timeframes for reducing Roman Catholic unemployment.

This recommendation, unless accepted in the most general terms and over a long period, would prove practically impossible. Ideally it should be avoided as a recommendation. There are two reasons for this. Firstly, if radical change is being sought over the short-term, the reference to Roman Catholic unemployment, as opposed to unemployment generally, clearly implies some form of preferential treatment in the allocation of jobs which would override appointment on merit. Secondly, the Northern Ireland economy does not operate in isolation from the rest of the world. In particular, the province's economic performance follows closely the economic cycle in the rest of the UK. The Government cannot allow itself to be drawn into the trap of committing itself to reduce unemployment when so many other outside factors influence it.

6. Since legislation needs to be assessed by HMG, Recommendation 5 should be changed to read "Wishes existing legislation to be assessed in the light of the expertise of acknowledged specialists, both local and international".

7. Recommendation 6 states that "Northern Irish Catholics see the worldwide 'MacBride Principles' campaign as a great source of support in overcoming their problems".

The report produces no evidence to back-up this statement. The campaign is certainly not "worldwide" - it has very little support outside the United States - and while Roman Catholics in NI obviously want to see fair participation in employment (as does the Government) it seems fanciful to say that they derive "great support" from it. The nature of this support is far from clear and it is doubtful if there is any objective evidence for it.

Furthermore there are no "moral principles" in the campaign which do not also lie behind the fair employment legislation.

Suggested amendment to Recommendation 6:

Delete "a great source of support in overcoming their problems and endorses the campaign's moral principles"

Substitute "assisting in overcoming their problems".

8. Recommendation 7 is acceptable in so far as the strategic aim of the NI Structural Funds Plan is to "promote economic and social cohesion within Northern Ireland and relative to the other regions of the European Community" (attached final Chapter 4 of the plan setting this out in detail).

Furthermore, the fair employment dimension is acknowledged by HMG in the Plan as forming an essential part of the overall framework of Structural Funds spending, just as it does for all Government expenditure. As the Plan makes clear, this is particularly important

in Northern Ireland where HMG is committed to eliminating all unlawful discrimination in employment and securing fair participation in the workforce by both the Protestant and the Roman Catholic communities and by both men and women. To that end, the Structural Funds proposals were also reviewed in the context of the Governments Policy Appraisal and Fair Treatment Initiative which is designed to ensure that considerations of equality, equity and non-discrimination are from the outset built into the preparation of policy proposals.

9. Recommendation 8 has to be rejected. Firstly, as explained in relation to Recommendation 4 neither HMG - nor the European Union - has control over the level of employment in the Province, and therefore timeframes and objectives are impossible in relation to employment. Secondly HMG has as explained above, effective mechanisms to ensure that everything that can be done is done. The Structural Funds will provide valuable assistance in this work, but if there was an attempt to develop an unimplementable conditionality clause the situation would deteriorate. Thirdly, the Commission has no authority under the Regulations (and indeed may not have the ability under the Treaty of European Union) to set such a condition. If it sought to introduce it, this would have to be agreed by all Member States. The revised legislation maintains the general principle of ensuring compatibility between measures financed by the Structural Funds and other Community policies, which is accepted by Government. Finally, as the Vandemeulebroucke report fails to acknowledge, from 1990-1992 there has been a significant closing of the gaps between Protestants and Roman Catholics in employment when set against the respective proportions in the economically active population.

REPORT

ANALYSIS OF THE EXPLANATORY STATEMENT IN MR VANDEMEULEBROUCKE'S DRAFT REPORT TO THE COMMITTEE ON SOCIAL AFFAIRS, EMPLOYMENT AND THE WORKING ENVIRONMENT

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1. The fifth paragraph begins with the sentence "There were significant deficiencies in the operation of the 1976 Act". This should however be preceded by the following, "Despite the successes of the Agency, particularly in promoting equality of opportunity in the public sector, there were significant deficiencies

Without this qualifying statement the draft report reads as though the 1976 Act was a total failure, which is incorrect.

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2. The second paragraph states that "... the objectives of the 1976 Act were not being achieved". It is important to add "as quickly as had been hoped" since, particularly in the public sector, progress had been achieved.
3. In the same paragraph it is stated that "Figures .. showed that Catholics were bearing the brunt of soaring unemployment". Rising unemployment was however a consequence of the general economic situation, and while by the nature of the jobs lost the Roman Catholic community may have suffered disproportionately, this problem could not have been altered by any Fair Employment legislation. The text should be amended to read, "In addition, due to rising unemployment in the growing economic recession, Catholic unemployment was rising".

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4. The fourth paragraph states that the MacBride Principles pinpoint "specific action that employers could take to ensure that they did not discriminate on the basis of religion". Unfortunately this is precisely what they do not do. The Principles are vague and ambiguous. This is hardly a satisfactory position for employers to find themselves in. The text should be amended to read ". nine Principles setting out general approaches which employers .".

 5. This paragraph refers to the promulgation of the Principles in 1984 but Annex I sets out the Principles as amplified in 1986. This should be made clear in the text of the report, by stating "(see Annex 1 which sets out the 1986 amplification of the Principles)".

 6. "The Principles call for affirmative action, which is legal, rather than positive discrimination or quotas". This is a matter of opinion and interpretation. Certainly in their unamplified form (which is how they are reproduced in state legislation in the US) they could be interpreted as advocating quotas. Unless the report discusses this problem in detail it would be best to omit this sentence.

 7. This fourth paragraph ends by suggesting that it was the failure of HMG to respond to calls for the strengthening of the 1976 Act which led to the development of the Principles. This is a misrepresentation of the facts. The Government acknowledged in 1985, based on its own published statistics, that its approach to employment equality needed to be made more comprehensive, consistent and effective. There were also other influences on the Government such as the views of ROI, the SDLP, the Labour Party and the FEA. To say that calls for strengthening of the Act had been "persistently ignored" is something of an overstatement. Amend to read, ". and emerged at a time when there was a growing consensus that the 1976 Act had to be strengthened".

8. Similarly in the fifth paragraph to say that the MacBride Principles were responsible for re-opening the debate on fair employment gives unwarranted weight and importance to a campaign which, at most, was only a contributory factor in the decision to introduce further legislation. Rewrite the paragraph to say:

"The MacBride Principles were part of the groundswell which argued for the re-opening of the question of discrimination in Northern Ireland, and, together with the British Government's own examination of the issue, led to change. But one of the most persistent ."

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9. The first paragraph refers to the amendment of the Bill during its passage through Parliament, as though this was an unusual event, and the clear implication is that HMG was trying to get away with another weak piece of legislation. This is quite wrong. The sentences "During its passage ... the House of Lords" should be deleted.

10. Under the heading "3. The current state of affairs" the reference in the second line should be to Annex II not Annex I.

11. The description in the same paragraph of "The Directory of Discrimination" is somewhat disingenuous. This document - it hardly merits the description "study" - is a highly selective and partial accumulation of facts and figures mainly extracted from Fair Employment Agency reports which were published several years ago. None of the facts are actually wrong but the Directory makes no attempt to place them in the context of the FEA reports or to draw attention to the progress that has been achieved in many cases since the reports were prepared.

12. In the second paragraph the reference to Annex 2 should be to Annex III.
13. In the third paragraph "Department for Economic Development" should read "Department of Economic Development".
14. To say that the presentation of the facts in the Directory of Discrimination was open to criticism "in one or two places" grossly understates HMG's concern about this document (see paragraph 11 above). The report should be amended to read "although they argued that the presentation of the facts were highly selective".
15. The report states that "It is an undeniable fact that Catholic employees are subject to discrimination in both the public and private sectors". Based on the findings of the FET it would be equally true to say that Protestants were also subject to discrimination. The report here, as elsewhere, quite wrongly equates disadvantage with discrimination. Roman Catholics are at a disadvantage in the labour market compared with Protestants but there is a whole range of social and economic reasons for this; it is only partly due to discrimination. The text should be amended to read "It is an undeniable fact that the Catholic community has been disadvantaged in employment, in both the public and private sectors, by, among other factors, discrimination, and significant change is required."
16. In the fourth paragraph (line 4) "May 1992" should read "May 1993"; and in line 6 the bracket should be closed after 60.9%.
17. The final paragraph on page 7 begins with the sentence "However, the share in the labour force is not, of course, the only significant criterion" but fails to qualify the word "criterion". It is

suggested that this should be amended to read "criterion of disadvantage" and thus make it clear that it is not a criterion of discrimination.

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18. The table of male unemployment rates is taken largely from a DED consultative paper published in 1986. The use of rounded percentages gives a slightly misleading picture. In fact the male unemployment differential has fallen from 2.6:1 in 1971 to 2.2:1 in 1991. (The 1993 figures quoted are from the 1991 Labour Force Survey.)

19. It should also be pointed out that the interpretation of the differential in the table as the "Number of Catholics per 100 Protestants" is incorrect. What is being quoted here are relative rates of unemployment not absolute numbers of Protestants and Catholics. The manner in which the differential is defined in the table confuses the absolute size of a community with its relative advantage/disadvantage in employment terms. The following table would be correct.

Unemployment Rates for Males: 1971-1991

		Protestant	Roman Catholic	Unemployment Differential
1971	Census	6.6%	17.3%	2.6
1981	Census	12.4%	30.2%	2.4
1983-84	CHS	14.9%	35.8%	2.4
1985-87	CHS	14.2%	35.5%	2.5
1991	Census	12.7%	28.4%	2.2

Sources: CHS = Continuous Household Survey

20. The first line states "Clearly the situation has not changed much in the past 20 years". While in relation to unemployment the change has not been that large, it is an important development. Further the claim is not true in relation to employment. In addition, the paper, while quoting the DED document of 3 September 1992, in detail fails totally to deal with the difficult demographic issues and labour market problems which make the connection between the undoubted improvement in Catholic employment and Catholic unemployment levels loose. For this reason the text should read:

"Clearly while Catholic employment has improved, and there has been an encouraging trend since the introduction of the 1989 Act, demographic and labour market problems have made changes in relative unemployment levels slow."

21. In the second paragraph the female differential should read 1.8, not 1.5.

22. In the last paragraph the 1989 Act is described as "technically speaking" one of Europe's most stringent anti-discrimination laws. The words "technically speaking" are superfluous and should be deleted.

23. The first paragraph says that the test of the 1989 Act is its capacity to change the reality of religious discrimination. It is not entirely clear what this means. Since the rapporteur has failed to understand the demographic and labour market issues, and the resulting gradual readjustment of unemployment problems, his argument is confused. It would be better to say that the test of

the law is "its capacity to bring about fair participation in employment by both communities and to provide redress for those who have been victims of unlawful discrimination."

- 24. This paragraph ends with the sentence "The situation seems to suggest that it is not able to do so, and that its toughness is more apparent than real". There are no grounds for this assertion. Through its powers to prosecute and disqualify employers, the FEC has achieved 100% compliance by firms in registration and monitoring. Voluntary undertakings to promote affirmative action have been obtained from firms which have been investigated. Substantial awards of compensation have been made to those who have suffered discrimination. There has been a steady and significant increase since 1990 in the Roman Catholic proportion of those in monitored employment. The final sentence should be removed since it is clearly wrong. It could be replaced by the correct comment that:

"While there is clear evidence that the law is tackling discrimination in employment, the question must be asked how quickly this will filter through to improving the Catholic unemployment situation, and whether more can be done, by the legislation or other policies, to remedy this."

- 25. In relation to the comments contained in the second paragraph it has to be emphasized that the unemployment differential is an insensitive and potentially misleading indicator of progress towards employment equality and that the differential is not synonymous with discrimination. The text should be amended to read:

"... suffer unemployment as Protestant males. However the unemployment differential is not a sensitive measure of discrimination and it is unlikely to be affected significantly by the fair employment legislation. Indeed, sections of the

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Department of Economic Development themselves confirm in confidential documents that the disparity in unemployment rates .".

26. The third paragraph speaks of "a number of errors" in the 1989 Act which had then to be altered "again". This is wrong. Because of the need to protect individuals, the confidentiality provisions concerning the disclosure of monitoring information were tightly drawn. The Act had to be amended (once!) to allow the release of relevant information for the purposes of Tribunal proceedings.

27. The rapporteur has misunderstood the Tribunal figures which were given to him. These covered the period 1 January 1990 - 30 April 1993. During this period 19 (not 17) cases were allowed ie there was a finding of discrimination; but in 82 cases there was a finding of no discrimination. In addition 24 cases were settled and 285 cases were withdrawn. It should be noted that even the withdrawn cases represent a satisfactory outcome to the extent that the complainant decided in the circumstances that there was little to be gained in pressing the case to the Tribunal.

28. The Government has announced a goal of 25% Catholic representation in the most senior administrative grades in the Northern Ireland Civil Service by the end of 1996. This is considered to be a more realistic expectation of what might be achieved in this timescale. It would be unreliable and speculative to offer a projection of when the proportion of Catholics at this level in the Civil Service might match the proportion of Catholics in the total population (40%). The Government believes that it is unrealistic and fallacious to use overall population proportions as the benchmark for fair participation between the two sections of the community in each and every area and level of employment without regard to considerations such as qualifications, age and experience. The fourth and fifth sentences should be deleted and replaced by:

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"The declared objective, though apparently quite modest, would represent a considerable improvement on the current position. It is presumably only an initial target and further objectives and time frames will be set in future years as the Government seeks to achieve fair employment on a measured and sustained incremental basis".

29. The fourth paragraph describes the Government's failure to set time frames and objectives, as recommended by SACHR, as "one of the major failings of the 1989 law". It is hard to understand how this can be described as a failing. The sentence should be omitted and the comment made that "The Government has made it clear that reduction of the unemployment differential depends upon a number of factors, not least of which is the UK economic climate, and that it would be foolish in the extreme to set a goal whose achievement is likely to be affected by so many outside influences."

30. On a point of detail, the Government has not promised to evaluate the legislation every five years (fifth paragraph). The commitment is to review it five years after coming into operation, ie in 1995.

31. It is untrue that the Central Community Relations Unit consists of only three full time civil servants. To date, three officials in CCRU have had responsibility for this particular task, but, in addition, there are several other officials in other arms of Government (eg the Policy Planning and Research (Unit) who are engaged on substantial tasks connected with the review. In 1991 the proceedings of a seminar were published and in November 1993 the first of a series of occasional papers on research commissioned in the context of the review were published. In conducting the review, CCRU will commission and publish research from independent reputable academic specialists. It is considered that this will ensure a sufficient degree of independence in the review and that external involvement is not

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necessary. The three final sentences of this paragraph could be omitted and replaced by: "To ensure the effectiveness and credibility of this review, the CCRU should draw on the expertise of acknowledged specialists, both local and international".

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32. The first paragraph refers to MacBride legislation having been passed in 13 US states and a number of cities, and implies that no firms can get "government support" unless they endorse the Principles. This is true only in those states and cities where there is contract compliance legislation. Many of the MacBride bills do not go as far as contract compliance. Amend to read "companies based in those states or cities which have contract compliance legislation are obliged to endorse .".
33. The second paragraph claims that Roman Catholics see MacBride as "a source of great support in the face of their problems". This statement must be treated with some scepticism. By and large the MacBride campaign is not an issue in Northern Ireland; the activists are in the United States. John Hume for example has spoken against the MacBride campaign and its effect on investment. Amend to read "it cannot be denied that some - but certainly not all - Northern Irish Catholics .".
34. This paragraph also contains the extraordinary assertion that "Bombardier forced Shorts to recruit more Catholics". Quite apart from the fact that such action would be directly discriminatory and completely unlawful, it fails to acknowledge that Shorts has been pioneering affirmative action in NI since 1983. It was not bought over by Bombardier until October 1989. Therefore, after "more Catholics", add "However Shorts had been pioneering affirmative action since 1983".

35. The fourth paragraph refers to the new Structural Funds Plan Northern Ireland will receive EC subsidies to the value of £1 billion approximately over the period 1994-1999. This is considerably less than the £1.5 billion over the period 1993-97 suggested by the Report.

36. The fifth paragraph states that the decision for Objective 1 was justified on the basis of the conflict. Northern Ireland's justification was based on low and falling GDP but undoubtedly its unique political problems are an important element in the Community's view. It is however important to remember that the creation of employment is essential to improving the unemployment situation. The new Structural Funds Plan covers the period 1994-1999, not 1993-1997.

37. The seventh paragraph says that "EC aid must meet specific fair employment objectives" but the report does not indicate what these objectives might be and simply says that the Parliament could ask the Commission "to make appropriate arrangements". Were this suggestion to get off the ground it would be extremely damaging to Northern Ireland. Any suggestion of conditionality of EC funding must be resisted strongly. Apart from anything else, the Roman Catholic community would be likely to suffer disproportionately from the withdrawal of EC funds. Those proposing this line have to indicate how conditionality would work within a law which they have described as "of a very high order". They also have to show how a Government can set "very strict time frames" and "specific fair employment objectives" which can be achieved lawfully, and which, within the complex demographic and labour market context of Northern Ireland, will be effective. They also need to demonstrate under which legislation the Commission can operate. In the light of the impossibility of this approach, and its inappropriate nature, the text should be amended to note that:

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"EC aid should be used alongside existing Northern Ireland programmes, to seek to ensure fair treatment for all, and with the aim of reducing the differential level of Catholic and Protestant unemployment. The Committee welcomes the fact that the Northern Ireland Plan emphasises this role strongly, and asks the Commission to ensure that the issue is reflected appropriately in the Northern Ireland CSF."

38. The last paragraph of the report refers to the need for a political agreement in NI and states that it is only when this is achieved that there will be a climate in which discrimination can be eliminated. If this is the rapporteur's view, then it seems grossly unfair to make EC funding conditional on the elimination of discrimination. This section should therefore be dropped.