

PRIME MINISTER

EURO ASSEMBLY AND NORTHERN IRELAND

Although the early reportage of the Euro Assembly's plans for hearings has been acceptable I fear it will not be in later news bulletins and in the press tomorrow. A great deal of wedge driving is in train.

The problem, as you know, arises from the fact that Mr Prior did not stick to the statement issued to the press and left out the sentence: "Against this background the Government will give no (formal) assistance to the Committee in drawing up its report."

At the Lobby I was questioned, as was the Lord President before me, about this in view of the line I put out at the morning Lobby.

I said I could not explain why Mr Prior had not been as categorical as I said the Government was on not assisting the Committee. But there was no doubt about the Government's attitude. It was as follows:

"The Assembly has no right to discuss the internal political affairs of a member state.

The Assembly has itself recognised that it has no competence to make proposals to changes in the Constitution of Northern Ireland. Any conclusions the Committee may reach can have no practical effect.

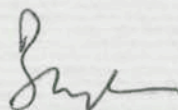
We will not provide any assistance to the Committee in drawing up its report.

We make every effort to ensure that Government policy on Northern Ireland is understood by our partners and in the Assembly."

On the last point I made it clear we would take every opportunity generally to get over our policies and position to MEPs. But there was no question of co-operation or assistance in an exercise which was beyond the Assembly's competence. There were many people who felt it was very important that the Assembly should be put in its constitutional place; some felt it was getting too big for its boots.

Under questioning two main points arose:

- why did I refuse to call the Assembly a Parliament when Mr Prior made a point in the House/^{of} calling it a Parliament? - Because some did not recognise it as a Parliament;
- surely the Assembly had competence to discuss economic issues? - Yes, we might be prepared to talk to them about shovelling money over for Belfast housing but that is not what they intend to talk about; I subsequently sent over to the Lobby the terms of the 3 Assembly resolutions.



B. INGHAM

24 February 1983

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Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister

Preliminary advice. War

is continuing.

24 February 1983

A.J.C. 25/2

John

I have passed this comment on by phone

Dear John,

European Parliament and Northern Ireland

You asked for advice on two questions:

- i) What legal basis have we for saying that the European Parliament has no right to discuss the internal political affairs of a Member State; and
- ii) What action can the United Kingdom take to stop the Parliament doing this.

I enclose a note giving a short legal answer to these two questions. Its contents have been discussed at official level with the Law Officers' Department, the Treasury Solicitors and the Northern Ireland Office, but should not be taken as a definitive expression of their views. There may be a case for a fully-considered paper on the complex legal issues raised by this case.

The Political Affairs Committee of the Parliament have so far decided to make a report: we do not know yet how they will set about it. When the rapporteur appointed by the Committee produces his report, it will have to be discussed by the Committee. Only when the Committee has reached agreement will a draft Resolution be put to the Parliament as a whole. So it could in fact be some time before we know whether we are likely to be faced with a formal European Parliament Resolution on this question, and there will be a number of intermediate stages at which we will have opportunities to influence developments.

I am copying this letter to the Private Secretaries to the Lord Chancellor, the Attorney-General, the Secretary of State for Northern Ireland and Sir R Armstrong.

Your ever

John Holmes

(J E Holmes)
Private Secretary

A J Coles Esq
10 Downing Street

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1. (i) The European Parliament, as an institution of the Community, is required under Article 4 of the Treaty of Rome to act within the limits of the powers conferred on it by the Treaty. These powers consist of certain advisory and supervisory powers which are specified in the Treaty. They clearly do not extend to making a report on the internal political situation in the territory of a Member State.
- (ii) The answer to the second question is more difficult and must be subject to the views of the Law Officers. Under Article 38 of the ECSC Treaty, the European Court has power, on application by a Member State, to declare an act of the European Parliament to be void. In the present case, however, the action of the European Parliament of which we are complaining, consists of a decision of the Political Affairs Committee to make a report on the situation in Northern Ireland. Such a decision, which is essentially one internal to the Parliament, would not constitute an 'act' of a Community institution in the sense of the term used elsewhere in the Treaties and which has been held by the European Court as meaning an act which produces legal effects. Indeed, it is difficult to see how any decision of the European Parliament on this matter, which at worst would be likely to take the form of some kind of resolution, could constitute an 'act' and thus be capable of adjudication before the European Court. One must, therefore, advise that any action which the United Kingdom might bring against the European Parliament before the Court on the basis of Article 38 of the ECSC would almost certainly fail on this preliminary point.

2. Given that the European Parliament in preparing a report on the situation in Northern Ireland would, in our view, be acting ultra vires, it would be perfectly proper for the United Kingdom to refuse to cooperate with the European Parliament, eg by declining to provide written evidence or for officials to give evidence. Urgent consideration will need to be given as to whether there are any other steps which the United Kingdom could lawfully take to frustrate the work of the Parliament in this matter.

24 February 1983

MR JAMES MOLYNEAUX (Antrim South): To ask the Secretary of State for Northern Ireland, if he will make a statement on the constitutional implications of the EEC's decision to interfere in the internal affairs of Northern Ireland.

MR PRIOR

The Political Affairs Committee of the European Parliament decided yesterday to make a report on the situation in Northern Ireland on the basis of 3 motions for resolutions before it. No decision was taken on a fourth resolution, in the name inter alia of the hon Member for Antrim North.

The Government's view on this matter is clear. My hon friend the Member for Pentlands stated it in the House on Monday. The European Parliament has no business to discuss the internal political affairs of a member state. These resolutions, insofar as they cover such affairs, are therefore in our view not within the competence of the Parliament.

Moreover, any conclusion the Committee may reach can have no practical effect. Against this background the Government will give no [formal] assistance to the Committee in drawing up its report.

The decision of the Political Affairs Committee of the Parliament can have no constitutional implication for the United Kingdom. The Government was not in a position to prevent yesterday's decision, which we regret. It believes that neither its position nor that of this House is affected.

If those outside our control see fit to undertake enquiries, however misguided their decision may be, it does not follow that the formal position has been changed. It remains the Government's wish to promote the greatest possible understanding of its policy in Northern Ireland amongst our partners in the European Community in the Parliament and elsewhere, but this decision will do nothing to advance such understanding.

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FM DUBLIN 251555Z FEB 83

TO IMMEDIATE FCO

TELEGRAM NUMBER 64 OF 25 FEBRUARY 1983

PS TO PM. NO 10. DOWNING ST.

INFO IMMEDIATE NIO BELFAST, PRIORITY UKREP BRUSSELS, UKDEL STRASBOURG

WASHINGTON, BIS NEW YORK

INFO SAVING OTHER EC POSTS

UKREP BRUSSELS TELNO 785 TO YOU:

EUROPEAN PARLIAMENT AND NORTHERN IRELAND:

REACTIONS IN THE REPUBLIC OF IRELAND

1. TODAY'S IRISH TIMES REPORTS THAT MR BARRY SAID LAST NIGHT THAT THE EUROPEAN PARLIAMENT'S DECISION WAS IN LINE WITH THE GOVERNMENT'S VIEW OF NORTHERN AFFAIRS AND THE ROLE OF EUROPEAN INSTITUTIONS. HOWEVER, THE FOREIGN MINISTER IS ALSO REPORTED AS EMPHASISING THAT THESE WERE PRELIMINARY OBSERVATIONS. NO STATEMENT HAS BEEN ISSUED AND THE GOVERNMENT PRESS SECRETARY (PRENDERGAST) TOLD US TODAY THAT THE GOVERNMENT WOULD BE VERY HESITANT ABOUT MAKING SUBSTANTIAL COMMENTS AT THIS STAGE. THE GOVERNMENT CERTAINLY BELIEVED EUROPE SHOULD TAKE A HELPFUL INTEREST IN NORTHERN IRELAND (AS INDICATED IN DR FITZGERALD'S SPEECH IN BELFAST ON 27 JANUARY): BUT THIS PROPOSAL WAS STILL 'FAR FROM REAL'. IT WAS UNCLEAR WHAT MIGHT EMERGE FROM THE PROCEDURAL HOOPS IT HAD STILL TO GO THROUGH. MEANWHILE, THE GOVERNMENT WAS CAUTIOUS ABOUT BECOMING INVOLVED IN THE AFFAIRS OF 'ANOTHER PARLIAMENT'. HE LEFT NO DOUBT THAT HOWEVER LAUDABLY 'EUROPEAN' IN IRISH EYES, THIS PROPOSAL COULD BECOME DIFFICULT FOR THE GOVERNMENT TO HANDLE.

2. FIANNA FAIL'S FOREIGN AFFAIRS SPOKESMAN HAS WELCOMED THE EUROPEAN PARLIAMENT'S INITIATIVE AND SOME FURTHER OPPOSITION COMMENTS ON IT ARE LIKELY AT THE PARTY'S CONFERENCE THIS WEEKEND.

3. IT IS ENCOURAGING THAT THE IRISH GOVERNMENT IS PLAYING THIS CAUTIOUSLY. HOWEVER, THEY MAY WELL COME UNDER PRESSURE FROM FIANNA FAIL AND FROM THE SDLP. IN ANY MOVES WE TAKE IN RESPONSE TO THE EUROPEAN PARLIAMENT'S PROPOSAL, IT WILL BE IMPORTANT TO AVOID IF WE CAN ANY WHICH RISK EXPOSING INDEPENDENT DIFFERENCES OF APPROACH TO EUROPEAN INSTITUTIONS BETWEEN US AND THE IRISH GOVERNMENT.

FCO PLEASE PASS TO SAVING ADDRESSEES.

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NORTHERN IRELAND

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