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EUROPEAN COUNCIL, BRUSSELS

12/13 JULY 1976

DIRECT ELECTIONS TO THE EUROPEAN ASSEMBLY

Brief by the Foreign and Commonwealth Office

REFERENCES

- A Presidency Note on seats [to be circulated]
- B Current proposals for the distribution of seats
(FCO table)
- C Calendar for May/June 1978 showing UK preferences on
dates and public holidays in the 9 Member States
- D T/353/1/76 rev 1: latest text of draft Convention

INTRODUCTION

1. There is a general wish in the Community to take a decision on direct elections at this meeting. The necessary flexibility should now exist to reach agreement on the main question, that of numbers. The Council will have before it a paper from the Presidency setting out all the variants at present under consideration (to be attached as Reference A when received). If there is agreement on seats there may be an attempt to settle one or two other outstanding points such as the dates for the first elections, or questions arising out of the UK and Danish derogations. The European Council will presumably delegate to Foreign Ministers the

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task of finalising and signing the agreement as soon as possible.

OBJECTIVES

2. a) to secure agreement on the number and allocation of seats on a basis which will give adequate representation to Scotland and Wales vis à vis Denmark and Ireland. Our variant of the first Luxembourg Presidency proposal offers a good prospect of agreement. The Belgian proposal would also suit us, but is unlikely to win general support. We should try to avoid any less favourable formula.

b) to take a positive line in discussion of other outstanding issues if they are raised (including the date for elections and the UK derogation). We should stress our intention to join with other Member States in holding elections in 1978 if we can while keeping open the possibility of nominating UK members should this prove necessary. We should make clear (subject to Cabinet discussion on 8 July) that we no longer maintain any kind of overall reservation.

c) Should the question of the legal form of the agreement be raised, to stress our strong preference for a Convention, while not excluding totally the possibility of compromise should we find ourselves isolated. The legal problems should be referred back to experts.

d) In the event of a failure to reach agreement, particularly on seats, to make it clear that the fault is not ours.

ORGANISATION OF THE BRIEF

3. The remainder of the brief is arranged as follows:-

- Section I Seats (speaking notes and background)
- Section II The handling of the UK derogation (speaking notes and background)

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- Section III The date of the first elections (speaking notes and background)
- Section IV The legal form of the agreement (speaking notes and background)
- Section V UK reservations concerning political consultations (defensive speaking note and background)
- Section VI A commentary on the draft convention (background only)

SECTION I: SEATS

Speaking notes

4. Mr Crosland's message of 25 June to his Community colleagues explained a new proposal, derived from the first Luxembourg Presidency proposal. It represents an attempt to find a solution that might be generally acceptable. It may not be ideal for everyone. It is far from ideal for us as there are still wide discrepancies between the representation of the constituent parts of the UK and smaller countries with similar populations. Nevertheless, we believe that our idea could be a possible answer and urge other Governments to consider its advantages.

5. (If attempts are made to return to either of the Luxembourg Presidency proposals) I cannot agree to direct elections on this basis for the UK. We need to be able to give Scotland 9 seats which would be impracticable if the UK only had 72. But we also need to avoid too great a discrepancy between the seats we can give Scotland and Wales and the representation of Member States of comparable size. From this point of view

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the second version of the Luxembourg Presidency proposal is a considerable step backwards. The Belgian proposal and our own variant represent the limits of what would be acceptable to UK opinion.

6. (If complaints are made that we ignored the second Luxembourg Presidency variant) We regret if we gave the impression of brushing this aside. This was the result of a simple misunderstanding as to what forms of the Luxembourg Presidency proposal were on the table. But the fact remains that the second variant is not a possible starting point for us.
7. (If the Dutch seek to increase their share) We do not ourselves see difficulty in 25 seats for the Netherlands. The question is whether it would alter the balance of our proposal in a way that would make it unacceptable to other Member States. Our proposal was inspired by the wish to stay as close as possible to the Treaty framework, a point to which we understood the French to attach importance. Since we have a clear and simple proposal, should we not try to agree on that basis rather than embark on a series of detailed adjustments which ought in fact make agreement harder to reach? This is bound to be an element of rough justice in any solution.
8. (If the smaller countries suggest that they need more seats to prevent their being outvoted) This is not really relevant at the present stage of the Community's development. Smaller countries' interests are protected inside the Council of Ministers where they enjoy equal representation, and in any dispute between the Council and the Assembly the Council has the last word.

9. (If the Irish and/or Danes maintain that they should have somewhere near the same proportion of seats as they enjoy in the present Assembly) Our present proposals are a very modest move to proportionality which the Assembly itself has said must be an important criterion. Smaller countries' interests are in any case fully safeguarded by their representation in the Council of Ministers.
10. (If the French revert to their idea of the status quo in an attempt to break the deadlock) I could not agree to direct elections in the UK on this basis. Quite apart from the glaring disparity between the representation of Scotland and Wales and that of other Member States, there has already been considerable criticism of the size of constituencies even with an Assembly in the range of 350-400. Criticism in Britain of constituencies twice as large, would be fierce. I would not wish to hold up the Community if there is a general desire to go ahead on this basis but I am sure that the House of Commons will prefer to continue to nominate its representatives in the Assembly.
11. (If the Irish suggest that Northern Ireland should have at least 3 seats) It has been generally accepted that the allocation of seats within each country should be left for national decision. Our working assumption is that it would be difficult to move far from the distribution of seats at Westminster, but our Select Committee has still to look into this question and until it has done so the Government cannot take a final decision.

BACKGROUND

12. The Presidency have promised to circulate a paper (to be attached as reference A) setting out the six proposals

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concerning the numbers of seats which are regarded as being in play. The proposals which the Secretariat say will be included in this paper are given in the table at Annex B, which also indicates the possible allocation of seats to Scotland and Wales under the various proposals. The last column gives the variant of the Luxembourg Presidency proposal which we discussed with President Giscard and which was subsequently relayed to the other Member States in a message from the Foreign and Commonwealth Secretary.

13. Our talks with Giscard may have paved the way for an agreement along the lines of our latest variant of the Luxembourg Presidency proposal but there is clearly still some way to go. The smaller countries have shown a mixture of concern that matters were being decided over their heads and determination to retain some part of the favourable proportion of seats they currently enjoy, but we have had reasonably favourable reactions from the Germans, Belgians, Luxembourgers and Italians. Our chances of success will depend largely on how Giscard plays his hand. It is well worth pursuing our proposal which genuinely offers a good prospect of a reasonable settlement. If however it seemed tactically wise, we could indicate readiness to examine other proposals provided there is no worsening of the discrepancy between the representation of Scotland and Wales and the smaller Member States. If there were to be a move back towards the Belgian proposal, we could certainly accept it, but it seems unlikely in view of the critical French attitude. We should firmly resist any reversion to less favourable variants. If at the end of the day we cannot get what we want it will be for the Prime Minister to decide

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what is likely to be saleable in the UK. Our best chance of getting what we want seems to lie in taking a firm line from the start so as to divert pressures to compromise on to others.

14. The main opposition to our variant is likely to come from the Irish, Danish and Dutch. The Irish may argue that they acceded to the Treaty of Rome on the basis of their present percentage of seats in the Assembly and cannot, so soon afterwards, accept a significant reduction in that percentage. Dr FitzGerald is still holding out for 16 seats though he has shown readiness to discuss a lower number. There is no great public interest in the issue in Ireland, and Mr Cosgrave is not so personally committed. It seems likely that the Irish would come into line if isolated.

15. Dr FitzGerald has already raised with the Foreign and Commonwealth Secretary the question of representation of Northern Ireland. If Dr FitzGerald and Mr Cosgrave revert to the question during the Council it must be made clear that this is an internal matter for the UK Parliament and Government to decide. If the UK gets 70-80 seats, then Northern Ireland would only qualify for 2, whether on population grounds or by analogy with Westminster. There will be a problem to which Dr FitzGerald has drawn attention about the representation of the Catholic minority. But this is not a suitable subject for discussion in the European Council.

16. The Danes would like to have one seat more than Ireland. But they have indicated that their attitude will largely be influenced by the French.

17. The Dutch Ambassador told the PUS on instructions that the Dutch could not accept 22 seats in the context of our proposal. He pointed out that it would give them a worse percentage of seats than any other proposal so far considered and a ratio of seats to electors on a par with France. They regard this as unfair for a middle sized country. As far as our own needs are concerned we could accept 25 seats for the Netherlands, as the PUS hinted to the Dutch Ambassador, because the Netherlands is not directly comparable in size with Scotland or Wales. But, as the PUS also pointed out, we all have to take account of the French 'point of principle'. There is a danger of unravelling our proposal as a whole, if its logical balance is altered. We should clearly leave the Dutch to argue their own case and encourage them to accept our proposal in the interest of reaching agreement, but if it seems that a concession has to be made we might tentatively suggest that the Netherlands might be regarded as in an intermediate category between the four larger and four smaller states. But if the French are adamant we should try to persuade the Dutch to accept parity with Belgium which would be the case if existing numbers were maintained.

18. It is possible, in the event of a deadlock, that the French may revert to their status quo proposal claiming as they did at the last European Council, that this might break the deadlock. If so the Prime Minister will no doubt wish again to make it clear that he does not believe that the House of Commons would feel it worthwhile to proceed to direct elections on that basis, although we would not wish to hold up our other partners if they wished to proceed on that basis. We would continue to nominate.

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But this would be a thoroughly unsatisfactory outcome of the Council; and a serious effort to reach a solution on the basis of our proposal would be justified.

SECTION II: THE UK DEROGATION

SPEAKING NOTES

19. We must retain the possibility to nominate members in 1978 should this prove necessary. We will do our utmost to hold elections in the UK at the same time as elsewhere in the Community, and hope that we will not need to make use of the derogation. But the business of drawing up constituencies will inevitably take us longer than member states using a list system and we shall have important constitutional legislation to enact.

20. We would not wish any unavoidable delay in the UK to hold up elections elsewhere, or to call in question the validity of the Community agreement.

21. (If the French argue that they can for constitutional reasons only accept an agreement which is fully reciprocal) Our derogation would be strictly temporary, on a par with a transitional provision. It does not call into question the principle of the reciprocity of the agreement as a whole.

BACKGROUND

22. Some Member States, including the French and the Dutch, attach great importance to elections being held in the UK in 1978. They may well press the Prime Minister to drop the derogation agreed at the Rome European Council which would permit any Member State which found it impossible to hold elections in 1978 to nominate members at the first election. Less importance is attached to the Danish position simply /because

because Denmark is less important to the Community. The FM will want to make sure that we retain the right to go on nominating if necessary, while emphasizing that we will do our best to hold elections in 1978.

23. The texts which are at present under discussion but not agreed are set out at the end of the draft Convention at Annex D. The Danish text is of course designed to take account of the special position of wishing to keep open the option to retain a compulsory dual mandate and to combine Assembly elections with national ones. It would be inappropriate to get into a negotiation on texts at the European Council - this should be left for Foreign Ministers.

SECTION III: DATE OF THE FIRST ELECTIONS

TALKING POINTS

24. We will do our best to hold the first direct elections in the UK in 1978 at the same time as elsewhere in the Community, and we can agree to any date in early June 1978 which is generally acceptable to the other Member States provided it avoids the weekends close to UK public holidays (Ascension Day on Thursday 4 May and the Spring Bank Holiday on 29 May.) Any of the first three Thursdays in June would suit us well; thereafter there are major regional holidays in the United Kingdom which would have a distorting effect on voting, so we would prefer to avoid late June.

BACKGROUND

25. The last European Council agreed that there should be an electoral period from a Thursday morning to a Sunday evening and that counting should not take place until after the end of voting on the Sunday. (The French have two-stage voting on successive Sundays but their first ballot will be held at the same time as the single ballot in single ballot countries.)

26. There may well be an attempt to settle the precise dates for the 1978 election at this meeting. A calendar for the two months in question showing which dates would be suitable in the UK and the public holidays in all nine Member States is at reference C.

27. The Select Committee recommended that the Government should agree that elections should be held in May or June 1978 and that they should take place on a date on which no other elections are statutorily held". Our local elections in 1978 are due on Tuesday 2 May (Scotland) and Thursday 4 May (England and Wales). The latter clashes with Ascension Day and may anyhow have to be changed, but the Home Office would prefer, before doing so, to know on what date it is proposed to hold European elections.

28. The majority of the Nine favour a day towards the end of May to avoid holidays, including Whitsun which is on 15 May 1978. We, however, have our Spring Bank Holiday on 29 May and it will be important to avoid the preceding Thursday as, given our obligation to delay counting until the Sunday night, there would be considerable expense involved in paying counting clerks overtime on a public holiday.

29. Given the Wakes Weeks in the North of England in the last two weeks of June, we would wish to avoid either 22 or 29 June, but any of the first three Thursdays in June would be acceptable, as indeed would 11 or 18 May.

30. The day or period to be settled applies to the first direct elections. There are provisions for agreeing the dates for later elections, should there be difficulties about automatically adopting the similar period.

SECTION IV - THE LEGAL FORM OF THE AGREEMENT

TALKING POINTS (For use only if raised)

31. We are strongly in favour of having a Convention, as the Assembly itself proposed, rather than any other form of Community Act. People are expecting a Convention and to change tack might well cause confusion. It is important to avoid any possibility of question as to the legal basis for direct elections, which could conceivably be exploited by those who are opposed to the elections in principle. In the UK Parliament there are people who watch such legal matters closely.

32. This is clearly a question for experts to discuss further and Heads of Government cannot settle it today.

BACKGROUND

33. The Secretary of State put his colleagues on warning at the last Council meeting of the importance we attach to having a Convention. This is partly a presentational point and partly because legal opinions differ as to the adequacy of a Council Decision which some Member States would prefer. Our own legal advisers consider that a Convention is desirable to establish direct elections on an unassailable legal basis.

34. There is no need for us to raise the point again. If others should do so, the Prime Minister will wish to stress that this is a political point for us. It should however be referred for further work by the legal experts. Ministers will not wish totally to close the door to compromise on this issue should we later find ourselves in a position of embarrassing isolation.

35. Another unsettled legal question, which will depend on the choice of legal form, concerns the provision for the jurisdiction of the European Court. This question too should be referred for further work by experts.

SECTION V - UK RESERVATION CONCERNING POLITICAL CONSULTATIONS
DEFENSIVE SPEAKING NOTES [Subject to outcome of Parliamentary

Debate and Cabinet discussion]

(If asked whether we can now lift this general reservation.)

36. Parliament has now considered and broadly endorsed the Select Committee's Recommendations. We no longer need maintain any overall reservation on the work done in the Community.

37. Of course Parliamentary approval will still be necessary before we can implement the agreement in the UK. But this will no doubt be broadly the same in all Member States.

BACKGROUND

38. Our participation in the work on the Community text has been subject to the general reservation that Ministers would wish to look at the agreement as a whole in the light of the political consultations they were carrying out in the UK. Other Member States have been watching the progress of these consultations with interest, and have appreciated our attempts to keep Parliamentary opinion in step with negotiations in the Community. After the Select Committee's Report and the Debate they will however expect us to endorse the points on which a consensus has already been reached in the Community. If we were to be unable to do so this would arouse doubts again about the possibility of concluding the Community negotiations in the near future, as everyone hopes.

SECTION VI - A COMMENTARY ON THE DRAFT CONVENTION

BACKGROUND

39. Since the last meeting of the European Council, the Working Group have met once to work on the text of the draft Community agreement in the light of what was agreed at the Luxembourg

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European Council. The text circulated after that meeting is at Reference D. It still needs some careful polishing to eliminate inconsistencies that have crept in, and there are a few more substantial points to be settled (see below)

40. The main points agreed at the last European Council were:

- (a) the electoral period should be from a Thursday to a Sunday inclusive;
- (b) votes should not be counted until the Sunday evening;
- (c) the juridical act should refer to "Assembly" rather than "Parliament" (the present text still refers to "Parliament" throughout and will have to be amended);
- (d) the assembly should be consulted about any further implementing measures that might need to be agreed by the Council, but would not have a right of codecision.

41. With the major exception of the question of seats (see Section I of brief) the most significant matters still outstanding are:

- (a) the handling of the UK and Danish derogations (see Section II of brief);
- (b) date of the election (see Section III);
- (c) legal form (see Section IV).

Foreign and Commonwealth Office

5 July 1976

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EHG(B)(76)3 - Addendum

7 July 1976

EUROPEAN COUNCIL, BRUSSELS

12/13 JULY 1976

DIRECT ELECTIONS TO THE EUROPEAN ASSEMBLY

The attached document, a copy of which was delivered to the Foreign and Commonwealth Office today by the Netherlands Embassy, should be attached to the Brief as Annex A. It contains a table summarising the various proposals for the allocation of seats.

Foreign and Commonwealth Office

7 July 1976

EUROPEAN COMMUNITIES

Brussels, 12 July 1976

The Council

NOTE FROM THE PRESIDENCY

Subject: Summary of the various proposals for seat allocation in connection with the election of the members of the European Parliament by direct universal suffrage

Members of the European Council will find annexed hereto a table summarizing the various proposals for the allocation of seats in connection with the election of the members of the European Parliament by direct universal suffrage.
