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Memorandum for the Government

Recovery of monies in Federal Republic of Germany

Report by Minister for Finance to Dáil Éireann

- 1 In its final report on the expenditure of the Grant-in-Aid for Northern Ireland Relief from Subhead J, Vote 16 for 1969/70, presented to the Dáil on 13 July 1972, the Committee of Public Accounts included the following recommendation at paragraph 81(b):-

"Recovery of monies"

The Committee recommends that when the Department of Finance has brought to a conclusion the steps being taken by it to recover as much as possible of monies paid to an arms dealer in West Germany (Par 50), a full report thereon should be made to the Dáil by the Minister for Finance"

- 2 As the steps taken by the Department to recover these monies have now concluded the Minister for Finance is required to make a report to the House.
- 3 The requirement can be met by one of the following:-
 - 1 An oral statement made after Question Time (opposition spokesmen can make further statements, subject to whatever latitude the Ceann Comhairle might allow. No debate would be permitted under Dáil Standing Orders No. 38).
 - 2 A written report laid on the table of the House under the normal presentation procedures.

- 3 A short oral statement of the basic facts and a fuller statement laid on the table of the House.
- 4 By sending a letter to the Chairman of the Committee of Public Accounts setting out the facts and have this laid on the table of the House.
- 4 The Minister for Finance has decided to adopt option 2.
- 5 A copy of the report is hereby presented to the Government prior to its being laid before the Dáil.

Report by Minister for Finance in regard to the attempt to recover monies paid to an Arms Dealer in West Germany in pursuance of paragraph 81(b) of the Report of the Committee of Public Accounts (Order of Dáil 1 December 1970)

In its final report on the expenditure of the Grant-in-Aid for Northern Ireland Relief issued from Subhead J, Vote 16 for 1969/70, presented to the Dáil on 13th July 1972, the Committee of Public Accounts included the following recommendation at paragraph 81(b).

"Recovery of monies

The Committee recommends that when the Department of Finance has brought to a conclusion the steps being taken by it to recover as much as possible of monies paid to an arms dealer in West Germany (Par 50), a full report thereon should be made to the Dáil by the Minister for Finance."

As the steps taken by the Department of Finance to recover these monies have now concluded, the Minister for Finance makes this report to the House in pursuance of the Committee's recommendation.

The Minister wishes to make it clear that the amount of money which this particular arms dealer states he received for arms from his Irish contacts which can be reasonably assumed as coming from Exchequer sources was DM 163,000 approximately. The approximate sterling value at the time was £20,500. He gave officials of the Department a signed statement indicating that he received this sum in four instalments from his Irish contacts on specified dates. He also made available copies of invoices which purported to show details of the equipment involved and expenditure on freight, customs clearance, etc.

The arms dealer concerned was first approached on behalf of the Department of Finance in February and March 1971 and was told that the moneys paid to him for arms came originally from the Irish Exchequer.

An officer of the Department of Finance saw the dealer on 27th March 1971 and handed him a letter claiming on behalf of the Minister for Finance a refund of all moneys paid to him for goods not collected for delivery in Ireland. The dealer suggested that the goods should be taken to Ireland by the Irish authorities but he was told that the authorities were only interested in obtaining a refund of money rightfully due to the State.

A detailed statement of the sum claimed by the State based on the documents received from the Arms Dealer was handed to him on 21st July 1971 and a refund sought of the moneys due to the Exchequer.

In a letter dated 5th October 1971 the arms dealer rejected the claim on the basis that there was no legal contract between his firm and the Irish Government. However he subsequently indicated orally that despite the exchange of correspondence, he was prepared to attempt to sell the goods and refund to the Government the amount he received for them less his expenses. He told the officials later in the same month that he had in fact arranged for the sale of the goods abroad and that he would make a refund when this was done. He said he would get DM 86,026 from the sale.

During the ensuing twelve months contact was maintained with the arms dealer but he did not refund the money. Officials of the Department again visited him finally in October 1972. He repeated his earlier assertion that his firm repudiated all liability to the Irish state. He also stated that he had not yet been able to dispose of the goods but he indicated that he was prepared in his personal capacity to pay the State any moneys he might receive from a sale he was then negotiating, less his expenses. He was informed that this was not regarded as satisfactory in view of the long delay which had already taken place. He was pressed to make a payment on account, as evidence of his good faith, but refused. He also refused to acknowledge in writing his oral undertaking to pay on making a sale. He was then informed that in view of the long delay and the uncertainty regarding the date of a settlement in the future, the Irish Government would have to consider taking the matter up with the German Federal Authorities. The dealer subsequently

wrote restating the legal position of his firm.

The Federal German Government authorities were approached by the Department of Foreign Affairs but indicated that they were unable to be of direct assistance in the matter.

Legal advice was then taken from German lawyers. The lawyers advised that in the absence of a written undertaking to pay, legal action against the Arms Dealer would not be successful. However they felt that there was a possibility of convincing a Court that the Arms Dealer had deliberately deceived the Department of Finance negotiators with the intent of inducing them to think that an oral undertaking was binding under German law. Acting on this advice it was decided to sue the dealer in the German Courts. Proceedings for a sum of DM 86,026 (the proceeds he said he was getting from the re-sale) were initiated in the German Courts in August 1976 and the Civil Court in Hamburg dealing with the case sat on five occasions in all. Witnesses were examined on behalf of the Plaintiff at the hearing on 25th May 1977 - the defence offered no witnesses at this stage.

The Defendant speaking from the body of the Court but not as a formal witness told the Court at the hearing on 25th May 1977 that while he had received DM 163,000 for the goods in 1970 he had delivered in the same year goods to the value of DM 100,000 and he alleged that these were seized by the Irish authorities. He said that part of the remainder was sold to a third party and the proceeds amounting to DM 34,000 were paid over to a Dublin firm in 1974 or 1975. He stated the rest was unsaleable and was stored in Lisbon. The Defendant's statement to the Court was demonstrably false under a number of heads and the Court was asked that he be put on proof of his assertions. The Defendant had negotiated with the representatives of the State in 1971 and 1972 on the basis that he still had the goods and he made no mention at that time that he had disposed of a major part of the goods. The State denied that goods to the value of DM 100,000 were seized here in 1970 and offered two witnesses - a Garda Officer and a customs officer - to prove this. The Defendant offered one witness - Mr Albert Luykx. The Court issued a Court Order on 22 June 1977, which stated, inter alia, that following the hearing of the evidence the Court assumed

that the Defendant had concluded a legally binding agreement in October 1971 and in November 1972 under which he undertook to sell the goods not yet sold to third parties and to pay the proceeds to the State of Ireland. The Court expressed the view that the giving of such a declaration by the Defendant was a constitutive undertaking and was subject to German law. In the opinion of the Court the action taken by the State was justified.

The Court suggested on three separate occasions that the two parties should get together with a view to negotiating a settlement. At the resumed hearing on 7 December 1977, Counsel for the Minister said that the Minister was, in principle, willing to settle but not on the basis of the defendants' allegations that DM 100,000 worth of goods had been exported by him in 1970 and seized by the Irish authorities. The Defendant refused to settle at all times. The Court, however, decided to hear no more evidence and issued a judgement on 28th February 1978. In its judgement the Court said that on the basis of the testimony of the witnesses, it was convinced that the defendant personally i.e as a private person and not in his capacity as managing director of his firm, gave a declared undertaking to the Irish representatives in so far as he promised to return to the State of Ireland the proceeds of the sale elsewhere of the goods. However despite its view expressed in its earlier Court Order the Court dismissed the action and awarded costs to the defendant, giving as the basic reason for its decision the absence of the written form of acknowledgement of the debt by the Arms Dealer personally. On the plea that the Defendant had deceived the Irish negotiators, the Court found that while the arms dealer had made the false statement by way of oral undertaking, such intentional deceit as would be necessary to make it binding in law in the absence of writing had not been proved.

After consultation with the lawyers in Germany and acting on their advice and on the advice of the Attorney-General, the Minister for Finance decided that nothing would be gained by lodging an appeal in the German Courts.

With regard to the allegation by the Defendant that proceeds amounting to DM 34,000 were paid over to a Dublin firm in 1974 or in 1975, the Attorney-General has advised the Minister that there is no evidence on which any claim could be founded.

Addendum

Dates of Court hearings:

10 November 1976	Scrutiny of documents and legal arguments made.
19 January 1977	Legal arguments continued
30 March 1977	Legal arguments continued. Court ordered that witnesses for the Plaintiff be heard.
25 May 1977	Witnesses for Plaintiff gave evidence. Further legal arguments.
7 December 1977	Further legal arguments continued.

Costs:

(1) Expenses in respect of visits to Germany to negotiate with Arms Dealer (March 1971 to November 1972)	£1,288.20
(2) Expenses in respect of visits to Germany arising from the taking of legal action. These include visits to German lawyers for consultations, attendance of witnesses at Court hearings (June 1975 to December 1977)	£4,000.35
(3) Legal costs, fees	£1,089.15 (see note)

Note

Not complete. Claims in respect of all the costs and fees have not yet been received.

May 1978.