Interview with Pierre Pescatore: the political implications of the Luxembourg Compromise (Luxembourg, 12 November 2003)

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[Pierre Pescatore] Clearly, throughout this affair, Luxembourg's position, Luxembourg's overriding interest, lay in ensuring that the Community survived; all the more so given that the decisive meetings took place and were held in Luxembourg itself. This was a priority for us, just as it was for the other members of the Community. And let me refer to one element that, I believe, has not been known until today. It is what the English call the 'contingency planning' of those countries that were then opposing France. There were five countries against France in this crisis, weren't there? It had been started by France alone; France found no support among the other Member States, and there were five countries against France. And I recall that one of the important points made during these negotiations among the Five — for France was absent — on the best way of dealing with the crisis was an observation by Paul-Henri Spaak. I can see Spaak now; he was present during this crisis, and he asked: 'What shall we do if France takes the situation right to breaking point?' And if we were able to ride out the crisis, it was because we knew what we should do afterwards, didn't we? Because there was a way out.

The solution that Spaak proposed went like this: 'We shall go before the Court of Justice to ask the Court to take note of France's failure to honour its commitments. This course of action is open to us, and we can then, at the very least, point to where the responsibility lies.' So it was this idea that lay behind the way in which the crisis was managed, and this was evident later on during conversations with France. They took place in two stages — you must know, I suppose, the exact dates? There was a gap of about two weeks, if I remember correctly, between the first meeting with the French negotiators and the second meeting. That meeting went down in history as marking the end of the crisis, as the occasion when the solution was found. It became clear in the course of these negotiations that General de Gaulle and the French Government were aware that they would not be able to push the crisis to the point where the Community would collapse. And why was this? It was because the issue of an agricultural sector for which the Community would be responsible in its entirety, from outlets to funding, was of vital interest for France, and France could not permit itself the luxury of destroying the Community and jeopardising the interests that it had already staked in the Community system.

We were no longer in 1958; it was 1965, so things had changed. The first elements of a common agricultural policy already existed, not to mention other areas; why put all this at risk because of a conflict which, originally, as I just said, was limited? A conflict of responsibility between the Commission and the national governments; a desire to integrate the European Parliament more closely in the Community system, since the Assembly was merely an advisory body at that point; it just was not worth the trouble, so France sought a solution to this crisis. The whole question was to find out how much such a solution to this issue would cost, and the price was settled: it was what you'd call — I hesitate to call it the Luxembourg agreement — no, I'd rather say the Luxembourg *deal*. Later on, this was referred to as an 'agreement not to agree', and that was what it was. France drew up, and submitted, two documents. The first was a sort of list of what came to be known as the 'Ten Commandments'. In my opinion it was more of a register, because, if I recall, it was a document that listed seven points, and I called it 'the register of the seven deadly sins'; the ones that one must not commit. From this list, we managed to get rid of one or two, so that just the points regarding protocol were left. They were issues like who should receive the Ambassadors and what they should wear — morning suits or whatever — issues like the red carpet treatment and more of the same that, all in all, after cutting down on the ceremonial aspect of the management of the Commission, and of the Community, were acceptable.

But there were one or two points that were not acceptable, and I remember one that came to the fore in later discussions regarding the famous principle of subsidiarity. At the time, France was already complaining that Community directives were far too detailed and that, as a result, the distinction between regulations and directives was no longer evident. Directives were becoming characterised by their detailed substance and by the limited scope for individual approaches that they allowed Member States — in fact, the Treaty lays down the ways and means for compliance with a directive … when implementing it, a Member State can no longer challenge the actual substance of the directive. So, at that time, France had already attacked the directive procedure for overstepping the limits of the remit to some extent and had proposed a clause which

would have forbidden the inclusion of too many details in the directives. By referring to the wording of the Treaty, which had not been called into question, by being more restrained and by recalling the fact that it was, after all, the Council of the Governments that established the substance of the directives by means of a vote, it was possible to convince the French that there would be sufficient safeguards and so this point, which was the only really tricky one and which would have constituted a real threat to the future of the Community, was also dropped. So that the shortened list was reduced from ten to seven or from seven to five — you can work it all out from the published documents. So we could give way, thanks to the French agreeing to drop the point concerning the wording of directives. We were able to accept it because we realised that, red carpet or no red carpet, morning dress or no morning dress, who should receive the Ambassadors and so on, it just did not matter, and it was ridiculous rather than truly political.

The other French demand remained, however, and this was that, when the vital interests of a State were at stake, the Council should undertake not to apply the majority vote procedure. And, in this instance, the concession was that France would not demand that this should somehow be the subject of a formal and duly signed agreement but that it should be set down in the proceedings of the conference as a declaration of intent and that it should not enjoy the status of a rule that might limit or even take precedence over the existing Treaties. On this point, there was a misunderstanding on the part of the Member States, or rather those States that were to become members of the Community and were waiting at the door but had not followed the internal settlement process. It was their opinion, and this was particularly true of Denmark, that the Member States had adopted a genuine agreement, one which, like an international *modus vivendi*, modified the scope of the Treaties. And it was on the basis of belief in the existence of this loophole that these countries joined the Community. It was, above all, in Denmark where this opinion was widespread and where it was to become one of the reasons for Denmark's acceptance of the Community system. It was my impression, through my own contacts with the first Danes that I met within the system — not just at the Court, but also in scientific circles, during seminars and at congresses — that they really believed that such a thing existed, whereas, in the eyes of the Five, who had had to make this concession to the French, it was a *modus vivendi* secured as the result (and here I shall use a word that seems to me inevitable) of blackmail, with France threatening to cause the Community to collapse. It was the result of unbearable pressure by France; it had been accepted as a temporary measure so that the normal work of the Community might be resumed but on the hypothesis, in the certainty, that, over the years, things would be settled and this agreement would eventually become a dead letter.

And looking back, I should like to say that this is what happened, because, on certain critical occasions, France itself took part in majority voting in order to secure solutions regarding the British. Thus, little by little, this arrangement — it is too much to call it a decision — which settled the dispute in an ambiguous way, has been lost in the sands of time, and no one would mention it, now that the majority vote is well established, now that it has been used effectively and now that even the larger Member States have had to accept majority votes that went against them.