

Note concerning the position of Luxembourg and Germany on the empty chair crisis (Luxembourg, 20 July 1965)


Caption: On 20 July 1965, Pierre Pescatore, Secretary-General of the Luxembourg Ministry for Foreign Affairs, provides an account of his meeting the previous day in Bonn with Rolf Lahr, State Secretary for Foreign Affairs of the Federal Republic of Germany (FRG), in order to consider the causes for the empty chair crisis and the possible diplomatic and political solutions to it.

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Luxembourg, 20 July 1965

Confidential

Report of a conversation between Mr Lahr, Secretary of State at the German Ministry of Foreign Affairs, and Mr Pescatore, Secretary General of the Luxembourg Ministry of Foreign Affairs, on 19 July 1965 in Bonn

Subject: The crisis in the Common Market

Distribution: internal — Minister, Deputy Minister, Director and Deputy Director; abroad — Permanent Representatives to the Communities, NATO, United Nations; the embassies in Bonn, Brussels, The Hague, London, Paris, and Rome

The German Minister for Foreign Affairs, Mr Schröder, in a direct telephone call to the Luxembourg Prime Minister, Mr Werner, had proposed that the latter should send to Bonn an emissary who would be able to discuss the problem of the crisis in the Common Market with the State Secretary, Mr Lahr, who had special responsibility for that problem. Mr Werner appointed Mr Pescatore to carry out that mission, and the latter travelled to Bonn on 19 July 1965, following preparatory talks with Mr Werner, Mr Borschette and Mr Lambert Schaus. The meeting took place in Mr Lahr's office, and no one else was present. It lasted for two hours, and the conversation proceeded in a very relaxed atmosphere.

Mr Lahr began the conversation with a long statement dealing in turn with the interpretation of the current situation, the policy envisaged by the German Government in the present crisis situation and specific problems of a more technical nature.

First of all, Mr Lahr speculated as to the possible explanation for the events of the evening of 30 June. The German Government had indeed been surprised when the French broke off the conversation even though their five partners were in favour of continuing the discussion and trying, despite the conflict of interests which had been revealed, to find a solution to the agricultural problem. There had obviously been some hardening of the French position, but why? It was all the more remarkable because of the fact that, in preliminary talks between the French and the Germans, the way had been thoroughly smoothed by Mr Lahr and Mr Wormser, the latter not being known as a man who erred on the side of optimism.

Obviously, it was instructions from the Élysée which had caused Mr Couve de Murville to break off the talks. Apparently, not all the members of the French Delegation were aware of those instructions, because, afterwards, several of the French delegates expressed surprise at what had happened. Was it a decision dictated by circumstances or a more long-term tactical manoeuvre? Did General de Gaulle intend to raise questions which were more in the nature of issues of principle?

It seemed to the German Government that the real motive obviously went much deeper than agricultural policy, and it was this which made the situation critical. We had known for a long time what General de Gaulle thought about supranationality. Mr Lahr had had a search made in the archives to try to find instances in which de Gaulle had expressed his views on this subject, and that was how, in the minutes of the notorious 'Rambouillet Conversations', the ideas that General de Gaulle expressed at the time to Chancellor Adenauer were discovered, namely the establishment of a conference of heads of government and the creation of two ministerial councils, one consisting of ministers for foreign affairs and the other consisting of ministers for economic affairs. Under this plan, the Commission of the Common Market would act as a secretariat to the latter council. This was still the way de Gaulle saw things developing. He tended to distance himself from the Commission (it seemed that he particularly resented the latter's right to submit legislative proposals), and he also distanced himself from the majority rule, that is to say, he wanted to curtail the powers of the Council. In the long run, he intended to reduce the role of the Parliament.

Moreover, the question was formally put to General de Gaulle during the Franco-German consultations. However, on that occasion, we were able to obtain only an enigmatic statement saying that it was necessary 'to bring the Commission back to a spirit of reality'. General de Gaulle was obviously hostile towards the Commission and, in particular, towards Mr Hallstein and Dr Mansholt, and this type of reaction was a characteristic feature of 'personal power'.

The German Government anticipated that the majority principle within the Council would be called into question between now and 1 January 1966. If that happened, the matter would be serious, because it would mean calling into question the foundations of the Treaty of Rome. The Germans, the Dutch, the Italians and probably the Belgians, too, were most insistent that the rules of the Treaty of Rome should remain sacrosanct. The German Government was counting upon the support of the Luxembourg Government on this point. Faced with this opposition, General de Gaulle might then incline towards a sort of 'gentlemen's agreement' concerning, on the one hand, the Commission's use of its right to submit legislative proposals and, on the other hand, the use of the right to take majority decisions, for example excluding that right in cases where the 'vital interests' of one of the partners were at stake. However, such an arrangement would not be acceptable to the Germans, either in the form of a gentlemen's agreement or — even more so — as a formal amendment to the Treaty. As far as the German Government was concerned, there could be no question of compromise on institutional issues.

Returning to the situation created by the breakdown on 30 June, Mr Lahr said that the French seemed to be demanding some sort of 'satisfaction' from their partners in order to compensate for the failure to take a decision before 30 June. The German Government could not accept this view. In effect, Mr Lahr, recalling the history of Regulation 25 and the previous toing and froing on this issue — which had three times in a row been the subject of Council deliberations without its having been possible to come to any decision — believed that, if the responsibility for this rested anywhere, it rested with the Council as a whole, including the French themselves as regards their manner of negotiating and of organising the French Presidency. Germany refused to lay the 'blame' unilaterally on France's partners. There was therefore no question of a 'price' to be paid in exchange for France's return to the Council table.

At this point, Mr Lahr wondered whether the 'empty-chair policy' was compatible with the Treaty. The conclusion on the German side left no room for doubt: France, by refusing to cooperate, was infringing the Treaty. (On this subject, Mr Lahr referred to Article 5 and Article 219 of the EEC Treaty. The latter provision obliged Member States to seek a solution to their differences by using the mechanisms of the Treaty and not outside the Treaty.) In those circumstances, it would be absurd to make the Five pay a price in exchange for France's bringing this situation to an end: it would amount to paying out a reward for an infringement of the Treaty.

Mr Lahr then tackled the question of what tactics should be used in the immediate future. The Council of the EEC was due to meet on 26 July, and there would certainly not be a majority in favour of an adjournment (the Germans, Italians and Dutch were, at all events, against the idea of an adjournment). The meeting would have to go ahead, if only in order to acknowledge that Community law was still in force.

With regard to the agenda, Luxembourg had apparently expressed some reservations about the inclusion on that agenda of the problems which had caused the current crisis. Mr Lahr believed that, whatever we called it, the crisis situation was so serious that it was bound to constitute one of the subjects for discussion. What would the Commission be doing at that meeting? The Germans, Italians and Dutch took the view that the Commission should not present its new proposals until the meeting on 26 July. That would enable the government representatives to hear them without having to enter into excessively detailed discussions. On this subject, the Italian Government had put forward a proposal that seemed to be particularly useful: the Commission would give an oral report on its ideas, and someone would then propose that those ideas should be put in writing and submitted to all the governments. The chief concern of the German Government was to ensure that the Community continued to exist, for better or worse, while at the same time not to do anything to cross the French even more. We therefore had to take a middle way which would enable us to do what was necessary in the interests of the Community but without, in so doing, upsetting the French too much.

Following the same line, Mr Lahr thought that it would be better for the various Member States not to take the initiative by submitting proposals of their own before the next Council session. The German Government was concerned that we should not give the impression of wanting to drop the Commission. Even if there was some doubt as to the advisability of the proposal which lay at the heart of all this (although, on this point, the German Government was hardly in a position to criticise, since it had encouraged the Commission from the outset to take this line), we had to remember that it was the ideas of the Commission itself which had to form the starting point for any subsequent research.

Mr Lahr then went on to talk about a series of more technical problems, firstly the problem of funding the agricultural policy. Whether the provisions to be adopted should cover a period of two years or five years, or only one year (as Italy had proposed), the German Government found them all acceptable. In itself, the most appropriate solution would be the one which targeted 1 July 1967.

However, the allocation of agricultural levies to the Community required approval by law in the Federal Republic, and here it was inevitable that the question of the European Parliament's budgetary powers would arise. There was a logical, and necessary, link here: we could not accuse the Commission of having established this proximity. However, taking the political situation into account, there was no chance of such a project succeeding. For that reason, the German Government took the view that, when all was said and done, the best solution would be to make provision for a transitional scheme for the next five years, thereby postponing the issue of the Community's own resources until 1970. The French, for their part, would have to help in securing such a solution, one which implied considerable sacrifices, especially for Germany and Italy.

Mr Lahr was in favour of the Luxembourg proposal that this five-year period should be divided into two phases, one running until 1967 and the other until the start of the next period. That would be worth linking to the idea of the 'harmonious progression' of the Community. It would be desirable to establish the customs union by 1 July 1967, but we had no guarantee that this would happen. The same applied to trade policy and to certain other developments. The German Government's idea would be to establish a 'work programme' which took account of the 1 July 1967 deadline. In early 1967, we could then, as it were, examine our consciences on this subject. If the result of that examination were positive, then the system for financing the agricultural policy would continue. If the result were negative, then that would have repercussions for agricultural policy. Mr Lahr added that the implementation of this 'work programme' would be a prerequisite for the German Government which wanted to achieve the 'synchronised progress of the Community' (*gleichmässiger Fortschritt der Gemeinschaft*). The German Government was aware that it bore the largest share of the cost of financing the agricultural policy. It was willing to accept this, but at the same time it would like to see harmonious progress in other areas involving the Community, especially in trade policy and fiscal policy, which it believed to be essential parts of the whole.

First of all, with regard to fiscal policy, Mr Lahr would like to see an energetic start made and a serious programme established, although achieving all that, which would enable the 'fiscal frontier' to be abolished, would take until well beyond 1970. However, as long as fiscal frontiers continued to exist, there could be no real Common Market.

As for trade policy, there were a number of problems here, and Mr Lahr referred in particular to the problem of the agreement on wheat. It was to be expected that some of the Community's GATT partners would raise the question of 'market access'. He then spoke about the specious difficulties of interpretation raised by the French Government with regard to Article 111, which it wanted to interpret restrictively, limiting the application of the majority-vote principle to procedural questions. However, the German Government was keen to see some sort of balance struck between the application of the majority-vote principle in the agricultural area and in the trade-policy area. Finally, there was the problem of loans to the countries of Eastern Europe, a sort of 'loans race' between the partners, which was leading to longer and longer loan periods — currently seven to eight years. The German Government loan terms to be stabilised at this level. What is more, it was considerably annoyed at the loans granted to East Germany, which have the effect of rendering 'inter-zone' trade meaningless and therefore depriving such trade of all political value.

Mr Pescatore, before going on to talk about more specific problems, first of all gave a coherent explanation of the attitude of the Luxembourg Government towards the crisis situation created within the Common Market. According to Mr Werner, a distinction had to be made between the decisions required to ensure that Common Market was duly established — in other words, the decisions covered by undertakings given in the Treaty or by virtue of it — and any other provisions intended to amend, to a greater or lesser extent, the actual constituent bases of the Communities.

With regard to the first series of measures, those which resulted, of necessity, from the setting up of the Common Market, we were currently faced with three major sets of questions. First of all, the development of the agricultural policy, with the aim of establishing an agricultural common market, and this involved the need to find a solution to the financing problem and to agree on the remainder of the regulations and decisions on agricultural matters, with regard to the sectors which are still open, and agricultural prices. As far as the financial regulations was concerned, in particular, Mr Werner believed that we should incline towards a solution which covered the remainder of the transitional period but that we should also insert a revision clause, linked, where possible, to objective conditions, which would come into play after a period of two years.

The second set of questions involved the customs union. According to the Commission's proposals, this would have to be established during 1967 and would entail the complete abolition of all customs duties within the Community and the implementation in full of the common external tariff.

Finally, there was a third set of problems resulting from parallel progression towards economic union, in other words towards the establishment of a set of measures additional to the customs union in its strictest sense, such as fiscal and financial harmonisation, the harmonisation of economic policies, common rules regarding establishment and the provision of services, the common trade policy, etc.

At this point, Mr Lahr said how reassured he felt to hear a reference to the common trade policy, because, apparently, Bonn had received information to the effect that the Luxembourg Government thought that this subject should not be included in the work programme. Mr Pescatore reassured Mr Lahr on this point, saying that the Luxembourg Government had never considered removing the common trade policy from the Community programme. On the contrary, he said, it knew from its own experience with the Belgo-Luxembourg Economic Union (BLEU) and Benelux that a common trade policy was inseparably linked to the implementation of internal liberalisation measures and that freedom of movement within the Community was inconceivable if provisions relating to external trade were not harmonised.

Generally speaking, then, the Luxembourg Government took the view that, in the present economic climate, we should concentrate, in a spirit of realism and modesty, on establishing the full Common Market during the period from 1967 to 1970. It believed that this was an achievable task, given that undertakings — to a large extent very precise undertakings — had already been given by Member States on the subject of these various measures.

As for the proposals which have been put forward with a view to developing the actual constituent bases of the Community, a further distinction had to be made. Some lines of development were already indicated by the Treaty: this applied, in particular, to the Community's own resources (Article 201). Other suggestions, however, were entirely new compared with the Treaty, and this was true, in particular, of proposals that the powers of the European Parliamentary Assembly (EPA) should be extended. Generally speaking, the Luxembourg Government believed that circumstances were not favourable towards developments of this kind, because it had to be admitted that, at the present time, there was no unity of intention or common political idea among the partners. The Luxembourg Government wondered whether it was wise, in these circumstances, to push the discussions in the direction of these critical issues. There was already some doubt as to whether it was a good idea for the Commission, in a proposal which had been described as 'indissoluble', to link together not only elements which constituted the implementation of undertakings already given (agricultural funding) but also elements which strayed into territory which was already known to be controversial (the problem of own resources and in particular the extension of the powers of the EPA). Taking all this into account, the Luxembourg Government would like to see attempts made to reach an

outcome along the following lines:

1. We should try to revive discussions about the problems which had, of necessity, arisen as a result of the full development of the common market, in other words the problems relating to agricultural policy, the customs union and development towards economic union.

In this connection, it would seem logical, and even inevitable, to recognise the existence of a problem regarding the collection of customs duties at the point of entry, because, as soon as freedom of movement within the Community was fully achieved and/or the common external tariff was in place, the place where charges were paid would no longer necessarily coincide with the place where the imported products were finally consumed. In tabling its own draft decision, France had already recognised the existence of a problem, so that we could continue to discuss this issue which, logically, would lead to a consideration of the problem of the Community's own resources.

2. This being the case, we should be forced to recognise, too, that the development of the Community and, in particular, of its financial autonomy would give rise, in very general terms, to a 'control' problem. The detailed rules for this control, whether governmental or parliamentary, had still to be determined, but the overriding objective here was the appropriate use of resources.

3. Finally, since the political problems — both that of own resources and that of the democratisation of the Communities — were unlikely to be solved in the near future, they would have to be added to plans for the merging of the European Communities.

The Luxembourg Government thought that, in this way, it would be possible to bring the debate back into the real world and remove the political 'mythology', as it were, which had merely falsified our discussions.

In the course of this statement, Mr Lahr expressed particular interest in the issue of own resources. To begin with, he thought it necessary to make a distinction between two questions which could apply to two successive stages: first, there was the equalisation of national customs revenue (*Zollausgleich*); and, subsequently, is the 'communitarisation' of that revenue (*Vergemeinschaftung*). When Mr Pescatore had explained to him the way that things worked in the BLEU and Benelux, Mr Lahr thought that, at all events, given the substantial differences in economic levels and commercial policies within the Community, any *pro rata* redistribution of customs revenue according to population size could not be considered. An economic distribution criterion would have to be sought, and account would need to be taken, in particular, of the import policies of the various governments.

Mr Lahr's statement revealed some concern about the more conciliatory attitude adopted by the Luxembourg Government during the present crisis. Mr Pescatore pointed out that a distinction should be drawn between the problems which had led to the crisis which began on 30 June and the more fundamental problems with which the French were apparently preoccupied but which, to date, they had not formally raised. The Luxembourg Government believed that the breakdown which occurred on 30 June happened because conditions were unfavourable, owing chiefly to an inopportune proposal from the Commission. However, there was no doubt that, if the fundamental rules of the Treaties, such as the provisions relating to the role of the Commission or the principle of majority decisions, were called into question, the Luxembourg Government would vehemently insist that rules previously enshrined in the Treaties should be retained. On the other hand, the Luxembourg Government fully agreed with the other partners in thinking that the 'empty chair policy' being pursued by France was incompatible with the undertakings laid down in the Treaty of Rome. Although Mr Werner adopted a reserved and conciliatory attitude during the Brussels discussions, that was because he thought that the problem being made discussed at the time was being unnecessarily complicated by questions which were irrelevant to the matter at the heart of the debate.

Mr Pescatore also told Mr Lahr about a suggestion which had been made personally to Mr Borschette by the French Permanent Representative on the subject of how to improve relations between the Council and the European Parliament on budgetary matters. The suggested solution was a 'double shuttle' system. After listening to a precise explanation of how the system would work, Mr Lahr did not show much interest in the

idea, saying that ideas similar to those of Mr Boegner, or even slightly more advanced, had been put to him by Mr Wormser.

Finally, Mr Pescatore asked whether the approaching elections in Germany had had, or might have, any particular influence, one way or another, on the German attitude to the crisis within the Common Market. Mr Lahr replied that the questions raised were so fundamental that the German reaction had not been influenced by the vicissitudes of domestic policy.

At lunch, when Mr Lahr and Mr Pescatore were joined by Mr Neef, senior German civil servants and the Luxembourg Chargé d'Affaires a.i., Mr Lahr gave a brief report of the conversation which was remarkably accurate. This summary did not add anything new, but it did focus attention on two points: on the one hand, Mr Lahr noted that there was very broad agreement between the views of the German Government and those of the Luxembourg Government and, on the other hand, he demonstrated that he had perfectly well understood the scope of the ideas set out by Mr Pescatore on behalf of his Government.

Finally, Mr Lahr said that he hoped that this contact would be maintained, and he made it clear that, where necessary, he could personally travel to Luxembourg for a meeting with Mr Werner some time in autumn.