

CONV 637/03

CONTRIB 284

COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Contribution submitted by Ms Lena Hjelm-Wallén, member of the Convention: - "Public access to documents and freedom of expression for EU officials"

The Secretary-General of the Convention has received the attached contribution from Ms Lena Hjelm-Wallén, member of the Convention.

Contribution from Lena Hjelm-Wallén to the discussion on a Constitutional Treaty, Part II: Public access to documents and freedom of expression for EU officials

We all agree that the EU must perform its tasks as openly and as closely to the citizens as possible. Transparency strengthens the democratic nature of the institutions and the citizen's confidence in the administration. However, we have not focused enough on this issue in the Convention. There are changes that need to be made, both in Part I and in Part II. I have already proposed changes regarding openness and good administration¹, which would clarify that the Member States of the Union take this issue seriously. I hope those proposals will be accepted by the Convention.

Turning to Part II in particular, other amendments of importance need to be made if we are seriously aiming to achieve greater openness and increased confidence in the Union.

I therefore propose that the rules on public access to documents should be extended to all EU institutions and bodies and that the EU officials' right to freedom of expression should be codified in the Treaty.

On public access to documents, I would suggest the following changes to be made to the present Article 255 EC:

“Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions and bodies.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be laid down by Law.”

A time limit, preferably no longer than two years from the entry into force of the new Treaty, would also need to be included.

On the other issue, freedom of expression for EU officials, it is regrettable that the present Article 287 solely deals with the obligation of professional secrecy. Since the officials through established case law of the European Court of Justice undoubtedly have a right to freedom of expression, I see no reason why we should omit an explicit reference to that right in the Treaty. An inclusion of such a reference would, on the other hand, send a clear signal to the citizens that the Union institutions are modern and open. The need for confidentiality and professional secrecy remains, of course, and

¹ CONV 490/03. I proposed a provision giving the Union the power to adopt rules on good administration within the institutions:

”In the handling of administrative matters and in other administrative activities the institutions and bodies of the Union shall act in accordance with fundamental principles of good administration, detailed arrangements for the implementation of which are to be defined in accordance with the procedure referred to in Article 251 of the EC Treaty within two years of the entry into force of the Treaty of X.”

shall also be clearly stated. The detailed provisions on the limits of the right to freedom of expression need not be in the Treaty itself, but can be outlined in the Staff Regulations together with all other rights and obligations of the EU officials.

I suggest a provision along the following lines be included in Part II of the Treaty:

“The Members of the institutions of the Union, the members of committees, and the officials and other servants of the Union have the right to freedom of expression. This may be restricted in accordance with the principles and conditions to be defined in the Staff Regulations.”
