

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 7 May 2003

CONV 718/03

CONTRIB 318

COVER NOTE

from :	Secretariat
to :	The Convention
Subject :	Contribution presented by Mr Andrew Duff, member of the Convention: - “Privileges and Immunities of the European Parliament”

The Secretary General of the Convention has received the attached contribution from
Mr Andrew Duff, member of the Convention.

Contribution by Mr Andrew Duff MEP

Privileges and Immunities of the European Parliament

1. This is a proposal for the Convention to tackle the reform of the privileges and immunities system of the European Parliament.
2. The basis for the parliamentary immunity of Members of the European Parliament is the 1965 Protocol on the privileges and immunities of the European Communities, the relevant articles of which read as follows:

Article 9

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 10

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

3. The legal base was confirmed by Article 4.2 of the 1976 Act concerning the election of the representatives of the European Parliament by direct universal suffrage, as amended by the 2002 Decision to establish a uniform electoral procedure.¹

4. The 1965 Protocol was established when MEPs were delegates of national parliaments and the powers of the European Parliament were distinctly modest. As the work of the Convention has confirmed, the contemporary, directly-elected European Parliament has an autonomous representative capability, enjoying very significant powers of the purse, of scrutiny and of legislation. The legal base of 1965 now appears loose, inadequate and out-moded.

¹ OJ L 283, 21 October 2002. Article 4(2) says: "Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of the Protocol of 8 April 1965 on the privileges and immunities of the European Communities."

5. Article 10 of the 1965 Protocol, in particular, seems insufficient because it establishes two different regimes - one national, the other European - and does not deal at all with procedure. The parliaments of Member States do not by themselves provide the European Parliament with a comprehensive or coherent basis on which to build its own immunity system ensuring equal treatment for all its Members. There is a wide variety between Member States as far as legal basis, scope, duration, procedure and practice are concerned.¹ Moreover, what may be the form for national MPs within their own country does not and cannot set a precedent for MEPs in a Member State other than their own. For these reasons, the development of European level immunity by analogy with national parliamentary immunity is not fruitful.

6. There have been several examples of the impracticability of relying on the 1965 Protocol, with confusions arising leading to the intervention of the EU Courts.² Last year, in an attempt to rationalise the system, the Parliament agreed to change its own Rules of Procedure as to how it deals with applications to waive, or in certain circumstances to assert, the immunity of a Member (DUFF Report).³ The new Rule 6.1 defines the purpose of parliamentary immunity as follows:

In the exercise of its powers in respect of privileges and immunities, Parliament shall seek primarily to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in performance of their duties.

7. Now, after lengthy negotiations, the Parliament seems ready to make a proposal for the Statute of Members (ROTHLEY Report).⁴ The Statute is being drafted to include a comprehensive definition of MEPs' privileges and immunities, including a statement of the nature of the protection afforded to Members and the assertion of Parliament's constitutional right to decide on such questions. The Statute should serve to clarify the issues of privilege and immunity as far as the judicial authorities and the general public are concerned.

8. The European Council is minded to conclude the question of the Members' Statute "as a matter of urgency".⁵

9. Resolution has been helped by the introduction of QMV in the Council. Article 190(5) TEC, as amended by Article 2.18 of the Treaty of Nice, now says:

The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

¹ *Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union*, European Centre for Parliamentary Research and Documentation, Brussels, 2001.

² See, for example, Case 149/85, *Wybot v. Faure*, [1986], and Case T-353/00, *Le Pen v. Parliament*, [2001].

³ Report on the reform of the Rules of Procedure with regard to parliamentary immunity (Rule 6), A5-0195/2002.

⁴ Draft Report on the adoption of a Statute for Members of the European Parliament, PE 324.184.

⁵ European Council at Cologne, 3-4 June 1999, Presidency Conclusions No. 51.

10. The Parliament's rapporteur, Mr ROTHLEY, proposes that the Statute to be established under Article 190(5) shall cover all aspects relating to the exercise of the parliamentary mandate. Such a Statute would therefore supersede Articles 4(1) and 4(2) of the 1976 Act and Articles 9 and 10 of the 1965 Protocol.¹

11. I propose that the Convention follows this logic when, in making proposals for the formulation of Part Two of the Constitution, it addresses the revision of these two measures of primary law.

¹ Article 4(1) says: "Representatives shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate".