

CONV 490/03

CONTRIB 193

BEGELEIDENDE NOTA

van: het secretariaat

aan: de Conventie

Betreft: Bijdrage van mevrouw Lena Hjelm-Wallen, mevrouw Teija Tiilikainen, de heer
Dick Roche Wallen, leden van de Conventie
- "Een constitutioneel Verdrag: openheid en goed bestuur in de instellingen van
de EU"

De secretaris-generaal van de Conventie heeft van mevrouw Lena Hjelm-Wallen, mevrouw
Teija Tiilikainen, de heer Dick Roche Wallen, leden van de Conventie, de bijdrage ontvangen die in
bijlage dezes staat.



REGERINGSKANSLIET

14 January 2003

**Prime Minister's Office
Sweden**

Member of the EU Convention

Lena Hjelm-Wallén

Mr. Valéry Giscard d'Estaing
President of the European Convention
Brussels

Dear Mr. President,

On behalf of my fellow members of the Convention, Ms. Tiilikainen and Mr. Roche, I am pleased to submit our common contribution on openness and good administration in the EU institutions.

I ask for the contribution to be circulated to the Convention.

Yours sincerely,

Lena Hjelm-Wallén

14 January 2003

Contribution from Lena Hjelm-Wallén, Dick Roche and Teija Tiilikainen to the discussion on a Constitutional Treaty: Openness and good administration in the EU institutions

It is generally accepted that a precondition for democracy in the Union is that all citizens should be able to influence the formulation and implementation of the Union's policies. To realise this it is necessary to work towards more open, efficient and accountable EU institutions. It is not too bold to claim that the future health of the Union depends on citizens' trust and confidence in the workings of the institutions. The new Treaty must demonstrate that the Member States of the Union take these issues seriously and should clearly state what principles should apply in the administration of the institutions.

Openness

Openness is dealt with in the outlines of Articles 14, 34 and 36 in the draft Treaty. It is not clear to which Article in the draft Treaty the current statement in Article 1 of the TEU ("where decisions are taken as openly and close to the citizens as possible") is expected to be transferred. It is important that it is preserved in an appropriately prominent place. The article should be inserted among the provisions containing definitions and describing the objectives of the Union in Part 1, Title 1.

Regardless of whether the legal basis for public access to EU institution documents is transferred to Article 14 in the draft Treaty or to Part two with the provisions on legal bases, the current wording of Article 255 of the TEC needs to be redrafted. This should be done taking into consideration that the Regulation implementing the principles was adopted in 2001 and that the right to public access to documents should be expanded to include to all institutions and bodies of the union, in line with the current discussions within the institutions.

It is not clear what the meaning of openness is in relation to Article 34 in the draft Treaty (which is suggested be moved to Title IV). If a principle on participatory democracy is to be inserted, openness should be strongly emphasized, a general principle of consultation of interested parties should be laid down¹ and the Treaty should not limit such consultations to citizens' organisations, as suggested in Article 34.

Article 36 in the draft Treaty deals with public legislative debates. This is a good proposal and is in line with the recommendation from working group IV on the role of national parliaments.²

¹ C.f. The Communication of the Commission on the institutional architecture, 4.12.2002 COM (2002) 728 final.

² CONV 353/02.

The European Ombudsman

The institution of the European Ombudsman has been omitted from the draft Treaty. This must be corrected.

Good administration

Working group V on complementary competencies has proposed that a provision should be introduced in a future Treaty on providing power for the Union to adopt rules on good administration within the EU institutions.¹ A similar suggestion has been made to the Convention by the European Ombudsman.² The proposal from the working group did not meet any objections when its conclusions were discussed in the plenary. It would appear logical that this should allow for the detailed elaboration of rules based on fundamental principles of good administration.³

We suggest a provision along the following lines be included in the Treaty, either as part of Article 14 or in Part two of the draft Treaty, in connection with other provisions on the work of 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 administration⁴, detailed arrangements for the implementation of which are to be defined in accordance with the procedure referred to in Article 251 of the EC Treaty⁵ within two years of the entry into force of the Treaty of X.”

¹ CONV 375/1/02

² CONV 221/02.

³ These are set out in Article 41 of the Charter of Fundamental Rights, which in turn is based on extensive case law.

⁴ The nature of any cross-reference to Article 41 of the Charter will depend on the Convention's ultimate decision on the treatment of the Charter.

⁵ Codecision.