

**NOTE DE TRANSMISSION**

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du: Secrétariat  
à: la Convention

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**Objet: Rapport du Comité restreint sur l'Union européenne de la Chambre des Lords, présenté par Lord Tomlinson et Lord MacLennan:  
"L'avenir de l'Europe: traité constitutionnel - articles 33 à 37 (La vie démocratique de l'Union)"**

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Le Secrétaire général de la Convention a reçu de Lord Tomlinson et Lord MacLennan, membres suppléants de la Convention, le rapport du Comité restreint sur l'Union européenne de la Chambre des Lords, qu'ils transmettent en leur nom à la Convention.

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**EUROPEAN UNION COMMITTEE****DRAFT REPORT FROM SUB-COMMITTEE E (LAW AND INSTITUTIONS)**

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

**THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY—ARTICLES 33–37**  
**(THE DEMOCRATIC LIFE OF THE UNION)**

CONV 650/03 The democratic life of the Union

**PART 1: INTRODUCTION**

1. Title VI of the new Treaty, to be entitled “The democratic life of the Union”, contains seven draft Articles:

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| Article 33  | The principle of democratic equality among Union citizens;   |
| Article 34  | The principle of participatory democracy;                    |
| Article 35  | The European Ombudsman;                                      |
| Article 35a | Political Parties at European level;                         |
| Article 36  | Transparency of the proceedings of the Union’s institutions; |
| Article 36a | Protection of personal data;                                 |
| Article 37  | Status of churches and non-confessional organisations.       |

2. The proposed content of this group of Treaty Articles has therefore changed from that envisaged in the Preliminary draft Constitutional Treaty<sup>1</sup>, the skeleton text presented to the Convention on the Future of Europe last October by its President, Valéry Giscard d’Estaing. Articles 33, 34, and 36 remain. But Articles dealing with EP elections and voting rules in Union institutions have been omitted and four other provisions (Articles 35, 35a, 36a and 37 above) inserted. One further change has been proposed. Included in the recently published draft articles for Title IV of the Constitution (those dealing with the institutions) is an Article X, entitled the Congress of the Peoples of Europe. The Praesidium has suggested that Article X be inserted into Title VI on “The Union’s Democratic Life”. We comment on the proposal for a Congress in our Report on the Institutions.<sup>2</sup>

3. The group of Articles (33-37), the subject of this Report, is intended to “establish a number of principles, to enable citizens to see that:

- they can contribute to the framing of the Union’s decisions;
- they can follow the Union’s decision-making process, and thus assess it”.<sup>3</sup>

This intention responds to the need, as expressed in the Laeken Declaration, to increase the democratic legitimacy and transparency of the institutions. We have endeavoured in this Report to assess how far the Articles go in achieving the stated aims.

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<sup>1</sup> Doc CONV 369/02. The text is printed at Appendix 2 to our Report *The Future of Europe: Constitutional Treaty—Draft Articles 1-16* (9th Report, Session 2002-03, HL Paper 61).

<sup>2</sup> See our Report *The Future of Europe: Constitutional Treaty—Draft Articles on the Institutions, together with the Minutes of Evidence* (21st Report, Session 2002-03, HL Paper 105).

<sup>3</sup> Doc 650/03, at p 2.

4. Only Articles 33 and 34 are completely new. The others can be traced to provisions in the current Treaties or, in the case of Article 37, Declaration 11 to the Amsterdam Treaty.

5. This is our fifth<sup>1</sup> Report on the draft Treaty Articles now being discussed in the Convention.<sup>2</sup> The format of this Report follows that of our earlier Reports in this series. Each Article is followed by an Explanatory note<sup>3</sup> (the text of which has been prepared by the Convention Secretariat) and a Commentary added by the Committee.

**6. We make this Report to the House for information.**

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<sup>1</sup> For our earlier Reports in this series see *The Future of Europe: Constitutional Treaty—Draft Articles 1-16* (9th Report, Session 2002-03, HL Paper 61), *The Future of Europe: Constitutional Treaty—Draft Articles 24-33* (12th Report, Session 2002-03, HL Paper 71), *The Future of Europe: Constitutional Treaty—Draft Article 31 and Draft Articles from Part 2 (Freedom, Security and Justice)* (16th Report, Session 2002-03, HL Paper 81), and *The Future of Europe: Constitutional Treaty—Draft Articles 43-46 (Union Membership) and General and Final Provisions* (18th Report, Session 2002-03, HL Paper 93).

<sup>2</sup> See Appendix 1 for membership of the European Union Committee, and of Sub-Committee E (Law and Institutions) which undertook the detailed scrutiny work.

<sup>3</sup> The Convention document uses the term “Comments”.

## PART 2: ANALYSIS OF ARTICLES 33–37

### **Article 33: The principle of democratic equality**

The Union's operation shall be founded on the principle of the equality of citizens, who shall receive equal attention from the Union's institutions.

#### **Explanatory note**

*“Article 33 introduces the general principle of the equality of citizens in relation to the European institutions. The institutions must take account of this in their dealings with European citizens.”*

#### **Commentary**

7. Article 33 is new. The statement of a principle of equality before the Union's institutions would complement Article 7(1), which provides for equality before the law.<sup>1</sup> It is noteworthy that equality before the institutions may not be the right of everyone but only of “citizens”. This may mean EU citizens (*ie* nationals of Member States). The drafting is unclear. Contrast the wording of Articles 33a, 35a, and 36, referring to “citizens of the Union”, and of Article 36a, referring to “everyone”. Persons (third country nationals) resident in a Member State would not be entitled to benefit from Article 33, though such persons would expressly have rights of access to EU documents (see Article 36(3) below).

### **Article 34: The principle of participatory democracy**

1. Every citizen shall have the right to participate in the democratic life of the Union.
2. The Union institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their opinions on all areas of Union action.
3. The Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

#### **Explanatory note**

*“1. The purpose of this Article is to provide a framework and content for the dialogue which is largely already in place between the institutions and civil society (note that the social dialogue has been consigned to Part Two of the Constitution in the provisions relating to social policy, as is the case in the TEC.)*

*2. Paragraph 2 refers to the forums, opportunities for Internet chat and other similar mechanisms which the institutions have now put in place.*

*3. In paragraph 3 associations are mentioned in addition to civil society since there are associations which do not come under the civil society heading (employers' and employees' trade unions, associations representing the interests of the regions and regional and local authorities, etc.).”*

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<sup>1</sup> Article 7(1) states: “Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law”.

8. This Article is also new. The principle enunciated is unexceptionable. But problems with the Article arise from the vagueness of its provisions and the absence of the definition of key terms such as “representative associations” and “civil society”. We doubt whether all the grand words in Article 34 will have much effect in re-engaging the citizen in the political life and legislative processes of the Union. **Article 34 should spell out much more clearly what is intended by the concept of participatory democracy, what it means for the individual citizen and by what practical means he or she may take advantage of the rights given.**

9. The present Convention process has shown the potential for making the individual more aware of and getting him or her more involved in the development of Union policy. Key elements in the process have been the initial “listening stage” of the Convention’s work and the opportunity given by the Convention Forum to follow the proceedings of the Convention as well as to make contributions to the debate. Article 34(2) makes clear that the involvement of citizens and representative associations covers “all areas of Union action”. It is not limited, for example, to Social Policy. The Article leaves open the question as to what would be the “appropriate means”.

10. In practice NGOs and other groups and organisations play a more significant role than the individual in the identification and formulation of policies at both European and national levels. Article 34 makes a distinction between the individual and representative associations and also between representative associations and civil society. There are potential problems of definition. The Praesidium’s Explanatory note explains that “representative associations” is intended to cover employers associations and trade unions (the “social partners”) as well as “associations representing the interests of the regions and regional and local authorities, etc”. However, “civil society” is undefined and is not a precise term of art. The Commission’s White Paper on Governance includes “trade unions and employers’ organisations (the “social partners”); non-governmental organisations; professional associations; charities; grass roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities”.<sup>1</sup>

11. In our recent Report on “Social Europe”<sup>2</sup> we examined the participation of both the social partners and civil society in Union decision-taking. We concluded that if the social partners and civil society were to be given a greater role a number of important issues would need to be clarified, especially regarding the definition of civil society, the determination of its role and the need to distinguish between different civil society organisations regarding their respective powers.<sup>3</sup> **The use in Article 34 of the terms “representative associations” and “civil society” makes such clarification even more necessary and important. Does “civil society” include voluntary associations?**

12. The reference, in Article 34(3) to an ‘open and regular dialogue’ is welcome in principle. But it raises various questions: Would there be an obligation on the institutions to consult in all cases? Would such ‘dialogue’ cover legislative proposals, broader policy action or any action by the institutions? Should, and if so how would, such ‘dialogue’ be formalised? Is dialogue always to be initiated by the institution or could “representative associations” and “civil society” set an agenda to which the institutions would be obliged to respond? What will be the resource implications when 25 Member States are involved in “regular” dialogue? Unless these questions are thought through and clear answers given, the welcome intention that appears to underlie Article 34(3) is likely to lead to disillusion.

<sup>1</sup> Doc COM (2001) 418, at p 14. For a more precise definition the Commission refers the reader to the Opinion of the Economic and Social Committee on “The role and contribution of civil society organisations in the building of Europe”, [1999] OJ C 329/30.

<sup>2</sup> *The Future of Europe: “Social Europe”* (14th Report, Session 2002-03, HL Paper 79).

<sup>3</sup> 14th Report at para 28. The issues identified were: the definition of what constitutes “civil society”; the different functions that civil society can perform in the Union; the difference in outcomes between greater consultation of civil society and greater involvement in decision-making processes; how civil society would be supported by the Union; the criteria for deciding which groups from civil society should be given a greater role to play in the Union; and whether there is a role for “pan-European” representation of civil society (and of social partners) given the greater processes of European integration.

### Article 35: The European Ombudsman

An Ombudsman shall be appointed to receive, investigate and report on complaints concerning instances of maladministration within the Union institutions.

#### Explanatory note

*“This Article, which is based on Article 195 TEC, lets citizens know that they can appeal against maladministration. The detailed provisions will appear in Part Two of the Constitution.”*

#### Commentary

13. Under Article 21 TEC every EU citizen has the right to complain to the Ombudsman about maladministration (a term which has been widely construed by the Ombudsman) in the activities of any Community institution or body. The Ombudsman is appointed by the European Parliament and is required by the Treaty to be “completely independent in the performance of his duties” (Article 195 TEC). We note that Article 35 does not say how the Ombudsman is to be appointed. **The requirement that he or she be appointed by the European Parliament (Article 195 TEC) is an important guarantee of the Ombudsman’s independence which we believe could usefully be included in this Article rather than in Part Two of the new Treaty.**

### Article 35a: Political parties at European level

Political parties at European level contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

#### Explanatory note

*“This Article is based on Article 191 TEC and the wording of Article 12(2) of the Charter.”*

#### Commentary

14. The notion of European Political Parties (EPPs) was first recognised in the Maastricht Treaty. They have operated as umbrella groups for like-minded national parties. The larger EPPs share the same name as their respective MEP Groups in the European Parliament: the European People’s Party (centre-right); the Party of European Socialists (centre-left); and the European Liberal, Democratic and Reformist Group (ELDR).

15. Article 35(a) repeats the wording of Article 191 TEC. There are, however, two significant changes. First, the new text contains no reference to EPPs being “important as a factor for integration within the Union”. Some explanation would be helpful. Second, the second paragraph of Article 191, which was added by the Nice Treaty to give an express power to provide for the regulation and funding of EPPs, is omitted. Proposals<sup>1</sup> for a Regulation on the status and funding of EPPs have been the subject of controversy, not least as to the definition of EPPs (whether they need be active in more than one Member State), the principles by which EPPs would have to abide, and the possibility of individual or corporate donations to EPPs. It is unclear whether the omission of the second sentence of Article 191 TEC is deliberate and if so what and where in the new Treaty provision is to be made for regulating EPPs.

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<sup>1</sup> The latest version, Proposal for a Regulation of the European Parliament and of the Council on the Statute and Financing of European Political Parties (Doc COM (2003) 77) is currently under scrutiny in Sub-Committee E (Law and Institutions).

### **Article 36: Transparency of the proceedings of the Union's institutions**

1. In order to promote good governance and ensure the participation of civil society, the Union institutions shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council when it is discussing a legislative proposal.
3. Any citizen of the Union, man or woman, and any natural or legal person residing in a Member State, shall have a right of access to European Parliament, Council and Commission documents in whatever form they are produced, and to those of the agencies and bodies created by those institutions.
4. General principles, conditions and limits which, on grounds of public or private interest, govern the right of access to documents shall be determined by the European Parliament and the Council in accordance with the legislative procedure.
5. Each institution, agency or body referred to in paragraph 2 shall determine in its own Rules of Procedure specific provisions regarding access to its documents.

#### **Explanatory note**

- "1. The first paragraph states that, with the aim of sound administration, the Union institutions will take decisions as openly as possible (taking over the concept of openness from the second paragraph of Article 1 TEU ("This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen").*
- 2. The second paragraph of the Article relates to the transparency of the Parliament's and Council's legislative proceedings. The reference in the first sentence to the Council's discussions is intended to cover the entirety of the phase when legislation is under discussion, from the first time a legislative draft is discussed in the Council to its final adoption. Should the Convention decide to recommend the creation of a legislative Council, the reference to the Council in this paragraph would have to be clarified.*
- 3. Paragraph 3 is based on Article 255 TEC and on Article 42 of the Charter of Fundamental Rights. Those texts are supplemented with an extension of the right of access to documents of agencies and bodies created by the legislator, in accordance with the joint declaration by the European Parliament, the Council and the Commission (OJ L 173, 27.6.2001, p. 5) relating to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). The joint declaration stipulates that: "The European Parliament, the Council and the Commission agree that the agencies and similar bodies created by the legislator should have rules on access to their documents which conform to those of this Regulation [...]".*
- 4. Paragraph 4 of the Article is based on Article 255(2), with the reference to the procedure updated and with the time-limit for determining the rules deleted. The text also incorporates the term "conditions" in accordance with the definition of the scope of Regulation (EC) No 1049/2001 in its Article 1(a). Article 255(2) stipulates that "General principles and limits... shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam."*
- 5. Paragraph 4 is based on Article 255(3)."*

16. The principle set out in Article 36(1) is welcome. But we do not believe this statement of the general principle of openness should be limited to the institutions. As in the case of Article 36(3) (on which we comment in more detail below) **the application of the principle should be expressly extended to include all agencies and bodies established by or created by or under the Treaties.**

17. Article 36(2) contains a wider statement of the principle found in draft Article 25(3), which provides: “When acting under any procedure for the adoption of a European law or a European framework law, the European Parliament and the Council shall meet in public”. Again this is welcome. The Committee has consistently urged greater openness in the Council of Ministers.<sup>1</sup> Some improvements were agreed at the Seville European Council. **But a general rule in the Treaty, such as that in Article 36(2), would be an important step forward.**

18. Article 36(3) deals with freedom of information and is derived from, and largely replicates the provisions of, Article 255 TEC. The legal nature and constitutional significance of public access to information varies between States. Article 36(3) underlines its importance in any Union Constitution and is to be welcomed. However, there is much room for improvement, both in the Treaty text and in current practice. In our Report *Public Access to EU Documents* we criticised the limitations of the Article 255 TEC. We concluded that limiting the right of access to EU citizens (*ie* nationals of Member States) and persons resident in the Union and imposing duties on only three institutions was in principle undesirable and might give rise to artificial distinctions, if not unfair discrimination, in practice.<sup>2</sup> We therefore look for significant improvement.

19. It is notable that the new Constitution would continue to restrict the right of access to documents to EU citizens and residents. For the reasons set out in our earlier Report **we recommend that Article 36(3) be amended so that any natural or legal person (irrespective of his, her or its nationality or residence) should have the right of access to EU documents.**

20. We welcome the right of access being extended to all “agencies and bodies created by the institutions”. This is consistent with the recommendations in our 2000 Report.<sup>3</sup> But Article 36(3) does not go far enough. The present text would not cover, for example, the Court of Justice, the Committee of the Regions, the Economic and Social Committee (ECOSOC), the Court of Auditors, the European Central Bank, the Ombudsman or Europol. We see no justification for these bodies being excluded from the Union’s freedom of information regime. **We recommend therefore that Article 36 (3) be extended to cover all bodies and agencies established or created by or under the Treaties.**

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<sup>1</sup> See our Reports *The Convention on the Future of Europe* (30th Report, Session 2001-02, HL Paper 163), and *Review of Scrutiny of European Legislation* (1st Report, Session 2002-03, HL Paper 15).

<sup>2</sup> *Public Access to EU Documents* (16th Report, Session 1999-2000, HL Paper 102) at paragraph 178.

<sup>3</sup> *Ibid* at paras 94 and 177.



### Article 36a: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. The Parliament and the Council, in accordance with the legislative procedure, shall adopt the rules relating to the protection of individuals with regard to the processing of personal data by the Union's institutions and bodies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data.

#### Explanatory note

*"1. A general article on the protection of personal data, which creates a single legal basis for data protection by both the institutions and the Member States (when carrying out activities which come under the scope of Union law)."*

*2. Paragraph 1 reproduces Article 8(1) of the Charter of Fundamental Rights: "Everyone has the right to the protection of personal data concerning him or her".*

*3. Paragraph 2 is based on the current Community system (Directive 95/46/EC on data protection<sup>1</sup>, based on Article 95 TEC for Member States' activities and Article 286 TEC applicable to the institutions).*

*For reference, Article 286 TEC states:*

*"1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.*

*Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate."*

*For reference, Article 3(2) of Directive 95/46/EC states that: "This Directive shall not apply to the processing of personal data ... in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union..."*

*4. The question of the creation of a single legal basis for personal data protection was raised when the JHA articles, specifically Article 21 (Chapter 4, police cooperation) of Part Two of the Treaty, were being drafted. The comments on the draft of Article 21 (CONV 614/03, page 31) explain that Article 30 TEU, from which the wording of Article 21 is essentially derived, provided that the exchange of information between national services and between the latter and Europol is to be carried out "subject to appropriate provisions on the protection of personal data", and that on that basis, data protection provisions had been included in the various 3rd pillar instruments. It explains that rather than including an explicit reference to data protection in Article 21 in order to create a legal basis for maintaining and developing such provisions for the current 3rd pillar area, it would seem more logical, following the abolition of the pillars, to bring in general arrangements for the protection of personal data, covering both the current Community arrangements (Directive 95/46/EC on data protection based on Article 95 TEC for action by Member States, and Article 286 TEC for action by the institutions) and action under the existing 3rd pillar."*

<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

21. This would be a new Treaty Article but, as mentioned in the Praesidium note, it is based in part on Article 8 of the EU Charter of Fundamental Rights and in part on existing Treaty provisions. In contrast to Article 36(3) (access to documents, see paragraph 17 above) the right to the protection of personal data is acknowledged by Article 36a to be a right of all individuals and not limited to citizens and EU residents.

22. Currently EU data protection measures comprise Directive 95/46/EC<sup>1</sup> and a small number of other Single Market measures, Regulation 45/2001<sup>2</sup> in relation to the processing of data by the institutions, and particular provisions in Third Pillar instruments. Article 36a(2) would give a new power to regulate for data protection. What needs to be considered is whether by bringing together, in one general enabling provision, powers to legislate at Union level on data protection in the way currently being proposed a new, more extensive, competence would be conferred on the Union.

23. The draftsman has drawn inspiration for Article 36a(2) from Article 286 TEC (dealing with the protection of individuals in relation to the processing of data by Union institutions and bodies). There would be a wide power to regulate the processing of data which would include the processing of data by Member States “when carrying out activities which come under the scope of Union law”. It is noteworthy that a case currently before the Court of Justice raises the question how Community data protection laws (based on Single Market powers in Article 95 TEC) may impact on local/domestic and non-economic situations (in the particular case, posting on a public website personal and confidential details about a local church’s supporters). The Advocate General has drawn attention to the limitations of the power in Article 95 TEC.<sup>3</sup> The new power in Article 36a would extend beyond the Single Market and Third Pillar. On the other hand it does not appear to include the power to regulate the processing of data by natural and legal persons, though the intention, according to the Praesidium’s note, is to give a power at least as extensive as Article 95 TEC.

24. It appears to be the intent that the new power would extend to “the adoption of specific data protection rules geared to the police sector”.<sup>4</sup> But how much further the power is intended to extend is unclear. We would question the need and desirability of conferring any general competence on the Union to legislate on data protection, though we have no difficulty with putting data protection in Schengen and Third Pillar matters on a secure legal basis. However, the implications of the existence and exercise of any such competence for Article 10 ECHR (freedom of expression) needs to be carefully examined. There are potentially serious issues here, for example, for the regulation of the media. **We believe that the limits of the power in Article 36(2) need to be defined. It must be made clear that Article 36a does not confer any general power on the Union to legislate on data protection.**

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<sup>1</sup> [1995] OJ L 281/31.

<sup>2</sup> [2001] OJ L 8/1.

<sup>3</sup> Case C-101/01 *Bodil Lindqvist*. The opinion of Advocate General Tizzano was given on 19 September 2002. The judgment of the Court is awaited.

<sup>4</sup> See Praesidium’s Explanatory note to Article 21 of part 2 (Freedom, Security and Justice), reproduced in our third Report in this series (16th Report, Session 2002-03, HL Paper 81) at p 36.

### **Article 37: Status of churches and non-confessional organisations**

1. The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The European Union equally respects the status of philosophical and non-confessional organisations.
3. The Union shall maintain a regular dialogue with these churches and organisations, recognising their identity and their specific contribution.

#### **Explanatory note**

*“1. Paragraphs 1 and 2 take over in full the text of Declaration 11 annexed to the Amsterdam Treaty, on the status of churches and non-confessional organisations.*

*2. Paragraph 3 specifies that the Union is to maintain a dialogue with the churches and organisations referred to in paragraphs 1 and 2 (as with the associations and civil society; see Article 34).”*

#### **Commentary**

25. This Article upgrades, to a Treaty obligation, the need for the Union to respect the status under national law of both religious organisations (“churches and religious associations or communities”, undefined) as well, and on an equal basis, as philosophical and non-confessional organisations. While we recognise that there has been pressure to include express reference to religious values in any new Union Constitution the Committee is concerned that Article 37, which may have been included as some form of compromise, may give rise to greater problems than it is intended to solve. **Whether Article 37 is necessary or helpful requires careful consideration.**

26. In this Article as in others (see in particular our comments on Article 34 above) there are serious problems of uncertainty and lack of definition. The Praesidium’s Explanatory note suggests that churches and the organisations referred to in Article 37 (1) and (2) do not fall within the definition of “civil society”, but as we explain in paragraphs 10 and 11 above the meaning of that term is far from clear and there is a good argument that the churches and such organisations form a part of civil society.

27. Article 37(3) places an obligation on the Union (and thus in turn on its Member States and the Union’s institutions) “to maintain a regular dialogue with these churches and organisations”. The scope and extent of application of this obligation is unclear. We query whether anything more than or different to Article 34 is required. According special positions *inter alia* to the churches and religious associations or communities” and to “philosophical and non-confessional organisations” without defining those terms might open the door to a wide range of bodies (including sects and cults), some of which might generally be considered to be harmful, and some actually dangerous, to society.

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<sup>1</sup> Article 37 fudges the key issue of separation of church and state. Articles 9, 10, 11 and 14 ECHR (and their equivalent in the EU Chapter of Fundamental Rights) already provide a balanced approach to freedom of thought, conscience and religion, free speech, freedom of association, and freedom from discrimination on any ground.

28. There are also problems with the drafting of this Article. It contains apparent internal inconsistencies. For example, Article 37(1) “respects and does not prejudice the status” of churches, while Article 37(2) only “respects the status” of philosophical organisations. There is also possible inconsistency with related Articles. Again Article 37(3) refers only to “those churches and organisations” and omits any mention of the “religious associations or communities” in Article 37(1). What is intended? It is noteworthy that maintaining “a regular dialogue” suffices for Article 37(3), while Article 34(3) requires “an open, transparent and regular dialogue with representative associations and civil society”. It is doubtful, however, whether anything different is intended. It may be suggested, not least by lawyers, that the omission of the adjectives “open” and “transparent” can hardly be an accident, given the close proximity of Article 34(3). The greater clarity required for Article 34(3) (see paragraph 12 above) is required also here.

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