

NOTE

from : Praesidium

to : Convention

Subject : The democratic life of the Union

Part One of the Constitution, Title VI: The democratic life of the Union

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I. Main elements

1. The question of how to increase the democratic legitimacy and transparency of the institutions was an essential element of the Laeken Declaration. From the beginning of the Convention's proceedings, it was evident that citizens had high expectations as regards transparency in the Union's legislative process, and wanted the Union to be closer to its citizens, partly through dialogue between institutions and citizens on the Union's activities, through associations and civil society.
2. Draft Articles 33 to 37 concern the democratic life of the Union. They 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.
3. The first of these, draft Article 33, is a new text, which establishes the principle by which citizens are equal before the Union's institutions. Draft Article 34 sets out the main elements of participatory democracy, and is intended to provide a framework and content for the dialogue which is largely already in place between the institutions and civil society.
4. Draft Article 35 describes the role of the European Ombudsman, and reproduces elements of Article 195(1) TEC.
5. Draft Article 35a describes the role of the political parties at European level. The text is based on Article 191 TEC.
6. Draft Article 36 establishes the transparency of the work of the Union's institutions. The text reproduces elements of Article 1 TEU concerning the taking of decisions as openly as possible, and establishes that the process leading to the adoption of European laws and framework laws will be transparent: both the European Parliament and the Council will meet in public during this process. The Article also includes the provisions of Article 255 TEC concerning citizens' rights of access to the institutions' documents.

7. Draft Article 36a is intended to create a single legal basis for personal data protection, for the protection of such data by both the institutions and the Member States when they are acting in areas covered by the scope of Union law. The text is based on the current Community system, stemming from Directive 95/46/EC of 24 October 1995 on data protection (based on Article 95 TEC) as regards the actions of the Member States and Article 286 TEC as regards the Union's institutions.
8. Draft Article 37 incorporates Declaration No 11 annexed to the Treaty of Amsterdam on the status of churches and non-confessional organisations, by introducing an additional paragraph concerning the dialogue of the European institutions with those churches and organisations (parallel with the dialogue with associations and civil society, which is established in draft Article 34).
9. Articles on uniform electoral law for European Parliament elections and voting rules in Union institutions were planned for Title VI in the preliminary draft last October (CONV 369/02). The Praesidium now feels that such Articles might find a place in Title IV "Union institutions".

II. Table: the proposed Articles concerning the democratic life of the Union, in relation to the existing Treaties

	New Articles	Articles reproducing provisions found in the existing Treaties, but only partially or with substantial amendments	Articles reproduced from the existing Treaties, slightly adapted or unchanged
<u>Article 33</u> : The principle of democratic equality	✓		
<u>Article 34</u> : The principle of participatory democracy	✓		
<u>Article 35</u> : The European Ombudsman		✓	
<u>Article 35a</u> : Political parties at European level		✓	
<u>Article 36</u> : Transparency of the Union's proceedings		✓	
<u>Article 36a</u> : Protection of personal data		✓	
<u>Article 37</u> : Status of churches and non-confessional organisations		*	

* Declaration No 11 annexed to the Treaty of Amsterdam

NB. The comments in section IV below describe to what extent each draft Article is based on one or more existing Articles, as well as any modifications or new elements. To get an exact view of the basis of each Article, please refer to the comments.

TEXTS OF ARTICLES 33 TO 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.

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.

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.

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.

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.

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.

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.

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TEXTS OF ARTICLES 33 TO 37 WITH COMMENTS

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.

Comments:

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.

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.

Comments:

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.).*

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.

Comments:

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.

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.

Comments:

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

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.

Comments:

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).*

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.

Comments:

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 protection¹, based on Article 95 TEC for Member States' activities and Article 286 TEC applicable to the institutions).*

¹ 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.

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.*

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.

Comments:

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).*

