



**Church and Society Commission of the  
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*Churches and Religious Communities  
in a Constitutional Treaty of the European Union*

In the course of recent decades, religion, churches and religious communities have been more frequently mentioned in and affected by European Union legislation. Reference to religion can not only be found in treaty provisions but also in annexed protocols and declarations. EU secondary legislation directly refers to and impacts on religion in many areas of law, including non-discrimination, labour law, data protection, culture, media law, animal welfare, co-operation, finances, customs, and economic law<sup>1</sup>.

If a future Constitutional Treaty, designed to guide the European Union through the next decades, were not to make any reference to religion, churches or religious communities, this would constitute a vacuum, given their vital significance to society as a whole, to the values and identities upon which a society is based, and to the Union's relationship to its citizens.

These proposals are an expression of the increasing relevance of religion, churches and religious communities for the further development of the European Union. They take up existing provisions of Community law.

*They can figure as sections in a general article about churches and religious communities within a European Constitutional Treaty. They could equally be fitted into relevant specific contexts of the constitution.*

I.

**The European Union recognises and respects the right of the churches and religious communities to freely organise themselves in accordance with national law, their convictions and statutes and to pursue their religious aims in the framework of fundamental rights.**

This provision secures the right to self-determination of churches and religious communities in their teachings and organisation. Furthermore, religiously motivated activity is protected, especially worship, charitable and cultural activity, and pastoral care. By this means, corporate religious freedom would be guaranteed.

The provision does not create new competencies. It relates exclusively to the way in which existing and possible future competencies of the European Communities which affect churches and religious communities are exercised, e.g. in the areas of law mentioned in the general introduction, paragraph 1.

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<sup>1</sup> A Collection of religion-related Norms in the European Union is available at the Institute for European constitutional law of the University of Trier, Germany: <http://www.uni-trier.de/~ievr/EUreligionlaw/index.html>.

Given the variety of institutional relationships between state and religious communities throughout and across Member States, spanning from regimes of separation through systems of co-operation to established churches, the proposal reflects these relationships with the formulation “in accordance with national law, their convictions and statutes”.

The provision is necessary, because corporative religious freedom and the right to self-determination of churches and religious communities are not explicitly secured by Art. 10 of the Charter of Fundamental Rights of the European Union and by Art. 9 of the European Convention of Human Rights. These instruments deal primarily with individual rights; the corporate dimension is only covered by existing jurisprudence. To organise oneself in community with others according to one’s religious convictions, to decide upon the contents of these convictions as a community and to act in accordance with them is an essential element of religious freedom.

There are legitimate limits to the freedom to pursue one’s religious aims and objectives, arising from life in society. In a European Constitutional Treaty, these limits must be more precisely determined in harmony with the limitations to other freedoms.

## II.

**The European Union respects the specific identity and the contribution to public life of churches and religious communities and maintains a structured dialogue with them.**

The European Union, desiring to promote the widest participation of citizens, maintains and develops a dialogue with organised civil society. A provision for dialogue and consultation of civil society should be built into any constitutional text.

In this context, this provision relates to the specificity of churches and religious communities. It secures the respect of their existing specific identity concerning their various self-understandings and legal structures also in regard to civil society.

On the basis of their engagement at local, regional, national and international level, in fields as diverse as social policy, migration, development aid, peace-making, education and pastoral care, churches and religious communities can make a particular contribution to this dialogue and to the quest for values in policy. This proposal provides for a structured dialogue with and consultation of churches and religious communities as essential elements of the democratic and social community characterised by the rule of law and bound by respect for fundamental rights.

## III.

**The European Union respects and does not prejudice the status under national law of churches and religious communities in the Member States. The Union equally respects the status of philosophical and non-confessional organisations.**

This provision refers to Declaration No. 11 of the Final Act of the Treaty of Amsterdam. Declaration No. 11 states that the European Union respects and does not prejudice the status of churches and religious associations and communities and also non-confessional bodies as recognised in each Member State.

The structures of the law governing religion developed in the different legal systems of the Member States have grown over a long time and reflect diversity and national identity. Declaration No. 11 is an expression of the respect for the diversity of these systems. It may also be considered as an emanation of both the horizontal and the vertical dimension of the principle of subsidiarity.

Since the entry into force of the Treaty of Amsterdam, Declaration No. 11 has proven its significance, when the status under national law of churches and religious communities in the Member States has been taken into account as of the drafting stages of European secondary legislation.

Placing this provision at the end of this text shows that the preceding provisions are not meant as exceptions from the obligation to respect the structures of the Member States governing church-state relations. Rather, it concerns only the level of Community Law itself.

Brussels, 27 September 2002

## ANNEX

### Proposals relating to Churches and Religious Communities in a Constitutional Treaty of the European Union

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The European Union respects the specific identity and the contribution to public life of churches and religious communities and maintains a structured dialogue with them.

The European Union respects and does not prejudice the status under national law of churches and religious communities in the Member States. The Union equally respects the status of philosophical and non-confessional organisations.