

Article 17: Reasons for Concern

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Consultation by government with the governed about proposed policies is to be welcomed, and it should include religious organisations on the same terms as any others. Secularism – and the EU is a secular institution and committed to non-discrimination - is not a ban on the religious in the public arena, rather an obligation on government to give no weight to (purely) religious arguments. However, Article 17 is about more than consultation. It endorses the position of churches under national law, so that the EU can do nothing to correct discrimination and injustices entrenched in member states. And it gives privileged access to the EU at the highest level, superior to that of other civil society organisations, to one particular category of organisation - those representing religion and belief - whose dominant members, the churches,

- have a defining expertise - theology - that is irrelevant to the EU;
- have views on a range of matters of growing importance in the EU – such as education, child welfare, genetic research - that are highly controversial and not always representative even of their own members, let alone of the European public;
- have a record and current practice in politics and human rights that is seriously flawed; and
- have shown in the run-up to Article 17 an approach that is far from open and transparent.

The paper reviews the origins of Article 17 from a secularist viewpoint, describes the latest developments in the conduct of the dialogue and suggests ways (given that it will not be repealed) that its effects may be mitigated.

All or almost all religions (though often not their ordinary followers) claim that they have been vouchsafed a unique revelation of eternal truths. Their leaders characterise other- and non-believers as living in error, even perverse or sinful, and anyway a reproach to their own true faith.¹ This approach can properly be labelled totalitarian, since at root they seek by all means to impose their own religious beliefs and morality on everyone.

By contrast Humanism (of which I append a short definition) embraces difference. In the often confusing clash of such a variety of beliefs and cultures in modern life Humanists, while holding more or less firmly (it is an individual matter) to their own beliefs, find within humanist thought - indeed, essential to it - the acceptance of, the legitimacy of difference. Ours is the liberal, tolerant approach of the democratic 'open society', of freedom of religion or belief, of the secular state - an approach valid for all times but particularly suited to the complexity of our multi-belief world.²

Now the notion of a 'secular state' raises the hackles of religious conservatives. But in the sense I use it - of the state, its laws and institutions being neutral as between lifestances,

¹ For example, the Pope has written: the 'attempt to construct the human community by excluding God' will lead 'toward the brink of the abyss, toward the utter annihilation of man' - Ratzinger, J. (2006) *Christianity and the Crisis of Cultures* (San Francisco: Ignatius Press), quoted in Houston, K. (2009) *Faith in Dialogue: The Conflict Dynamics of Public Religion in European Union Governance*, Unpublished Thesis (PhD) University of Ulster, p.166. Similarly, in his encyclical letter *Caritas in Veritate* in 2009 he said: "A humanism which excludes God is an inhuman humanism". On his visit to the United Kingdom in 2010 he saw "aggressive secularism" and "atheist extremism" as serious threats to the welfare of the nation.-

² George Soros defined an open society as one "based on the recognition that people have divergent views and interests and that nobody is in possession of the ultimate truth" (George Soros: appendix to *The Bubble of American Supremacy* - Weidenfeld & Nicolson, 2004).

religious or otherwise - objections to it amount necessarily to claims for privilege for some and discrimination against the rest. Objectors tend to allege that secularists wish to drive the religious from the public square. Not so. How could we, when Humanism is no less a lifestance, a 'religion or belief' (to use the phrase from all the human rights treaties), than Islam or Christianity? If Christians were banned from the public square, so would be Humanists.

What, rather, secularists do say is that in debates on public policy purely religious arguments should have no place. In Voltaire-like defence of freedom of expression, we absolutely do not wish to suppress or forbid such arguments being voiced - but we do say that they should count for nothing in the minds of politicians and decision-makers. Let the religious argue (say) against assisted dying with warnings of a slippery slope - an argument we can all understand and assess - but if they argue that life is the gift of God so that it is not for us to take it away, then their words should be ignored. That is not an argument that can be legitimately admitted in a society where there are so many competing beliefs that reject its very premises. And insofar as even admissible arguments appear to be motivated by religious belief rather than disinterested search for the right answer, they merit particularly close scrutiny.

Now, my subject in this paper is the European Union. The EU is a secular institution in the simple sense of its not being a religious one, and it has embraced human rights, equality and non-discrimination as fundamental to its notion of European citizenship. It has thereby implicitly embraced secularism as its model.

Not only that, but the population of Europe is becoming increasingly non-religious. The EU's own Eurobarometer survey found in 2005 that in its then 25 member states only 52% of people believed in God while 18% rejected outright even the idea of 'some sort of spirit or life force'.³ Many other polls yield similar results: for example, in 2007 Eurobarometer found that 46% thought religion had too important a place in society, while the same poll found that when asked to pick up to three from a list of twelve 'values' religion twice came last: only 7% chose it as important to them personally and only 3% saw it as a value representative of the EU, instead putting at the top of their lists human rights, democracy, peace, and the rule of law.⁴ So, the churches attract smaller congregations, the seminaries have to turn to immigrants from Latin America to find candidates for the priesthood. In the Roman Catholic church in Europe liberal dissent is rife, with unambiguous doctrines such as that on contraception almost universally ignored, with grassroots movements such as Catholics for Choice gaining strength and with even traditionalist believers outraged at the way the hierarchy, by trying to cover it up, has perpetuated the scandal of sexual violence against children.

Against this background of a Europe historically and culturally Christian but increasingly

³ Eurobarometer special survey: Social values, Science and Technology (European Commission, June 2005) available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf - accessed 18 October 2010.

⁴ Eurobarometer 66: Public Opinion in the European Union (European Commission, September 2007) available at http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf - accessed 18 October 2010

non- and other-believing and of a European Union that promotes equality, non-discrimination and human rights, the inclusion in the Lisbon Treaty of a clause giving special privileges to religion or belief seems - indeed, is - anomalous.

Article 17 (actually of the Treaty on the Functioning of the European Union, inserted there by the Lisbon Treaty), reads as follows:

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

I shall argue first, fairly briefly, that Article 17 is contrary to general EU principles and then, with an examination of history and current practice, that this is a matter for serious concern.

Article 17 is contrary to the EU's general principles:

- (a) because it effectively exempts churches from EU non-discrimination laws;
- (b) because it privileges religion or belief organisations over other non-governmental organisations;
- (c) because it is indirectly discriminatory against non-religious belief organisations; and
- (d) because it is in practice directly discriminatory against non-religious belief organisations in general and humanist and secularist organisations in particular.

(a) The first two paragraphs of Article 17 first appeared in a Declaration attached to the Amsterdam Treaty of 1997. The second was plainly an attempt with little bearing on the real world to balance the first, but the first is vital. This Declaration was not cast as a recognition of the importance of religion to the European project. Nor was it a call for equal recognition of religious and other life-sustaining bodies across Europe: in many states religion has no formal status in national law. It was a simple *démarche* achieved by the churches: "what we have we hold". As they themselves have said, Article 17(1) "acknowledges the variety of State-Church systems in the Member States and underlines the exclusive national competence for determining the relations between Church and State and the non-interference of the EU in these relations."⁵ It gives churches exemption from any EU legislation that might affect their status - especially any directive on equality or non-

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"Article 17 of the Treaty on the Functioning of the European Union" - COMECE/CEC submission to EU May 2010.

discrimination.⁶ It protects the concordats the Vatican has with many states (and it managed to sign a surprising number of concordats with states just prior to their joining the EU) and the national arrangements whereby churches are heavily subsidised from public funds in the majority of countries in Europe. It has resulted in wide exemptions for religious bodies in the employment equality directive⁷ in 2000 and in the draft directive concerning goods and services⁸ now under discussion. One example of its effects is that church primary schools in Ireland - which make up 99% of the total and are funded by the state - are still allowed to refuse employment to or to dismiss gay or lesbian staff so as to “maintain the religious ethos of the institutions”: a complaint that the Irish Employment Equality Act 1998 breached the employment equality directive was dismissed by the Commission.⁹

(b) In stark contrast with the radical subsidiarity demanded by Article 17(1) in the interest of the churches, Article 17(3) in the same interest requires continuous consultation at the highest level in the EU with bodies founded on a religion or belief, religious or non-religious. Now consultation by government with the governed about proposed policies is to be welcomed, and it should include religious organisations - but on the same terms as any others.¹⁰ The effect of the treaty is that religion or belief organisations are privileged over all other non-governmental organisations which have to be satisfied with the ordinary arrangements for consultation with civil society¹¹. Yet these are bodies whose defining

⁶ For example, in its June 2010 publication “Developing Fair Non-discrimination EU Legislation” (see http://www.comece.org/site/article_list.siteswift?so=all&do=all&c=download&d=article%3A3636%3A2 - accessed 25 October 2010) COMECE stipulates: “First of all, the European Union in Article 17 paragraph 1 of the Treaty on the functioning of the European Union has explicitly recognised that it respects and does not interfere with the status of Churches and religious associations or communities under the national laws in the Member States. In addition, their identity and specific contribution have been explicitly recognised (Article 17 paragraph 3 Treaty on the functioning of the European Union). The EU has neither a competence for pastoral activities of the Churches, nor for regulating State-Church relationships in the Member States. As a consequence of this lack of competence, the wording of the provisions needs to be clear about the delimitation of the scope of the legal measures. . . In conclusion, in the areas where the EU enjoys legislative competence the only way to ensure a fair balancing of human rights and freedoms is to exempt manifestations of religious freedom from the non-discrimination measures.” This bald demand runs contrary to the provisions in (for example) the European Convention on Human Rights that, while freedom of belief is absolute, freedom to manifest belief is subject to limitations including those needed to safeguard the rights of others.

⁷ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

⁸ Draft Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

⁹ The complaint was *prima facie* incontestable, since the employment equality directive itself says that its exemption in specified cases from non-discrimination on grounds of religion or belief “should not justify discrimination on another ground” - such as sexuality. See Houston, K. (2009) Faith in Dialogue: The Conflict Dynamics of Public Religion in European Union Governance, Unpublished Thesis (PhD) University of Ulster, pp 235-6.

¹⁰ Churches were in 2001 still included with the rest of civil society in the EU white paper on European governance: “Civil society includes the following: trade unions and employers' organisations (“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.” - *European governance - A white paper* COM/2001/0428 final - Official Journal 287, 12/10/2001 - see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0428:EN:HTML> accessed 18 October 2010

¹¹ Under article 11 of the Treaty on the European Union as amended by the Lisbon Treaty.

expertise - theology - is irrelevant to the EU¹²; they have institutional views that are highly controversial and frequently not representative even of their own members, let alone of the European public - in fact, Roman Catholic grassroots organisations such as Catholics for Choice or Church on the Move, are excluded from the dialogue, despite Article 17(1)'s reference to 'religious communities' and Article 17(3)'s stipulation that the dialogue be "open"¹³, even though they are arguably more representative of the Catholic population of Europe than the intensely conservative Vatican hierarchy. Further, many religions have a record and current practice in politics and human rights that is seriously flawed. It is not necessary to go to the Organisation of the Islamic Conference with its demands for banning of criticism of religion to find an example: the Holy See, which, if it *is* a state, is the only one in Europe not to be a signatory to the European Convention of Human Rights, has an abysmal record of interference in the internal affairs of other states and of frustration of the rule of law¹⁴ and heavily qualifies its support for human rights with adjectives like "authentic" by which it refers to its own theological "natural law".

(c) Their superficially equal treatment under Article 17(3) barely conceals a gross indirect discrimination against the so-called "philosophical and non-confessional organisations" in that:

(i) the churches in Europe are historically powerful and would be immensely rich even without being subsidised to the tune of hundreds of millions of taxpayers' euros a year¹⁵ whereas most humanist and secularist organisations operate on tiny budgets, usually without any staff¹⁶;

(ii) it is normally regarded as a religious duty to belong to or attend a church, mosque or synagogue, whereas there is no need to join a humanist organisation in order to lead an admirably humanist life;

¹² However, until 2008 the EU described the dialogue with the churches in terms of their "specific contribution" being religious in nature: a page of its website that was taken down in February 2008 stated unequivocally: "Religious values play a very important role for the European citizens and consequently the European Union enjoys a spiritual dimension. . . [Article 17] refers explicitly to the religions and churches as transcendental institutions with their specific religious component. For the first time in the history of the European integration process, religions and churches have been firmly acknowledged as partners of the European Union, specifically taking into account their transcendental character." - http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/index_en.htm#, downloaded 30/1/2008 and now available at <http://www.humanistfederation.eu/download/93-BEPA%20Dialogue%20page%2030-1-08.mht>.

¹³ According to the Commission website, "Open means that anyone who wishes to take part in the Dialogue can do so." - see http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/index_en.htm, accessed 25 October 2010.

¹⁴ See my speech at the recent Review Conference of the Organisation for Security and Cooperation in Europe in Warsaw, 1 October 2010, at <http://www.humanistfederation.eu/download/506-Speech%20re%20Holy%20See.pdf> or at http://www.osce.org/documents/osce/2010/09/46436_en.pdf and Geoffrey Robertson QC *The Case of the Pope: Vatican Accountability for Human Rights Abuse* (Penguin Books, London, 2010).

¹⁵ See Appendices D and E in "Church and State: a mapping exercise" by Frank Cranmer, John Lucas and Bob Morris (London School of Economics, April 2006) available at <http://www.ucl.ac.uk/spp/publications/unit-publications/133.pdf> - accessed 25 October 2010.

¹⁶ Exceptionally in Belgium and (outside the EU) Norway secularist and humanist organisations receive some public funding under the same rubric as the religions.

(iii) the number of religious organisations is very large, partly owing to their propensity to schism but mainly to the religious tendency to pursue social involvement by setting up their own exclusive organisations, as if doing good was a motive secondary to bearing witness. As a result the number of religious bodies entitled to enter into dialogue with the EU under Article 17 is practically without limit. By contrast the non-religious generally work through the relevant civil society organisations - those concerned with poverty, the environment, education, etc. - whose rights of access to the EU are distinctly inferior and are anyway shared with religious organisations in the same fields;

(iv) it is difficult to activate quiescent public opinion to rally against the risks of excessive religious influence under a banner inevitably seen as hostile to the liberal value of letting all have their say. In this context as always it is impossible to make nice distinctions between opposition to religious influence in social matters and opposition to religion per se - which the churches will seek vigorously to obscure¹⁷.

Thus, especially with the religious liberals excluded, the defence of secular values in the Article 17 dialogue starts at a major disadvantage.

(d) As if this were not enough, there is more or less blatant direct discrimination against the “philosophical and non-confessional organisations” in the shape of inferior treatment in the implementation of the required “open, transparent and regular dialogue”. This cannot easily be specified in the short compass of this paper but some examples are cited on the website of the European Humanist Federation (EHF)¹⁸. In addition, it may be considered odd that for the last two years the EU Commission has chosen to invite to the annual meeting of non-confessional organisations with the three EU Presidents twice as many representatives of Freemasonry (including some specifically committed to religious belief¹⁹) as of humanist and secularist organisations.

Does all this matter? After all, the churches have much to say that no humanist could take

¹⁷ For example, in reply to my criticism at the OSCE meeting of the Holy See’s undiplomatic behaviour (CHECK note 8), the delegate from the Holy See, exercising his right of reply, launched a wholly unjustified attack on the European Humanist Federation for allegedly seeking to “somehow expunge religion from society and cleanse the culture of any religious sentiment or belief whatsoever. . .” - see http://www.osce.org/documents/osce/2010/10/46601_en.pdf.

¹⁸ See http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=58

¹⁹ For example, the Grand Orient of Italy and the National Grand Lodge of Romania were both invited to a key meeting with the Presidents of the EU Commission, Parliament and Council on 15 October 2010: the former will “accept only men, of irreproachable morals, that believe in the Supreme Being” (“La Gran Loggia deve accettare come membri soltanto uomini, di buoni costumi, che esprimono un credere nell'Essere Supremo”) while the latter states as a prerequisite for admission to the Order: “the belief in immortality of the soul and divinity, God generically called the Great Architect of the Universe” (“Conditia esentiala de admitere in Ordin: Conditia esentiala pe a putea fi primit în Ordin este credinta în Divinitate si în nemurirea sufletului, Divinitate denumita generic Marele Arhitect al Universului”). See respectively http://ec.europa.eu/bepa/pdf/conferences/101015/liste_des_participants_-_15_octobre_2010.pdf, http://www.grandeoriente.it/index.php?option=com_content&view=article&id=50&Itemid=66 and <http://www.mlnc.ro/francmasoneria> - accessed 25 October 2010.

exception to - pleas for more aid to the third world, for example. But this unexceptionable - sometimes admirable - work does not need a special status within the EU. We need to examine how that status is likely to be used, and when we do so we shall see that it does matter, and matter greatly. In order to demonstrate this serious cause for concern I wish first to look at the history of how Article 17 came to be included in the Lisbon Treaty.

The churches' determination to exert influence over the European Union and its member states dates from at least March 1996²⁰ when the Holy See, undoubtedly having in mind its success in infiltrating the United Nations²¹ and using its anomalous presence there to frustrate initiatives to promote women's rights, family planning and population control²², sent a note to the ambassadors of EU countries proposing *inter alia* that a forthcoming intergovernmental conference should:

- emphasize the contribution of the Churches and religions to the development of Europe
- maintain the relations between the Churches and the States as they were within the Member States
- root the relations between Church and State in the Community Law while protecting the competence of States in their relations with Churches and religions.

This document did not bear immediate fruit but soon afterwards Germany, Italy, Austria and Portugal proposed a clause for the Amsterdam Treaty which resulted in the inclusion in a declaration attached to the Treaty of what eventually became - unaltered - the first two paragraphs of Article 17.

After "sustained, coordinated lobbying efforts by the two main Christian associations"²³, COMECE (for the Roman Catholic bishops) and CEC (for the Orthodox, Protestants and Anglicans), Commission President Prodi asked the churches to submit proposals to establish "a structured dialogue between the Churches, religious communities and the European Commission". The churches responded jointly in June 2002 with a document that remains

²⁰ Note that the Holy See established diplomatic relations with the EU as long ago as 1970.

²¹ See chapter 6 of Geoffrey Robertson QC's *The Case of the Pope* (London: Penguin, 2010).

²² See the Vatican's statement to the United Nations summit meeting on the Millennium Development Goals, September 2010 for its insistence on its own meanings of terms such as "gender" and "sexual and reproductive health" - http://www.vatican.va/roman_curia/secretariat_state/2010/documents/rc_seg-st_20100927_sviluppo-millennio_it.html, accessed 25 October 2010. The Vatican's emphasis on women's alleged specific, complementary genius as helpers to men (regular descriptions in Vatican papers) comes out in the statement of their head of delegation at the conference: "At times in the preparatory process, the Holy See has had strenuously to emphasize that marriage, motherhood and the family, or the adherence to religious values, should not be presented only in a negative manner. To affirm the dignity and rights of all women requires respect for the roles of women whose quest for personal fulfilment and the construction of a stable society is inseparably linked to their commitments to God, family, neighbour and especially to their children." - available at <http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950905214652.txt> accessed 19 October 2010.

²³ Houston, K. (2009) *Faith in Dialogue: The Conflict Dynamics of Public Religion in European Union Governance*, Unpublished Thesis (PhD) University of Ulster.

unpublished (save on the EHF's website²⁴) and proposed:

- a pre-legislative consultation procedure "enabling Churches and religious communities . . . to comment on planned legislation"
- regular dialogue seminars between COMECE, CEC and the Commission, described by COMECE as "a significant discussion forum for matters of common concern"²⁵
- working sessions "on more specific issues whenever the churches . . . have a particular concern"
- presidential-level meetings between the President of the European Commission and high level representatives of the Churches
- a liaison office within the services of the Commission, in order to develop a "partnership" with the Commission.

This amounted to a demand for the Churches to have the right to interfere in all the affairs of the European Union, but only the last item has not yet been conceded. The Convention for the Future of Europe, chaired by Giscard d'Estaing, produced proposals for a Constitution for the European Union that incorporated the wording of the Amsterdam declaration and in addition called for a "regular dialogue" between the EU and the churches. The requirement that the dialogue also be transparent and open (as specified for the dialogue with civil society organisations) came later, partly as a result of the EHF's campaigning.

During the debate on the constitution, the churches contrived to distract attention from the substantive provision of this Article to the idea of a declaration in the Preamble to the Constitution that Europe's values were rooted in Christianity. This proposal was finally rejected, just as later was the proposal by the German Chancellor, Angela Merkel, as Council president, to include a reference to Christianity in the Berlin Declaration she produced for the fiftieth anniversary of the Treaty of Rome. However, despite the efforts of secularists and humanists across Europe, the Article remained unchanged thereafter and was inserted as it stood into the Lisbon treaty.

Throughout the time that the constitution and then the Treaty were under discussion, the Commission acted as if it were already in effect. There was a regular (if not open or transparent) dialogue with the churches and (to a limited extent) other religions. Frequent 'structured dialogue' meetings were held between Commission officials and main churches and the continuing pattern of the churches meeting each revolving presidency of the EU Council became established. After protests in the European Parliament a token meeting between President Barroso and the EHF was conceded at the end of 2005 and another was held in 2007.

As soon as the Lisbon Treaty was politically agreed, the Vatican asked for more. At a

²⁴ http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=95&Itemid=99, accessed 25 October 2010.

²⁵ <http://www.comece.org/content/site/en/euchurchdialogue/dialogueseminars/index.html>, ACCESSED 25 October 2010.

plenary meeting of COMECE on 21 November 2007, its president summarised conveniently the privileges they already enjoyed and pronounced them insufficient. First (he said) there were "seminars which the European Commission has been arranging for years on fundamental issues with church representatives". Next there were "the traditional talks between [church] representatives and the church in question with governments in the framework of their six-monthly EU Council Presidency". And there were "the . . . key talks of the last three years, to which leading religious representatives were invited by the presidents of the European institutions". Then he went on to say:

“These talks are indeed necessary but they alone are in our view not enough to satisfy the offer of an open, transparent and regular dialogue. . . Entry into force of the Lisbon Treaty will enhance recognition of the relationships between Church and state at Member State level and the EU’s dialogue with churches and religious communities at the primary law level of the European Union. This is why one should now start giving real thought to the form of this dialogue.”²⁶

Earlier this year the churches presented their joint proposals²⁷ once more, envisaging a “deepening and widening” of “existing dialogue practices”. They welcomed a resolution of the European Parliament that one-sidedly “stresse[d] that . . . there needs to be an open, transparent and regular dialogue between the Union and churches and religious communities”²⁸ and they proposed that they be called routinely as witnesses at Parliamentary hearings. They proposed that the dialogue be extended from the Commission, Council and Parliament to all the EU’s numerous agencies. They looked for “a further increase in the already high level of readiness of EU civil servants or politicians to engage in a dialogue with the churches”. The dialogue should be both collective and with individual churches. There should be “common content preparation prior to the events” and collaboration on any follow-up. And in line with their previous demand for pre-legislative consultation, they proposed an annual meeting “in due time before the Commission unveils its strategy for the coming year and its legislative and work programme”.

They also stressed the religious basis of their contribution (“grounded in the gospel . . . the earth as God’s creation . . . each human being is created in God’s image. . .”) - language that found a ready echo from the new President of the European Parliament, Jerzy Buzek, when on 19 July 2010 he told the latest summit meeting between the three EU Presidents and religious leaders “the EU needs the churches and we value the role you play. . . We are all God's children.” Immediately after his election the previous year he had stated his wish to

²⁶ Mgr Adrianus van Luyn, Bishop of Rotterdam and COMECE President, Report to the COMECE plenary meeting, 21 November, 2007 - <http://www.comece.org/content/site/en/press/pressreleases/newsletter.content/966.html> accessed 18 October 2010.

²⁷ http://www.ceceurope.org/fileadmin/filer/csc/Europe_Updates/EuropeUpdate33attachment__Article_17.pdf accessed 30 October 2010.

²⁸ European Parliament resolution of 13 January 2009 on the perspectives for developing civil dialogue under the Treaty of Lisbon (2008/2067(INI)).

"deepen dialogue with the continent's Christian churches", saying "I've no doubt Christian values should be very important at an individual level for each politician and leader, but also collectively since they define and show the key ways a politician can act."²⁹

In this *parti pris* stance Buzek was only copying his predecessor as President of the Parliament, Hans Gert Pöttering, who saw the role of his European People's Party "as an advocate of Judaeo-Christian values" fostering "the spiritual and moral dimension of the European project" and working towards a more "God-centred, more ethical world order".³⁰

Similarly when Nicolas Sarkozy, president of supposedly staunchly secular France, was president of the EU Council, he organised a colloquium on "Religions and Public Authorities in the EU" for one relevant government official from each member state, accompanied in each case by a priest or pastor, a rabbi and an imam. He had already met the churches as all Council presidencies now do but he ignored a letter from the EHF asking for a balancing meeting with non-confessional organisations. Again, in 2010, we wrote to the prime ministers of Spain and Belgium asking that, if they intended to perpetuate the tradition of Council presidents meeting the churches, they should have a meeting also with non-confessional organisations such as ourselves. Spain sent an acknowledgement; Belgium not even that but on 12 October went ahead with a meeting with "representatives of the churches in Belgium and in Europe . . . in the framework of Article 17. . ." ³¹

With politicians and officials like this - conservative, deal-making, fearing denunciation from pulpit - and with the entrenched power and resources of the Christian churches in Europe, therefore, the answer to my question whether Article 17 is a cause for concern is "most decidedly yes".

This answer is reinforced when one realises that the EU is increasingly concerned with matters remote from its "common market" origins. Without a formal remit it is backing into education via concern for European competitiveness³², into family policy via overseas aid,

²⁹ "Jerzy Buzek a Polish Lutheran who has become the first president of the European Parliament from a post-communist eastern European country, says he wants to deepen dialogue with the continent's Christian churches" - Ecumenical News International - <http://blog.echurchwebsites.org.uk/2009/07/31/jerzy-buzek-polish-lutheran-president-european-parliament-postcommunist-eastern-european-country-deepen-dialogue-continent-christian-churches/> accessed 19 October 2010

³⁰ 'Address by the Chairman, Hans-Gert Poettering MEP, at the presentation of the EPP-ED Group to the Holy Father, His Holiness Pope Benedict XVI' available at <http://www.epp-ed.eu/Press/peve06/docs/060330pope-benedict-xvien.pdf> accessed 18 October 2010.

³¹ <http://www.comece.org/content/site/en/press/pressreleases/newsletter.content/1265.html> accessed 18 October 2010

³² Its Education and Training 2010 work programme, launched in 2001, was followed in 2009 by a strategic framework for European cooperation in education and training ("ET 2020") which includes among its priority areas "active citizenship and social cohesion". The introduction to its schools programme on social inclusion says "trends such as violence, radicalism or fundamentalism and expressions of racism, xenophobia, homophobia and sexism are inevitably also reflected in school communities" and the Comenius programme for schools says it aims "to help young people and educational staff better understand the range of European cultures, languages and values" - see respectively http://ec.europa.eu/education/lifelong-learning-policy/doc64_en.htm and http://ec.europa.eu/education/lifelong-learning-programme/doc84_en.htm (both accessed 22 October 2010). These are

into human genetics via research policy. It is finding that it cannot avoid making evaluative judgements about matters such as contraception, gay relationships and other such questions. It is, in other words, becoming concerned with matters on which the churches - in particular the Roman Catholic Church - and other religions - in particular Islam - hold views that are seriously unrepresentative even of many of their own followers let alone of the general population of Europe.

General opinion has moved forward while church teaching has been left behind. Thus an alliance of the Vatican and Middle Eastern Islamic states seriously limited the success of the UN Cairo and Beijing conferences on population control and the status of women in 1994 and 1995 respectively. On assisted dying for the terminally ill the churches stand in opposition to overwhelmingly favourable public opinion in the United Kingdom as in many other countries, yet their influence is probably decisive in preventing reform. Here with short-sighted encouragement from government the churches are beginning to take over public services from accountable authorities - something long established in some other countries, where they seek to impose their moral code on others by making services of which they disapprove unavailable by aggressive use of conscientious objection. In the Belgian town of Mechelen the Roman Catholic church progressively took control of all the hospitals and pressurised all the doctors, previously willing to provide an abortion service, to register conscientious objections.³³ When the Parliamentary Assembly of the Council of Europe debated a careful report proposing that the exercise of conscientious objection needed to be regulated so that it did not result in lawful services being unavailable, lobbyists propagated alarmist falsehoods about banning conscientious objection and the resolution was by a narrow majority amended so as to endorse not just the individual right but the so-called right of institutions to impose their views on all their employees.³⁴

This comes against a background of a general campaign for further extension of religious privileges pursued on the back of wildly exaggerated claims of 'persecution' at the hands of 'aggressive secularism'. In their usage, an aggressive secularist is simply anyone who clearly states their rejection of religion and gives reasons. So an Observatory of Christianophobia³⁵ operates from Vienna, magnifying uncritically (for example) every industrial tribunal case brought on the flimsiest of grounds by the Christian Legal Centre here for the sake of the *Daily Mail* headlines. A former Archbishop of Canterbury, citing these hopeless lost cases, has called for a select panel of religiously approved judges to hear any case involving

matters where religious views are often at odds with those of the population at large and with the EU's values of equality and non-discrimination.

³³ Address by the Mayor of Mechelen to the European Parliament Platform for Secularism in Politics, 17 March 2010.

³⁴ See <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12347.pdf> for the proposed resolution and report, <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=950> for the amended (and seriously muddled) resolution - both accessed 25 October 2010.

³⁵ <http://www.intoleranceagainstchristians.eu/index.php?id=241> accessed 19 October 2010.

religion.³⁶ The Vatican came close to endorsing the repeated demand from Islamic states at the UN for a ban on criticism of religion when it recommended that the OSCE “should emphasize that the mockery of the sacred is not a right of freedom”.³⁷ Its delegate, in a speech explicitly aligning his church with Islam, proclaims “Le préjudice, la dérision . . . contre les croyants, leurs institutions religieuses et leurs symboles ne devraient jamais être permis”³⁸ - a sentiment implicitly echoed by the Pope when he said “every liberal society has to assess carefully to what extent freedom of speech and expression can be allowed to ignore religious sensibilities.”³⁹ At a time when (for example) the EU is transposing the framework decision on incitement of hatred⁴⁰ on grounds including religion, giving such voices a special hearing plainly carries risks.

If nothing else, the special status of religious groups is likely to lead to distortion of the messages reaching the higher echelons of the EU. For example, in the current EU Year for Combating Poverty and Social Exclusion, the EU-sponsored Religare project on Religious Diversity and Secular Models in Europe⁴¹ has commented in its first major paper that “The central place of religious bodies – and particularly Christian organisations – in the Year is reflected in the events agenda.” No-one will criticise the practical work done by the churches to relieve poverty - but are they really the “central” players in this work in Europe? What of all the secular charities? And do they merit a pre-eminent place among the economists, the sociologists, the political scientists and other serious students who concentrate on remedies rather than relief?

To conclude: for the EU to give special audience to leaders of organisations identified by religion or belief is anomalous and unjustified, all the more so given that the population of Europe sets so little store by religion in its assessment of its own values or those of the EU. For the religious to be favoured over the non-religious when non-discrimination is mandatory under international human rights law is disturbing. For the religious leaders

³⁶ Lord Carey’s witness statement in the case of Gary McFarlane -v- Relate Avon Limited: he asked for “a specialist Panel of Judges designated to hear cases engaging religious rights. Such Judges should have a proven sensitivity and understanding of religious issues” - see <http://www.bailii.org/ew/cases/EWCA/Civ/2010/B1.html> - accessed 19 October 2010.

³⁷ Recommendations of the Holy See on Promotion of Tolerance and Non Discrimination, and Mutual Respect and Understanding - HDIM.DEL/554/06 (12 October 2006) - http://www.osce.org/documents/odihr/2006/10/21593_en.pdf - accessed 19 October 2010.

³⁸ Contribution to debate on free media and information, HDIM.DEL/102/06 (4 October 2006) - http://www.osce.org/documents/odihr/2006/10/20993_fr.pdf accessed 19 October 2010.

³⁹ Address to the new Ambassador of the Kingdom of Sweden to the Holy See, 18 December 2008 - available at http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/december/documents/hf_ben-xvi_spe_20081218_sweden_en.html - accessed 19 October 2010.

⁴⁰ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328 , 06/12/2008.

⁴¹ "The RELIGARE project is a three-year European research project funded by the European Commission Directorate General Research - Unit L Science, Economy and Society. It comprises 13 universities and research centres from across the European Union and Turkey." - <http://www.religareproject.eu/> (accessed 22 October 2010). The paper quoted is at http://www.religareproject.eu/system/files/RELIGARE%20-%20Religion%20and%20the%20EU_Final_0.pdf.

who enjoy this guaranteed and regular access to the EU at the highest levels to be both unrepresentative of their own followers and at odds with the values of the European Union - human rights, equality and non-discrimination - is serious cause for concern. When by their behaviour they show themselves so determined to use every means to impose their morality on everyone, it is a matter for serious alarm and vigilance.

Finally I come to the question of how this bad situation may be mitigated. It is relatively easy to say that, if the dialogue with representatives of religion and belief cannot now be discontinued, it must be conducted fairly: that the heavy bias against the secularist and humanist interests must be eliminated and allowance made for the inevitable weakness of their organisations by comparison with the statistics of belief in the European population; that EU's representatives must bear in mind the mismatch of the values of the people of Europe with those of the religious organisations and must challenge the religious interests over their lightly disguised hostility to human rights and non-discrimination.

But in practical terms I have no easy answers. Criticism of the unbalanced way that the Article 17 dialogue has been implemented - since at least 2005, in anticipation of approval of the Treaty - has won the European Humanist Federation only opprobrium and worse treatment from the Commission, whose officers have perversely interpreted every criticism as an attack on religion - not even on the churches - when it has actually and explicitly been a matter of raising questions about how they were implementing the dialogue⁴².

To overcome such prejudice committed humanists and secularists need to rally support and organise themselves as never before - no easy task, as explained above. Political vigilance is essential in the European Parliament, but the Vatican in particular does not hesitate to threaten Catholic politicians who stray from its narrow path with consequences both spiritual (excommunication⁴³) and temporal (at the polls). There is indeed a Parliamentary Platform for Secularism in Politics which interests itself in the matter - but the formally equal treatment it can seek may still conceal informal bias. What is needed is critical surveillance of the way Article 17 is implemented, preferably in the news media. Academic studies by political scientists of the place of religion in the EU, although inevitably they tend to be both some years out of date and observational rather than critical, nevertheless may wield some influence and anyway provide insights for those of us in the front line.

⁴² See the complete sequence of the European Humanist Federation's correspondence with the Commission at http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=58, in particular our letter at http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=229, the Commission reply at <http://www.humanistfederation.eu/download/Jorge%20Cesar%20das%20Neves%20reply%20re%20EU%20bias.pdf> ("Your letters over recent months have not discussed Commission policy but rather articulated your views on religion") and at <http://www.humanistfederation.eu/download/58-Jorge%20Cesar%20das%20Neves%20ltr%20re%20dialogue%20with%20EU.pdf> our further response, all accessed 29 October 2010. A further example: EU assistance with a proposed EHF conference was agreed in principle but withdrawn when EHF suggested as the subject "Religion and Belief in Democratic Societies: Issues of Equality and Freedom" on the totally unjustified grounds that "the EHF asks us now to support a conference that intends to articulate its views on religion".

⁴³ In October 2010 Polish MPs were threatened with excommunication if they supported *in vitro* fertilisation - see http://www.thenews.pl/national/artykul141737_mps-to-be-excommunicated-for-supporting-ivf.html, accessed 27 October 2010.

Academic and campaigning lawyers interested in equality and non-discrimination are another valuable recourse, as are liberal Christians more committed to non-discrimination and human rights than to sectional advantage.

But we are faced not only with an imbalance of resources but with a disparity of conscientious dispositions. As I said in opening, Humanists seek to live in harmony with others within a tolerant society amenable to people of many different beliefs. They seek to improve society by their own lights but only by persuasion and democratic consensus. Many religious believers take the same attitude, but others, along with their immensely powerful churches and other institutions, see themselves as living among worshippers of false gods, be they literal or metaphorical, and so seek to impose on society by all available means their own externally dictated values, as illustrated in my opening paragraphs. Freedom of religion or belief is thus for the religious a test of their own tolerance - will they accept that they live in a plural society where their views have no greater legitimacy than others, or will they seek to put their own claims to divine revelation of what is good for mankind above the clear wishes of people of other beliefs? If so, what exactly does freedom of religion or belief mean to them?

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APPENDIX: HUMANISM IN SHORT

Humanism is not an “-ism” - it has no source book of unquestionable rules or doctrine. You don't ‘convert’ to Humanism and then have to take the rough with the smooth. Instead, most people become humanists without contact with any humanist organisation or even necessarily knowing the word. Rather, Humanism is a label for a range of beliefs and attitudes. To the extent that your beliefs and attitudes do or don't coincide with that range, then the label humanist is more or less appropriate for you.

Humanism's beliefs and attitudes make up an approach to life based on humanity and reason. Humanists recognise that it is simply human nature to have moral values – the result of our evolution over millions of years as social animals - and that as a result many of our values are widely shared. However, in making moral judgements in today's much changed world we need to be ready to adapt our traditional rules by the use of knowledge, reason and experience. Humanists make decisions after considering the available evidence and assessing the likely outcomes of possible actions, not by reference to any dogma or sacred text.

Humanists see the naturalistic and provisional explanations of life and the universe provided by scientific enquiry and the use of reason as the best available. They think it folly to turn to other sources - such as religion or new age superstition - for answers to unanswered questions. Humanists are therefore atheists or agnostics so far as a god or gods are concerned - but Humanism is a philosophy in its own right, not just a negative response to religion.

Humanists believe that this is the only life we have and see it as their responsibility to make life as good as possible not only for themselves but for everyone - including future generations. They strongly support individual human rights and freedoms - but believe equally in the importance of individual responsibility, social cooperation and mutual respect. They endorse the idea of an ‘open society’ in which people of good will but fundamentally different beliefs and lifestyles live cooperatively together, with shared institutions, laws and government that are neutral on questions of belief - that is, a secular state.

Humanists create meaning and purpose for themselves by adopting worthwhile goals and endeavouring to live their lives to the full. They feel awe in considering the immensity of the universe and the intricate nature of its workings, they find inspiration in the richness of the natural world, in music, the arts, the achievements of the past and the possibilities of the future, they find fulfilment in worthwhile activity, in physical recreation and endeavour and in the pleasures of human interaction, affection and love.