1. Summary description of project context and objectives

1.1 European secular models and their interplay with Europe's religious heterogeneity

The RELIGARE research project took a thorough look at the complex interactions between two principles enshrined both in EU law and in the national constitutions of the Member States and aimed at *critically examining,* for the ten aforementioned countries, the extent to which these principles are in tension with one another: on the one hand, freedom of religion and belief and, on the other, non-discrimination. Freedom of religion and belief is to be understood in a broad, generic sense: it refers not only to the protection, in law, of religion but also extends, in line with the generally accepted meaning, to non-religious individuals and groups.

With a view to ordering the relationships between State institutions and religious groups and communities of conviction, the majority of national legislators in Europe have made the – historic – decision to secularise State law.[2] The hypothesis was that detaching the State and its institutions from religion would ultimately make society in democratic States more inclusive, providing a unitary legal and political framework within which religious and non-religious people can live together. In reality, however, the 'secular model' followed in various European States is both complex and varied. While most States officially commit themselves in one way or another to secularity, often they *also* maintain support for one or more religious organisations or communities of conviction. Moreover, in a rapidly globalising world, one can observe in Europe both a de-traditionalisation, in the form of the rise of the 'unchurched', and an emergence of new religious movements and alternative, non-institutionalised spiritualities. New religious (or confessional) pluralism is a fact, as is the dispersal of governance functions among various levels of decision-making bodies in matters that touch upon the relationships between the State and religions and beliefs (supra- and sub-national in addition to the national). In the face of these facts, what remains of the constitutional principle of the autonomy of the State from (organised) religion and vice versa? Is the gap between an increasingly unchurched majority sentiment and the legal regulation of religion still in force evidence of hypocrisy, ethnocentrism, or perhaps just *bona fide* neglect of a developing trend? And what are (still) legitimate policy aims in this changing societal context?

For analytical purposes, four different Church-State models can be distinguished that are to varying degrees in place in European States.[3]

Models	Examples
States which proclaim a strict separation between state and religious groups	France, Turkey
States with established majority churches	England and Scotland, Denmark
States that have signed *concordats*/agreements with churches and religious communities	Italy, Spain, Germany
States with 'conditional pluralism'	Belgium, Bulgaria, the Netherlands

The first involves countries where there is – in principle – a strict separation between religious bodies and the State. In such systems, such as that in France (*laïcité* model), State policy is required to be conducted by means of secular laws alone and is therefore kept strictly separate from religious beliefs. States following the French example relegate religion, in theory at least, to the private sphere and oppose an inclusion of religion in State law and administration. The Turkish system, on the other hand, combines this theoretical separation with the exercise of considerable support, control and influence over the workings of the majority religion – Sunni Islam. A second model, by contrast, accepts institutional links between State and religion, such as the arrangement in England between the Church of England and the State. The third model is the concordat model in place in Italy, Germany and Spain. In these countries, the State has signed an agreement with some religions, but this does not mean that public authorities ignore other religions: significant minorities may also be recognised and/or offered certain specific accommodations. A fourth model combines non-establishment with conditional (limited) legal, administrative and/or political pluralism. A State may support religions, but should it decide to do so, it must beware of favouring one religion over another. Countries like Belgium and the Netherlands fall into this last category, but there are differences: whereas Belgium has a system of funding in place benefitting the recognized religions, the Netherlands has no such official recognition. Moreover, in the Netherlands, the monarchy has been tied to the Protestant Church, though there is no State church (since 1815). Bulgaria is even more different, since its new constitution declares Eastern Orthodoxy to be the 'traditional' religion of the country (some have thus argued this is more in line with establishment). It is important to note that non-institutional links and engagements with religious communities (funding, support, dialogue) are the rule rather than the exception in most States.

1.2 Between EU competency and EU relevancy

Before discussing the main findings of the RELIGARE project, it may be helpful to bear in mind the legislative framework put in place at the EU level, as well as a number of recent initiatives that were (or are being) taken by the EU authorities with regard to combating discrimination on the grounds of religion or belief.

In at least three ways, the EU is addressing problems linked with discrimination on the grounds of religion and belief:

First, there is the legislative framework put in place at the EU level to combat discrimination on the grounds of religion or belief in the area of employment and occupation: Article 10 of the Treaty on the Functioning of the European Union (TFEU) requires that the EU shall "aim to combat discrimination" based on religion or belief (among other grounds), "in defining and implementing its policies and activities". Article 19 TFEU enables the Union to take appropriate action to combat discrimination based on religion or belief, among other grounds. One such action has been to get the Framework Employment Directive[4], which prohibits discrimination on the grounds of religion or belief in employment, occupation and vocational training, approved and effectively applied. Another legislative action has been the directive (still pending) proposed by the European Commission known as the 'horizontal directive'[5] that aims to extend the scope of anti-discrimination to fields beyond the labour market. Following calls by the European Parliament and various civil society actors for the expansion of EU law protecting against discrimination, and after an elaborate consultation process,[6] the European Commission submitted the Proposal for the directive on 2 July 2008.[7] Bearing in mind the political reality, and the fact that the horizontal directive may not – at least in the foreseeable future – be adopted, the RELIGARE research project has nonetheless taken a particular look at the text of the directive, in particular at the provisions regarding protected grounds which may affect the rights and duties of religious or philosophically-motivated individuals and groups (e.g. prohibition of discrimination on the basis of sexual orientation).[8] We will revisit this in section 3 below.

Second, among the action(s) and programmes to combat discrimination on the grounds of religion or belief, the following publications and resources have been produced (and also proven to be of particular relevance for the purposes of the RELIGARE research project):

(1) In 2011, *Equinet*, the European network of equality bodies, published *Equality Law in Practice: A Question of Faith – Religion and Belief in Europe*.[9] This examines cases of religious discrimination and freedom of religion under Article 9 ECHR.

(2) The overview prepared by the European Network of Legal Experts and published in 2011 in the *European Anti-Discrimination Law Review*.[10] The article reviews ten years of case law on discrimination on the grounds of religion or belief and other grounds.

(3) Also in 2011, the European Network Against Racism (ENAR) published a report entitled *Reasonable Accommodation of Cultural Diversity in the Workplace*.[11] The document defines reasonable accommodation as "an adjustment made in a system to accommodate or make fair the same system for an individual, based on a proven need".

(4) The Network of Socio-Economic Experts in the anti-discrimination field, funded by the European Commission, is currently preparing reports (at Member State and European level) on discrimination on the grounds of religion or belief. These reports will have a particular focus on employment and education.

(5) Recently, the Directorate-General for Internal Policies (Department C: Citizens' rights and constitutional affairs) issued a study entitled *Religious Practice and Observance in the EU Member States*. The study highlights "present sources of conflict, […] best practices and put[s] forward recommendations to promote both religious practice and observance and the respect of human rights."[12]

This is just a selection, but what all these publications demonstrate is the growing interest on the part of various actors, including the EU, in understanding and in combating discrimination on the grounds of religion and belief.

Third, one must not lose sight of Article 17 TFEU, which states: "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."

The third subsection of Article 17 TFEU requires specific action by the Union. In practice, this action is now in the hands of the President of the Commission, specifically his Bureau of European Policy Advisers (BEPA)[13], which acts under the President's authority.[14] The RELIGARE findings suggest that a number of the issues investigated may impact on both the first two subsections and subsection (3) of Article 17: religion and belief indeed involve, if not directly then indirectly, many fields of EU competence. They are listed below, in the section on the potential impact of the RELIGARE research project. Since the Commission can be expected to act as a monitor of the implementation of EU law, nothing prevents it from taking a more forward thinking approach in its next Action Programme. [15]

1.3 Normative framework: 'Inclusive State neutrality' and 'justice as even-handedness'

Two core principles are enshrined in the Constitutions of Europe's States as well as in international human rights law: (1) freedom of thought, conscience and religion and (2) equality or the right to non-discrimination, including on grounds of religion or belief. The ideal that the EU itself stands for in this regard is formulated as follows: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." (Art. 2 TFEU). "In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." (Art. 10 (ex Art. 13) TFEU).[16]

In assessing the various ways in which the ten countries under scrutiny handle issues that relate to freedom of religion and belief and non-discrimination, the RELIGARE researchers propose two yardsticks: **'inclusive state neutrality'** and **'justice as even-handedness'.**

'Inclusive State neutrality' rejects a strict separation and 'strict neutrality' between the State and any religions or secular beliefs insofar as those positions could be interpreted as public hostility towards churches/religious communities and/or secular values. Experience show that it is impossible to rigidly uphold a strict separation between and a strict neutrality towards religion and belief. They also indicate that separation can be used to exclude, willingly or unintentionally, vulnerable minorities who are seen as 'outsiders'. Strict neutrality, when it takes on an ideological dimension, risks entering into competition with other ideas or systems – including religions - with claims on the public space. Inclusive State neutrality, on the other hand, offers an overarching framework for 'managing' competing claims on the public space, including those of religions and beliefs, in a way that recognises their roles and their right to make claims, while also refusing to favour one over another. The notion of inclusivity therefore serves as a guide to an equal opportunities policy, which within the framework of contemporary constitutional democracies includes equality of treatment of all individuals based on the principle of equal respect of human rights, civil liberties and social and economic rights. Inclusivity thereby challenges not only a strict State neutrality but also a strict equality and other strict standards that are in practice unachievable in the current state of affairs: for example, what is *strict equal treatment* of two religious communities, one with millions of followers and a well-established presence and the second counting mere hundreds of individuals, often newcomers, in a country?

Justice understood as 'even-handedness' further builds on this concept and recognises the legitimacy of active policies towards religion and belief, as long as they are applied in an *inclusive* way. The related idea of *equidistance* to be respected by the State towards different religions and beliefs under its jurisdiction connoted a certain hands-off attitude. From the perspective of inclusive even-handedness, diversity is an integral part of people's right to participation in society. Beliefs and practices are thus not seen as an obstacle, and neither are they seen as static. In fact, they may change over time depending on the circumstances (e.g. mainstream or minority practices; conversion; revival of some traditions and interpretations, etc.). 'Inclusive State neutrality' and 'justice as even-handedness', taken together, mean that the State's policy should be fair to all in granting recognition to religions, beliefs and practices; the principle is respect, with any limits placed only by way of an exception, e.g. for the protection of the fundamental rights of others in accordance with the case law of the European Court of Human Rights (ECtHR).

The data collected within the framework of the RELIGARE research project offer various concrete illustrations of what these two yardsticks, in combination, can mean in practice: the purpose in using them is to develop a more substantive understanding of equality, one which improves inclusivity in practice. One might object that since, **ultimately, 'inclusive State neutrality' and 'justice as even-handedness'[17] pertain to the State-citizen relationship** primarily, it is therefore difficult to adapt them completely to 'horizontal relationships' between private persons. In private relationships, one relies on the prohibition of discrimination and the protection of freedom of religion which have become increasingly meaningful in recent years in the negotiation of such horizontal relationships. Yet in either case – State-citizen or private relationships – the underlying aim is inclusivity and, with it, the

effort **to render more transparent the grounds for the protection of freedom of religion and belief, taken in the broadest possible sense (i.e. including secular beliefs) and to help fight discrimination and exclusion on these grounds as consistently as possible.**