Mapping the Field of Religious diversity in EU Law and Policies within the European Commission

Sergio Carrera and Joanna Parkin
Religious Diversity and Secular Models in Europe: Innovative Approaches to Law and Policy
Abstract
While the EU has no explicit legal competence in the sphere of religion and the management of relations with faith communities, questions regarding religion and religious diversity have taken on increasing importance within the legal and institutional framework and policy discourses of the European Union in the last years. This summary provides an overview of how religion and issues of religious diversity are being framed and addressed in EU law and policies, and particularly within the Directorates-General and other internal departments of the European Commission. Through an examination of EU legislation and both formal and informal European policy initiatives in the fields of citizenship and fundamental rights, non-discrimination, immigration and integration, social inclusion and education and culture, we demonstrate that there is a complex and heterogeneous patchwork of EU normative approaches delineating the relationship between religion and the EU. By mapping these different framings of religious diversity, this summary aims to locate the RELIGARE project and its research activities in the context of the policy landscape of religion at EU level with a view to facilitate the policy relevance of its forthcoming research results.

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Introduction: Religion and the EU

Questions of religion and religious diversity have formed an increasing preoccupation for European policymakers in the last years. In the aftermath of 9/11 and against a backdrop of important migration flows from non-EU countries, the challenge of reconciling religious freedom with European secular democracies has become a pressing concern for EU Member States.

The growing prominence of religion in law and policy debates is apparent not only in national spheres across Europe, but also at the level of the EU. The controversies that surrounded the possible inclusion of a reference to religion in the preamble of the now defunct European Constitution highlighted for the first time the challenges of elaborating an overarching EU approach to religious diversity against a backdrop of highly diverse national models.

Nevertheless, religious issues have taken on an increasing relevance within the EU political system\(^2\). In accordance with Declaration No. 11 attached to the Amsterdam Treaty (now Article 17.3 of the Lisbon Treaty) which calls on the EU to recognise the specific contribution of religious organisations\(^3\), the European Commission has formalised contact with religious groups, through the “dialogue with religions, churches and communities of conviction” coordinated by its Bureau of European Policy Advisors (BEPA)\(^4\). This dialogue takes the form of annual meetings between President Barroso and representatives of faith communities. Yet beyond this political level dialogue, EU policymaking activities have begun to encroach, in less visible ways, on areas where issues of religious diversity play a role.

The EU has no formal competence to legislate in religious affairs. Article 17 of the Lisbon Treaty safeguards state sovereignty in managing relations with faith communities. Yet, with the entry into force of the Treaty of Amsterdam (1999) and the Treaty of Lisbon (2009) the Union acquired new competences allowing European cooperation in areas such as non-discrimination and immigration.

While we refer to the concept of ‘religion’ we recognise the difficulties associated with providing a precise definition of this contested term. Challenges stem from the wide diversity of religions and convictions and the knowledge that conceptualisations of religion are themselves embedded in cultural and religious traditions, making them rarely neutral. This summary follows the RELIGARE approach to the study of religious diversity against a background of highly diverse national models. RELIGARE seeks to understand how the Courts and public authorities protect religious freedom in the context of increasing diversification of religions and convictions. For further discussion on the conceptualisation of religion see V. Bader (2010) Religion and the Myths of Secularization and Separation RELIGARE Working Paper.


\(^3\) Article 17.3 stipulates that: “Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.”

\(^4\) For further information see the BEPA website: http://ec.europa.eu/bepa/activities/outreach-team/dialogue/index_en.htm
Even in areas where the EU had been granted no explicit competence, such as migrant integration, social inclusion and education, a progressive “Europeanisation” (transfer or sharing of policymaking responsibilities from national to EU level) has taken place through the use of alternative governance strategies outside of any traditional legally binding Union framework. These so-called ‘soft’ policy initiatives rely on funding programmes or mechanisms such as the Open Method of Coordination, which employ exchange of practices, benchmarking and reporting to coordinate member state policies.5

The incursion of the EU into these new policy spheres during the last decade has allowed European level actions to address and interact with the religious dimension as never before, at times in rather unexpected fashions. Such developments challenge preliminary assumptions about the limited (or even non-existent) role that EU policy is said to have over phenomena labeled or linked with ‘religion’. They open up a new set of questions about the ways in which the EU is framing, understanding and engaging with religious affairs and religious diversity, that go beyond the European Commission’s political level “dialogue with religions, churches and communities of conviction”.6

What then is the place of religion in EU policies? This summary focuses on providing a mapping of the different Directorates-General and services inside the European Commission working on domains that touch upon the religious sphere as well as their respective policy approaches and conceptual foundations. Such a close and systematic examination of the Commission’s official (and unofficial) practices allows us to gain an insight into the complex ways in which religion is framed at EU level.6 This exercise therefore aims to locate the RELIGARE project and its research activities in the context of the current policy landscape of religion at EU level and in the work of the European Commission.

1. Mapping the field of relations between religious diversity and EU law and policy

An examination of EU policy areas which either explicitly address, or indirectly touch upon, religious issues, reveals five distinct thematic streams or approaches to religion and religious diversity. They largely correspond to the separate services responsible for each policy area within the Commission - the Directorates-General (DGs) – as illustrated in Figure 1, and are influenced by the guiding focus and policy priorities of the DGs in question. Five distinct approaches have been identified around the domains of European citizenship and fundamental rights, non-discrimination, immigration, social inclusion and employment and education and culture:


1.1 A citizenship and fundamental rights approach

Within the scope of EU policy on European citizenship and fundamental rights, religion has two core roles:

First, the freedom of religion is protected as a fundamental right to be enjoyed by all individuals. Freedom of religion is enshrined in the now legally binding EU Charter on Fundamental Rights, particularly Article 10 which safeguards freedom of thought, conscience and religion. This right includes the freedom to change religion or belief and freedom to manifest religion or belief, in worship, teaching, practice and observance. Furthermore, Article 21 prohibits discrimination (including on grounds of religion or belief) and Article 22 enshrines respect for cultural, religious and linguistic diversity. Protection of religious freedom is also reinforced by the Framework Decision on combating racism and xenophobia which criminalises behaviour inciting hatred on grounds including religion and is a cornerstone of the EU’s policy against racism, xenophobia, anti-Semitism and Islamophobia.

The second key function that religion can play in the realm of European citizenship and fundamental rights, is to act as an exception from fundamental freedoms, in particular the freedom of movement rights that form the basis of European citizenship as enshrined in Article 20 of the Treaty on the Functioning of the EU (TFEU).

A study of the case law of the Court of Justice in Luxembourg reveals that an accommodation of religious perspectives through recognition of notions of ‘morality’, ‘public order’ and ‘public policy’ could be used (under certain circumstances) as grounds for granting exceptions to EU free movement law and freedoms, with the Court acknowledging that member states have some leeway in deciding questions of public morality. Even so, this degree of leeway is limited by the requirement to comply with the general principles of EU law, such as those of non-discrimination and proportionality.

Within the European Commission, the DG for Justice, Fundamental Rights and Citizenship (Directorate C, Units C.1. ‘Fundamental rights and rights of the child’ and C.2. ‘Union citizenship’) has a central role in overseeing the implementation of these approaches. This DG is responsible for carrying out a systematic monitoring of Commission and EU Member States’ policies (falling within the scope of EU law) to ensure that compliance with fundamental rights and freedoms, including freedom of (and freedom from) religion, are taken into account at an early stage of policymaking as well as in the implementation phase of national transposition. The formal separation since the beginning of July 2010 of DG Justice from DG Home Affairs to create a new DG inside the Commission dealing specifically with citizenship and fundamental rights aspects, now led by its own Commissioner (Viviane Reding), has served to strengthen the citizenship agenda within the Commission and the fundamental rights ‘proof reading’ of EU policy-making.

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1.2 A non-discrimination approach

Closely connected to the role of religion as a fundamental right, is the function of religion in EU non-discrimination law. Prohibition of discrimination based on religion or belief was inserted into Article 13 of the Amsterdam Treaty, now Article 19 TFEU, which authorises the EU to adopt measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Two Directives were subsequently adopted: the Race Equality Directive and the Employment Equality Directive. These Directives have had a transformative impact on national norms, structures and practices in the field of discrimination. However, given that religion and belief is covered only by the Employment Equality Directive, limited to combating discrimination in the workplace, religion receives a less comprehensive coverage under EU law compared to other grounds of discrimination, such as race or sex.

The Employment Equality Directive safeguards respect for individual religious freedom in the workplace. It also recognises collective religious freedom, by allowing organisations with a religious ‘ethos’ to exercise differential treatment towards employees. Religious organisations may require their staff to be ‘loyal’ to their organisation’s ‘ethos’ and this is not deemed discriminatory.

This exception is also subject to limitations, and should not violate the general principles of EU law, nor justify discrimination on other grounds. Potential tension may thus arise where national legislation allows organisations with a religious ‘ethos’ to discriminate on the basis of sexual orientation.

Within the European Commission, responsibility for developing and monitoring non-discrimination has recently been transferred from the DG for Employment, Social Affairs and Equal Opportunities to DG Justice. This internal restructuring maybe seen as a further sign of the strengthening citizenship and fundamental rights agenda within the Commission services. Directorate D: ‘Equality’ and the units D.2. ‘Equal treatment legislation’ and D.4. ‘Non-discrimination policies and Roma coordination’ are particularly relevant for monitoring discrimination on the basis of religion or belief. These services also coordinate extensive ‘soft’ policy initiatives in non-discrimination and equal opportunities, including organising the European Year for Equal Opportunities, information campaigns such as “For Diversity. Against Discrimination”, Equality Summits between national experts and funding anti-discrimination projects.

1.3 An immigration and home affairs approach

Religion and religious diversity is framed differently within EU law and policy on immigration and home affairs. In immigration law, in particular within the Directives granting rights on family reunification and long term residence status, practices associated with certain religions (such as polygamous marriages)
can function as grounds conditioning access by third country nationals to the common set of European rights, freedoms and guarantees provided in EU immigration law.

Both pieces of legislation also allow member states the possibility to introduce ‘integration measures’ and/or ‘conditions’ such as mandatory integration tests and contracts, which can restrict access by immigrants to European rights and freedoms in case of non-compliance. Many such integration programmes employed by EU member states emphasise knowledge of national values, ways of life and liberal democratic principles, and certain examples have been charged with an implicit (and in one case explicit) targeting of Muslim applicants. Here religion (in particular, practices ascribed to certain non-Christian religions) may be framed as proof of a lack of integration and be linked to a failure on the part of the immigrant to accept liberal democratic values. In this way, religion may constitute an obstacle to accessing EU rights such as security of residence and family reunion to third country nationals envisaged in the above-mentioned Directives.

This framing of religion reappears in the Commission’s soft law policy instruments on migrant integration—the so-called EU Framework on Integration. Within the Commission services, DG Home Affairs (Unit B.1. ‘Immigration and integration’) is responsible for coordinating the Framework on Integration, as well as developing and monitoring EU immigration law. Core elements of the EU Framework on Integration, such as the eleven Common Basic Principles on Integration agreed by the Council in 2004\(^\text{11}\), place an emphasis on migrant third country nationals’ knowledge of the host society’s language, history and institutions and respect for national and European values. Indeed, respect for European values is central theme of EU level official discourses on immigration and integration and forms a core element of the exchange of practices on ‘intercultural dialogue’ that takes place between ministers of the member states within the Framework on Integration and also within programmes and projects financed under the European Integration Fund.

Analysis of these tools suggest that where certain religious beliefs and practices are perceived to risk contradicting European values, the individuals and community or faith representatives in question become the object of policy measures aiming to foster integration through participatory programmes that place an emphasis on acquiring knowledge of European values, alongside national and European identity, culture and civic competences.

1.4 A social inclusion approach

EU policy on social inclusion approaches the religious dimension from an angle of poverty reduction. This approach touches on questions of religious diversity in two key ways.

First, the Commission has created an active role for religious organisations within the policy process on social inclusion. It has established formal partnerships with 13 NGO umbrella organisations with expertise in fighting social exclusion – two of which have an explicit religious dimension\(^\text{12}\). The Commission draws upon the input and expertise of these (Christian) organisations within the process of coordinating national policies on social inclusion.

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\(^{12}\) The two organisations in question are Caritas and Eureldiaconia.
known as the Social Open Method of Coordination (OMC).

Second, the Commission’s social inclusion agenda interacts with the religious dimension, through its targeting of social policies on ‘vulnerable’ categories of people, including ethnic minorities and migrants. Within the Social OMC, there has been an increasing focus on the gaps between immigrants and EU citizens as regards poverty, health, income, unemployment and education – a targeting which implicates, by extension, certain religious minority groups. However, if religious groups are implicated by EU anti-poverty actions, this occurs indirectly. Religious groups are not mentioned within the EU’s Social OMC as a potentially marginalised or vulnerable category.

Within the Commission services, social inclusion policies are coordinated by the DG for Employment, Social Affairs and Equal Opportunities (Directorate D on Europe 2020: Social Policies, and specifically Unit D.2. ‘Active inclusion of disadvantaged groups’ and Unit D.4. ‘demography, migration, social innovation, and civil society’).

1.5 An education and culture approach

The EU’s culture policy engages the religious dimension primarily through European initiatives on Intercultural Dialogue (ICD). An increasing focus on ICD as a means to foster understanding between diverse groups in the EU has emerged in the last years through projects funded under the Culture Programme 2007-2013, and through the European Year of Intercultural Dialogue.\(^\text{13}\)

Yet, the success of this policy approach has been marred by confusion over the precise meaning of ICD, and the myriad interpretations it has generated. Difficulty defining ICD has been noted within the Commission itself. The Commission services responsible for this policy approach are DG Education and Culture (Unit D.1. ‘culture policy, diversity and inter-cultural dialogue’). In terms of the framing of the ICD concept, some policymakers have favoured a more traditional interpretation of cultural ‘diversity’ in terms of Europe’s diverse cultural ‘heritage.’ This is reportedly a factor behind the dwindling likelihood that the EU’s cultural policy will be transformed more fully into a tool for addressing ethnic and religious pluralism. Accordingly, DG EAC is now looking to re-focus the ICD agenda back towards an ‘arts and heritage’ approach, with actions focused on promoting the mobility of artists.

EU education policy indirectly addresses religion through its focus on ‘vulnerable’ groups and inter-cultural competences. The educational performance of children with a migrant background is increasingly prioritised within the OMC on education – which again implicitly implicates certain religious groups. Within the Commission services, DG Education and Culture (specifically Unit B.2. School education and A.2. Equal Opportunities and Equity) are responsible for coordinating and monitoring this policy approach. Unit B.2. in particular has taken forward the agenda on the education of migrant children, launching a Commission Green Paper in 2008 which identified the combination of linguistic and cultural difference with socio-economic disadvantage as factors behind the below average educational attainment of children from a migrant background\(^\text{14}\).

\(^\text{13}\) For instance, the European year of Intercultural Dialogue included actions such as the EU level seminar: “Intercultural Dialogue: a Challenge for Faiths and Convictions?”.

The need to address this gap is linked to widening social divisions including “cultural segregation, exclusion of communities and inter-ethnic conflict”. Intercultural education is proposed as one potential policy solution. This approach builds on the 2006 Recommendation on “Key Competences for Lifelong Learning” which highlights the role of education for instilling “essential social and civic values” such as citizenship, equality, tolerance and respect as a means for dealing with the EU’s increasing social and cultural diversity.\(^{15}\)

### Conclusion

The mapping exercise presented in this summary reveals the highly differentiated ways that religion and religious diversity are addressed within the European Commission, in particular in the policy domains of fundamental rights, non-discrimination, immigration and integration, social inclusion and education and culture. Furthermore, the various approaches behind current EU policy framings of religion are deeply rooted in the diversity of institutional working structures and actors in each of the relevant Directorates-General which make-up the Commission. The mapping clearly indicates that lack of formal competence to legislate directly on religious affairs does not prevent EU law and policies addressing and interacting with questions of religion and religious diversity in multiple, and often unexpected, ways.

These empirical findings set out in the Briefing Note open up a series of further questions regarding the potential implications of different approaches to religious diversity within the European Commission: what are the consequences for policy coherence within the European Commission? At what point does the absence of a common strategy for addressing questions of religious diversity at EU level become problematic? Such questions will warrant further academic examination and policy debate as managing the pluralism of religious and non-religious convictions becomes increasingly important across the EU.

Figure 1: Mapping key actors and approaches to religious diversity within the European Commission

Directorate-General for Justice, Citizenship and Fundamental Rights

- C.1. Unit for fundamental rights and rights of the child
- C.2. Unit for union citizenship
- D.2. Unit for equal treatment legislation
- D.4. Unit for non-discrimination policies and Roma coordination

Directorate-General for Home Affairs

- B.1. Unit for immigration and integration

Directorate-General for Education and Culture

- A.2. Unit for equal opportunities and equity
- B.2. Unit for school education; Comenius
- D.1. Unit for culture policy, diversity and inter-cultural dialogue

Directorate-General for Employment, Social Affairs and Equal Opportunities

- D.2. Unit for active inclusion of disadvantaged groups
- D.4. Unit for demography, migration, social innovation, and civil society

Annex 1.

List of Interviewees

Anne-Sophie Canihac, Policy Officer, Unit B.1. Immigration and Integration, DG Home Affairs.

Laura Cassio, Policy Officer, Unit D.1. Culture Policy, Diversity and Intercultural Dialogue, DG Education and Culture.

Brigitte Degen, former Policy Officer of Unit G.4. Action Against Discrimination (and Programme Manager, 2007 European Year of Equal Opportunities For All).

Katarina Lindahl, Deputy Head of Unit, (former) Unit E.2. Inclusion, social policy, aspects of migration, streamlining of social policies, DG Employment, Social Affairs and Equal Opportunities.

Stefan Olsson, Head of Unit, (former) Unit G.2. Equality, action against discrimination, legal questions, DG Employment, Social Affairs and Equal Opportunities.

Stefano Paci, Policy Officer, (former) Unit E.2. Inclusion, social policy, aspects of migration, streamlining of social policies, DG Employment, Social Affairs and Equal Opportunities.

Anna-Elina Pohjolainen, Policy Officer, Unit C.1. 001 Fundamental rights and rights of the child, DG Justice, Citizenship and Fundamental Rights.

José Alegre-Seoane, Head of Sector, Unit C.1. 001 Fundamental rights and rights of the child, DG Justice, Citizenship and Fundamental Rights.

Interviews conducted during June and July 2010.
## Project Identity

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<th><strong>Title:</strong></th>
<th>RELIGARE - Religious Diversity and Secular Models in Europe. Innovative Approaches to Law and Policy</th>
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<td><strong>Funding Scheme:</strong></td>
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<td>K.U. Leuven (Faculties of Law and Canon Law), Prof. Marie-Claire Foblets</td>
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| **Project Managers:** | Dr. Jogchum Vrielink  
Dr. Myriam Witvrouw |
| **Duration:** | 1 February 2010 – 31 January 2013 (36 months) |
| **Contact e-mail:** | info@religareproject.eu |
| **Short Description:** | The RELIGARE project is about religions, belonging, beliefs and secularism. It examines the current realities in Europe, including the legal rules protecting or limiting (constraining) the experiences of religious or other belief-based communities. Where the practices of communities or individuals do not conform to State law requirements, or where communities turn to their own legal regimes or tribunals, the reasons behind these developments need to be understood. |
| **Partners:** | 13 (10 countries) |
| **Consortium:** | Centre for European Policy Studies (CEPS), Belgium  
Université Catholique de Louvain (UCL), Belgium  
International Center for Minority Studies and Intercultural Relations (IMIR), Bulgaria  
University of Copenhagen (UCPH), Denmark  
Centre National de la Recherche Scientifique: Politique, religion, institutions et sociétés: mutations européennes (PRISME), France  
Universität Erlangen-Nürnberg (UEN), Germany  
Università Degli Studi di Milano (UNIMI), Italy  
Vrije Universiteit Amsterdam (VUA), The Netherlands  
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