RELIGARE

Religious Diversity and Secular Models in Europe: Innovative Approaches to Law and Policy

Research funded under the Socio-economic Sciences and Humanities Call of FP7

Messages to inform policy-making

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Prepared by Sean Feerick*
May 2013

* Sean Feerick is a senior level programme manager and policy analyst responsible for directing the EQAVET (the European Quality Assurance in Vocational Education and Training) Secretariat. The author would also like to express his gratitude to Prof. Marie Claire Foblets, Mrs. Louisa Anastopoulou, Dr. Sergio Carrera and the members of the consortium for their comments and discussions provided in the elaboration of this booklet and previous drafts.

www.religareproject.eu
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1. Introduction

This booklet has been conceived with the aim of distilling the essence of the RELIGARE project to inform the policy-making process. The project examines the legal and sociological dimensions of how states manage, in their existing legal and policy systems, their relationship with individuals of diverse faiths and beliefs, while continuing to ensure respect for the principles of freedom and equality that underpin the European Treaty and Charter of Fundamental Rights.

It does not summarise the research project, nor does it provide a synopsis of its considerable contributions to new knowledge on the topic of managing religions and religious diversity as found in the European Union. Rather, it is designed to present the policy-relevant insights of the research in order to support the process of policy-making at EU level and within different national contexts. It explains why RELIGARE is important, presents the four key areas where the interface between the state and individuals’ religious affiliation are at their most sensitive, examines the implications of the research for policy-making and concludes with some topics for consideration to support the policy-making process in the coming years.

The booklet has been prepared on the basis of the project material available on the RELIGARE website (www.religareproject.eu), discussion with the project coordinator, the RELIGARE consortium and the Centre for European Policy Studies, as well as an analysis of the contributions made during a conference to present the results of the research and their implications for policy-making held in December 2012.

The RELIGARE project has been undertaken in response to the European Commission’s Seventh Framework Programme under the Socio-economics Sciences and Humanities Programme. It responds to the specific objectives of addressing religious diversity and secular models in Europe and innovative approaches to law and policy.

The research examines innovative approaches to law and policy in a range of ten European countries with different legal frameworks and policy traditions for managing the formal relationship between religions and the state. The research, which is qualitative in nature, explores the particular challenges of equitably managing the relationship between the state and the growing diversity of faiths and belief systems in a Europe that tries to balance its, by and large, pluralist approach to individual beliefs, with the need to ensure equality, rule of law and freedom of belief and expression for all.

The countries cover three broad approaches to regulating the relationship between ‘church and state’: historically established strict separation (France and Turkey), established legal framework for managing the relationship with an historically majority religion (Denmark, Italy, Spain and the United Kingdom) and that followed by countries that have traditionally espoused more pluralist approaches (Belgium, Bulgaria, Germany and the Netherlands).

The significance of the research lies in the way it identifies the linkages between legal approaches and social realities, policy responses and their consequences and the need to find workable

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1 Belgium, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Spain, Turkey and the United Kingdom.
solutions that balance sometimes different, if not conflicting needs. Thus, the research results have relevance far beyond the countries studied. Because the research focuses on solutions that balance legal frameworks with social realities, it shows ways in which it is possible to work within the context of existing legislative provision. This will be relevant for policy-making at the level of both the European Union and individual member states.

The most salient of the key messages identified in the booklet are:

- The EU institutions have an important role to play in facilitating the development of policies that consistently address discrimination based on religion or belief.
- The broader Europe 2020 strategy creates an imperative for ensuring that all individuals can be fully contributing members of the society in which they live and contribute to the economic success of the EU.
- The principle of free movement within the EU requires much greater degrees of policy coordination between member states.
- More coherence is necessary across EU policy areas in the areas of education, employment and home affairs.
- An EU coordination mechanism is necessary in order to share experiences and practice on managing issues of religious diversity and secular models.
- Further study is necessary in order to examine the impact of a future adoption of the Horizontal Directive.

The various publications generated by the RELIGARE are listed in Annex I. The coordinates of the Project Coordination and the partner institutes are provided in Annex II.

The database of Case Law is available on the project’s website (www.religaredatabase.eu).

There is a wide variety of research materials, policy-making resources and academic publications available on the project’s website (www.religareprojects.eu).

2. European policy context and challenges: A context for the research

Europe today can be considered to be at a defining moment in its history. At a time of acute financial crisis and its increasingly obvious social consequences in many member states, its capacity to bring an added value to the quality of life of its citizens is tested as never before. The disconnect between perceived elites and the populations of cities, suburbs and regions, presents politicians and decision-makers with challenges to which they struggle to find answers. Traditional policy processes seem unable to react with the decisiveness needed to bring about the kinds of structural and institutional changes that are important in developing sustainable responses to the economic and societal challenges we face. They are also challenged by the heterogeneity
of individual experiences that are present in European societies. The apparent absence of engagement with individuals, with citizens, in identifying responses to policy challenges has created a dangerous lacuna in the process of building incremental change which has been a feature of policy-making at European level for many years.

From the earliest stages of development of what has become the European Union, the emphasis on shared values and union in diversity has been an important mobilising factor in encouraging membership and deepening cooperation. The Treaty of Maastricht introduces the concept of European citizenship for the first time. The ‘content’ of this citizenship has been defined through the processes of negotiating successive treaties and of clarification through legal actions taken by individual citizens seeking to exercise their citizenship. This process has been closely linked to that of greater awareness of the European identity, or the specifics of what being European means.

The growing diversification of European societies since the end of the cold war and the loosening of international borders have created new challenges for many member states in terms of the interactions between individuals and the state. Traditional ways of regulating the relationship between majority and minority groups are, in many cases, no longer sufficient as can be seen in many large European metropolitan areas. In some countries such as the United Kingdom, Germany and the Netherlands, the growing sense of the social dilemma presented by such a high level of diversity has called into question tried and tested policies for addressing intercultural issues and managing the relationship between majorities and minorities in national contexts.

Reflection on what it means to be European is informed by a number of considerations. At one level there are strong underpinning principles of a fundamental level of respect for human rights and rule of law, which reflect a concern for embracing and responding to diverse identities and the inclusion of otherness. Article 21 of the EU Charter of Fundamental Rights describes the all-embracing character of the concern with individual rights when it prohibits any discrimination based on any ground, such as sex, race, colour, ethnic or social origin, genetic features, language, religion of belief, political and/or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

At another level there is the growing intellectual sense of a European identity seen in terms of an identity of spirit, feelings and destiny. Such ideas are characterised by notions of individuals’ differing layers of identity, respect for the other and equality. These are the values that define what we believe to be the essence of what being European means. At a policy level there is an increasing concern with the importance of economic prosperity and the need to build on the competences and skills of all citizens in order to build a knowledge-based society that acts as a global leader.

The EU is seen as a single area in terms of its economy. Policy frameworks and strategies such as Europe 2020 also present Europe as a player on the global economic stage. This has consequences in terms of global economics and the position of European business, financial and industrial sectors. It is also relevant, however, in terms of Europe as a global destination, not only for business, but also in terms of migrant populations in search of better living opportunities or fleeing from politically and/or economically failed states.
The challenge that policy-makers now face is one of balancing notions of the norm within their national context, with recognition of and respect for the diversity that characterises the reality of the populations residing in their member state. Such norms may derive from nationally-based accommodations between the individual and the state, but they are also determined by broader European and international instruments to which the state is legally committed, either through its membership of the European Union, the Council of Europe and/or other international conventions. The courts also play a central role in establishing balance between the state and individuals, particularly when their rights are conflicting. Reaching an appropriate balance is complicated and policy-makers must strive to mediate between competing and sometimes conflicting interests. In times of crisis and financial austerity, this is more difficult and sometimes may be played out in a wider media-driven context for debate which renders nuance and sensitivity to differences more difficult to reach.

The added-value of what is European should be to support member states in developing sustainable approaches to managing diversity, building on the strengths that emerge from a dynamic engagement with difference, and using resources to strengthen the European character of solutions and further deepen the integration of the European economic and social space for the benefit of all individuals.

3. Why RELIGARE?

The challenge of balancing norms and diversity becomes most acute when legislators address the issue of religion and its place in the public space. Countries that have traditionally resolved the relationship between religion and the state either through complete separation, establishment of a state Church or some form of bilateral agreement clearly delineating roles, are confronted with much greater degrees of diversity than during the 19th and early 20th centuries when these modus vivendi were established. Today, not only are European societies characterised by a greater variety of religious affiliations which are largely the result of extensive migration, but there are also significant numbers of citizens who are affiliated with other belief or philosophical systems, or to none.

While religions, their relationships with the state, their place in the public space and freedom of religion, are questions that remain within the legal competence of individual member states, there are significant areas where the interaction with broader European and international legal frameworks has a direct bearing on the question, particularly when we examine the relationship between the individual and the state.

The key issue to be examined in this context is whether the traditional forms of accommodation between church and state in EU countries that are recognised in Article 17 of the Lisbon Treaty are sufficient to guarantee the personal rights of individuals as underpinned by Articles 10, 20 and 21 of the EU Charter of Fundamental Rights and Articles 9 and 10 of the Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantee freedom of religion and expression. This is the starting point for the RELIGARE project. The research is driven by four key questions, namely,
i) Is there meaningful freedom of religion and equality in various domains of social life?
ii) What are the obstacles in law or practice?
iii) How can the situation be improved?
iv) Where are good/bad/promising solutions and practices to be found?

The analysis of practice in nine EU countries and Turkey, coupled with the examination of underpinning legal frameworks, enables an identification of the areas where the interaction between the state and the citizen may be problematic and where action is needed if European values of openness, respect for the individual and diversity are to be fostered.

By bringing together the legal and sociological approaches to addressing this question, RELIGARE goes to the heart of the issue that policy-making, whether at EU or member state level, needs to address. By analysing case law, conducting in-depth interviews with people in a number of countries and establishing databases of examples that support policymaking, it presents the scale of the issue of interaction between the individual and the state and provides possible guidelines to support policy-makers in finding solutions to what appear at times to be intractable problems.

The consortium driving the research brings together 13 teams of researchers made up largely of jurists and sociologists. The juxtaposition of differing scientific perspectives, in addition to the balancing of scientific rigour and policy-making imperatives, has enabled the research to identify pragmatic solutions in a number of areas where the religious dimension makes the interaction between individuals and the state most sensitive. The EU legislative framework creates a strong basis for ensuring the sustainability of the proposed policy responses. The methodology used in the project, which has sometimes confronted quite different perspectives on the analysis of social realities, has enabled it to identify results that go beyond the confines of a purely legal or a purely sociological response to the emerging data.

The emerging results of the research are therefore of particular interest in a policy-making context as they bring the added value of two quite different academic disciplines, to identify workable solutions that can, over time, contribute to change. As such, it is a profoundly European project that emphasises the incremental approach to addressing policy issues.

The topics chosen for the research address the following four areas where religion plays an important role in the way the interaction between the state and the individual is managed:

i) access to the labour market and freedom of religion and belief in the workplace,
ii) family law and the judiciary,
iii) access to and the use of public space and
iv) state support to religions and non-confessional groups.
Each of these areas is sensitive, each is the subject of regulation at member state and EU levels and each has a direct bearing on the living experience of individuals.

In many cases realities have outstripped legal frameworks. These are also areas where national politics may influence particular types of solutions to perceived problems, particularly when linked to discourses on migration, social deprivation and state security concerns. They are also topics that are closely linked to the consideration of what type of Europe we wish to live in. Is it a Europe that is open, premised on the rule of law, equality of all citizens and respecting for diversity? Or is it a Europe that turns in on itself, unwilling or unable to respond to the challenges of diversity?

The four topics above delve deeply into these questions. By bringing together the existing case law, using the instruments that are part of the European and international legal framework and analysing the experiences of individuals in particular European contexts, the research identifies a number of key messages or suggestions that will be helpful for policy-makers in the very different national contexts found across the European Union. A research project cannot however provide ‘one size fits all’ solution for addressing these issues. Each of the case studies highlighted is based in a particular context; case law is determined not only by the existing legal frameworks, but also by the interpretation of individual judges and the advocacy of jurists.

3. **Overview of the four key research areas**

The focus of RELIGARE is to prioritise solutions that seek to balance two fundamental rights, namely the **freedom of religion and the right to equality of treatment** as enshrined in the European Convention on Human Rights and Fundamental Freedoms and also the Charter of Fundamental Rights of the European Union. The solutions identified are based on the principle of inclusive even-handedness and reasonable accommodation, which offers a pragmatic yet legally robust approach to issues of recognising, respecting and accommodating legitimate differences in increasingly diverse European societies.

4.1 **Access to the labour market and protection of freedom of religion and beliefs in the work place**

The issue of religion and how it is experienced in the workplace, particularly by religious minorities, is a particular area of concern in RELIGARE. There are two aspects to the question. The first aspect concerns the treatment of religious minorities with certain beliefs and practices in the workplace; the second concerns the **types of accommodation or derogation from accepted norms** of labour law that may be provided for religious or confessional organisations operating as employers.

The legal frameworks applying in the field of labour law within the EU are particularly robust with significant protection afforded to combatting discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. This legal framework presents policy-makers with a particular challenge when it comes to balancing the notions of freedom, particularly religious freedom and equality, with freedom from discrimination based on sex or
sexual orientation. Contexts within member states differ widely in this respect, arising from the historical experience of the place of religions and private beliefs in the workplace.

RELIGARE offers ways of addressing the issue that enable employment systems to identify workable solutions that move towards more inclusive workplaces that balance the rights and obligations of all the key actors. The solutions proposed are based on substantive equality rather than a mere formal adherence to principles. It is important that solutions agreed move beyond ad hoc local arrangements and are legally binding on the key partners.

In a context where the European labour market must take advantage of the skills and competences of all, substantive equality should create ‘win-win’ situations for both employer and employed. Such an approach may entail addressing sometimes difficult and/or unpopular issues but within a broader context of proposing solutions that are rights-based with due regard to context. To avoid addressing issues arising out of religious difference does not offer a feasible solution, and in the end, may also exacerbate problems.

4.2 Family law

The potential for difficulty in relations between religious groups and host states appears to be the greatest in cases where state law governing family issues and religious status interact and sometimes clash. This is of particular importance in relation to the free movement of individuals, which is a central tenet of EU policies. State legal systems in Europe have their own jurisprudence and traditions which have derived from their particular historical and political context. They have also, by and large, integrated the broader European legislation on gender equality, individual human rights and the right to fair process. The legal difficulties presented in such cases is given further resonance by the legal status of individual demands arising from alternative ways of resolving family law issues that may be provided by alternative dispute resolution mechanisms in specific countries but also the status of private international law in bilateral relations between countries, particularly in relation to the regulation of individual cases.

The fundamental issue to be addressed in the family law context is the need to balance the minimum criteria of European democracies, which are premised on the notion of equality before the law and the individual’s fundamental human rights, with those of individuals that derive from their religious affiliation and that offer different constructions of individual freedom and rights.

While legal understanding and practise have tended to see family law issues as private matters, a role is usually provided for state intervention in cases of violation of human rights and protecting the weaker party’s interests. In family law cases, equality of the sexes and the legal underpinning of same-sex relations create particular difficulties in the way in which state law interacts with religious-driven notions of what constitutes the family and its legal status.

The solutions identified by the RELIGARE research prioritise approaches that are premised on the notion that all individuals should have ownership of solutions that arise from a consensual model of reaching agreement on issues of difference. There is a need for a reciprocal process where individuals accept the rules of the secular legal state order, because the latter provides for the respect of the rights of all individuals, and individual decision-making is not done under pressure.
While family law is the legal responsibility of individual states, the sociological research undertaken in RELIGARE shows that nearly all member states face similar problems. There is therefore an added value from mutual learning at European level particularly from case studies. Although these are always context based, it is possible to identify common threads in the way particular legal systems have striven to address specific needs arising from the interaction between the religious and public domains in relation to family law but also their status in the country of origin.

Education of legal and public officials can play an important role in creating a greater level of understanding of the issues. Much work needs to be done in order to understand not only the content of the family laws that individuals refer to in making claims within the state legal systems of the EU, but also the status of these laws in the country of origin.

Dialogue between civil society representatives and minority religions can play an important part in de-mystifying the ‘Other’ and exploring ways of collaborating between state authorities and minority communities, in relation to accommodation of their status and position, within the democratically based legal frameworks premised on equality, which are the European norm.

4.3 Access and use of the public space

The place of religion, particularly minority religions, in the public space, has become a focal point for legal conflict in many European countries in recent years, most notably in relation to the place of religious symbols in the public space. National legislation has provided the basis on which countries have addressed issues of religious identity such as wearing the burqa, the display of religious images or laws on working time and religious duties. The emerging case law, reinforced by the decisions of the European Court of Human Rights, has tended to reflect the legal situation pertaining in the countries where particular instances of conflict have arisen, ranging from the French rigorous separation of religion and the public space, the Italian and German emphasis on the role of the dominant religion in the public space and the less formalised arrangements to be found in countries such as the United Kingdom.

The research undertaken in RELIGARE proposes to distinguish between three kinds of public space, each of which has its specific character and appropriateness: i) the common space, ii) the political space and the iii) institutional space. A key means of navigating these difficult waters will be through the principle of inclusive even-handedness. Such an approach however, requires a willingness to participate in dialogue, to accept certain shared principles of appropriateness that arise from the kind of public space in question and an acceptance of the need to find solutions that are premised on openness and respect for human rights and the rule of law. This is the particular defining characteristic of the community of values that constitutes the European Union.

4.4 State support to religions and confessional groups

There are clearly visible models of state support to religions and non-confessional groups across Europe, all of which are influenced by national histories. However, with the increasing diversity of European societies, such historically accepted models of regulating the interaction between
church and state are increasingly contested, not only because of issues relating to autonomy and recognition of churches or belief systems, but also arising from increased secularisation of European societies. Historical models of state support to religions are therefore no longer considered to be feasible.

The key issue for the state is how to most effectively regulate state support to religions in a context of equality which also respects diversity and the rights of minority groups. Each of the types of solutions suggested creates other possible sources of tension, such as how to determine the religious groups entitled to state support, notions of the legitimacy of this support and its role in defining the state. Issues such as the relationship between the state funding of a particular faith and its number of adherents in a particular country, the types of activity to be funded, whether funding protects collective or individual freedom of religion and decisions to be taken in times of financial crisis, all impact on the process of finding the most appropriate ways of regulating this question.

RELIGARE opts for the solution of managing the interaction between the types of legislation in place rather than proposing new legislation. Policy-making supported by legislative processes should work towards balancing deeply-rooted traditions with the need to respond to emerging and sometimes quite different sets of needs. The modus vivendi proposed balances the right to freedom of association, open to all groups, faith and non-faith based, which would enable access to state funding for religious purposes with a second tier of support, not restricted to religious organisations, of providing support to undertake activities in the public interest.

5. Lessons to be drawn from the RELIGARE project

As a European project, RELIGARE identifies policy solutions that have a meaning and relevance at a broad European level. Historical and social contexts will of course impact on the kinds of solutions that are identified in particular circumstances, but the added value of European cooperation can bring about a significant qualitative contribution to the policy-making process. While the models of interaction between religions and the state may differ in the countries examined, the broad outlines of the research findings create a basis on which policy-makers can identify solutions in their own contexts.

A first transversal area which has relevance across all countries concerns that of how language is used to describe social realities and religious difference. When speaking about differences of religion it is important to avoid using a terminology that may be unhelpful and collude with certain, sometimes extremist, political positions. The juxtaposition of words such as “religious” and “extremist”, “Islam” and “terrorism” or other more pejorative formulations, moves debate to the margins of what needs to be a consensual space for interaction between opposing world views and religious and/or cultural affinities. While individual religions or belief systems have their own language register of what is considered appropriate within their own domain, a state that is premised on democratic principles of equality and freedom of expression and belief, needs to build a public discourse that privileges the search for common ways forward to shared challenges.
It is not merely a question of expunging prejudicial language from public texts and the public sphere; it is a question of educating officials, judges and politicians in the use of language that finds a middle ground, rather than creating even greater polarisation within societies.

A second area emerging from the research findings and one that is relevant across all European countries, concerns the essential complexities and intricacies found in all state systems, regardless of political organisation or philosophical inspiration. This is defined in terms of the interaction between majorities and minorities, religious systems and individual beliefs, direct and indirect discrimination, legal frameworks and societal realities. Those in a policy-making role need to be aware of this complex dynamic when identifying the policy solutions necessary in regulating the relationship between state systems and socio-cultural realities.

Each policy decision has a consequence, a spin-off effect, intended or more often unintended, which may in turn exacerbate an emerging issue or indeed create new difficulties. The solution therefore is not merely to allow the presence of religious symbols in the public space, or to ensure a strict adherence to the principles of state neutrality concerning religion. More often than not, it is about finding pragmatic approaches to managing difficult, sometimes intractable situations, but in a way that is premised on confidence-building, leading to a practise of incrementalism which, over time, increases the quality of daily life and its legal underpinning for all individuals and builds confidence in democratic processes.

The third principle highlighted by the RELIGARE research deals with balancing individual rights with societal obligations. The state founded on democratic principles protects the rights of all individuals living within its borders. However this state obligation brings with it a certain number of individual obligations. Within the European Union, the member state is characterised by the willingness of individuals to commit to and share a public sphere that is underpinned by fundamental values of openness, pluralism and respect for individual human rights and freedoms. This is not a ‘free for all’ where anything goes, but a model of interaction between the state and the individual composed of discrete checks and balances to ensure equality for all. The sensitive issue for policy-making is to ensure that all of those who are living within the state feel enabled to engage with the participative processes in their country of residence and that there is a genuine space for shared dialogue, where individuals can identify together the most suitable ways of accommodating individual needs in the context of the broader community and the state’s needs.

The fourth principle arises from the third, and concerns the more formal legal dimension of reconciling differing demands and sometimes conflicting needs. While there are some areas where EU legislative instruments and the Convention on the Protection of Human Rights and Fundamental Freedoms provide a broader legal framework that is binding on member states, there are also instances where the parameters of legal competence need some time to be defined. This process can be seen in tensions arising from the new perspectives provided by the European instruments in cases where there may be an existing national jurisprudence and within states, in tensions between the special arrangements for regulating the relationship between church and state and individual rights to equality and freedom of religion and expression.

While the deepening of the Treaty base of the EU through the Treaties of Maastricht, Nice and Lisbon has generally strengthened the protection of individual rights in the EU, the position of historically present churches has remained the competence of the member states in their actions.
falling outside EU law. This legal context has informed the national context in which states respond to individual demands for recognition of individual belief systems. The practice of the European Court of Human Rights has generally been to place responsibility for finding solutions to the specific requirements of individuals relating to religious practise or the place of religion in the public space at the national level. The challenge therefore for policy-making is to find workable solutions that support both individual and state requirements. The experience of RELIGARE is to suggest the importance of reasonableness based on appropriate interpretation of the jurisprudence in reaching this reconciliation of sometimes-conflicting demands.

The overall thrust of the RELIGARE research is to suggest some underpinning principles that will be helpful in meeting challenges faced by policy-makers. These underpinning principles derive from a judicious examination of case law, templates to support workable legal solutions and a number of well-chosen case studies. While case studies are context specific, the case law that exists within and across countries and the ways in which the process of finding solutions has been addressed provide resources that will support policy-makers across Europe in finding workable solutions in sometimes difficult contexts.

The dual concepts of reasonable accommodation and inclusive even-handedness have been refined through an in-depth process of analysis of differing social realities and different state and legal systems, as they attempt to address shared European challenges. These underpinning principles marry the ideal with the real and attempt to create a basis for addressing individual and broader societal needs. They are also situated in a continuum of legal definition, social progress and policy-making that will develop over time as societies and individuals work together to define their public spaces in a way that provides equal opportunities for all people of good faith. The added-value of the project is evident in the way it draws on this heterogeneity of approaches in order to distil a certain number of solutions to policy-making dilemmas shared across all European countries.

Possible solutions to policy-making dilemmas

The experience of the RELIGARE project provides us with clear and workable guidance, which can support policy-making at a European level in the years to come. It identifies four key concepts that have a more universal significance when attempting to identify and implement workable solutions to difficult policy-making dilemmas. The driver for these legal and policy-making solutions is the need to reach a balance between existing legal frameworks that determine state intervention and evolving social realities where specific national circumstances may require clear responses to individual and system needs.

Histories, how the state is defined, experiences of multiculturalism and immigration contribute to creating the context within which policy-makers must find responses to specific or generalised societal realities. The policy-making reality is also determined by the existence of a number of guarantees of the individual’s rights that exist in the EU context and are also the subject of meta-level legal framework instruments, such as the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Declaration of Human Rights. It is the interface between these instruments that provide protection for individuals,
with the legal orders existing at national level concerned with broader issues of regulation or the public domain, relations with religions and legal competence that creates constraints for policy-making in national contexts. Policy-makers must not only consider the needs of the individual, but are also required to address notions such as the common good, notions of public and private space and issues of perception among both majority and minority cultures.

Regardless of the particular policy-making context, the key qualities that will be needed are those of balance and pragmatism. How these are managed will be of necessity dependent not only on context, but also on the competence and confidence of those involved in identifying policy-making solutions. The material produced by RELIGARE provides examples of how similar challenges are addressed in other European countries, with similar or quite different legal systems. The database of case law (www.religare-database.eu) provides valuable information on precedent and how other countries have addressed specific issues. The legal templates provide examples of how a process can be worked through and how to most appropriately address issues of proportionality and intended and unintended consequences. Case studies show how similar issues manifest themselves and are addressed in a range of different European contexts.

Dialogue with and between stakeholders is another underpinning principle of the policy-making process in this area. A focus on the sharing of perspectives, reaching consensus and adopting step-by-step approaches in seeking to address issues is more conducive to identifying solutions than grandstanding or using media to demonise the ‘Other’ or to spread dubious and/or unclear messages about difference.

Effective and sustainable policy-making will require a combination of appropriate education measures for key stakeholders in decision-making processes as well as the development and deepening of a culture of communication and dialogue about the importance of, the rights and responsibilities pertaining to membership of a community of values such as the European Union. Coupled with this approach is an awareness of the need for pragmatic approaches to finding solutions. These will need to be regularly reviewed as circumstances change, degrees of confidence in the policy-making process grow and stakeholders are empowered to assume greater levels of informed responsibility when soliciting state and community intervention with respect to their needs.

The concept of reasonable accommodation encapsulates this approach. Policy-making, which is about appropriate engagement with key stakeholders in identifying policies and decisions to enable ownership of the process, must always be based on the notion of reasonableness. This does not exist in a vacuum. One cannot be reasonable if one does not understand issues of scope, context and the potential for progression over time. RELIGARE commences a process of identifying the parameters of reasonableness and how it can be brought to bear on a policy-making process that is supported by robust legal frameworks and examples, which provide relevant insights into how to best address needs.

Combining notions of reasonableness and accommodation, we see how sometimes very difficult social and legal issues can be made more manageable from an individual and a state perspective. Inherent in the concept of reasonable accommodation is the notion of a pragmatic solution that offers a way of dealing with an issue at a specific moment in time.
This mirrors the broader European process of building a community of values, of finding ways forward through sometimes quite difficult situations.

Reasonable accommodation goes hand-in-hand with the concept of inclusive even-handedness. While the member state has responsibility for its own legal system, the European dimension requires each system to have due regard for the underpinning European values articulated in the Treaty, the Charter of Fundamental Rights and the considerable body of European and international jurisprudence that protects the rights and freedoms of the individual. The reality of Europe is determined to a large extent by its mobility and freedom of movement, and its global economic position. The community of values, which constitutes the EU, is driven by notions of equality and inclusion. These must be the drivers of policy-making in response to the realities of significant inward movements of people and the growing diversity of our societies. The aim of policy-making should be to ensure that no one feels left out or left behind, that everyone feels they have a voice and the capacity for equality of partnership in the society in which they are living.

**7. Areas for further consideration by EU policy-makers**

On the basis of the key messages and possible solutions it has identified in its research, the RELIGARE project proposes a number of important areas for further consideration by EU policy-makers. These findings are premised on the need to ensure that European societies are inclusive, forward-looking and embrace equality at a fundamental level and that Europe draws on the talents and experiences of all of those who choose to make it their home, regardless of religion or philosophical belief. Respect for fundamental rights needs to be a central tenet of policy-making both at the level of the EU and individual member states. Inclusive state neutrality and justice as even-handedness are seen as representing the fairest and most sustainable policy responses to religious diversity in the contemporary European context of secular states.

The policy-making realities observed in RELIGARE have built on three important observations, namely:

i) There is evidence that case law on the protection of freedom of religion and belief is sharply divided at all levels in the 10 countries examined.

ii) In terms of legislative intervention, there is a tendency of state law legislators and judges to perpetuate approaches that have developed within their own politico-social contexts and which may not provide a suitable context for members of ethno-religious minority communities to negotiate their place in the public space.

iii) The concept of reasonable accommodation is useful for addressing some of the policy-making challenges and perhaps it is now important to propose more binding commitments on member states in terms of extending the concept of reasonable accommodation to the protection of freedom of religion and belief.
On the basis of these observations, RELIGARE makes the following proposals:

- **there is a need for a more direct and active role for the EU institutions** in developing a policy that addresses in a consistent manner the multiple causes of religious discrimination and provides a basis for combating these discriminations beyond the realm of employment. Building on the existing EU framework of rights and more specifically on Directive 2000/78, the European Commission could extend its non-discrimination (and integration) objectives to issues pertaining to religion.

- The proposed Council Directive on Implementing Equal Treatment between persons irrespective of Religion or Belief, Disability, Age or Sexual Orientation (Horizontal Directive), Article 17 of the Treaty on European Union and the principle of even-handedness will be essential elements of this strategy. Even though the Council Directive is currently at an impasse in terms of its negotiation, it can also be seen as making a major contribution to the broader Europe 2020 strategy with its emphasis on “smart, sustainable and inclusive growth”.

- Article 17 of the Treaty on European Union should also be considered in the context of the current Action Programme particularly with respect to how the EU can intervene in relation to protecting the freedom of religion and belief and the requirement for non-discrimination. A potential expansion of the EU Directive 2000/78 (employment equality Directive) to other fields of social life will increase the opportunity for such intervention. The major objective of promoting free movement and residence with the Union creates an imperative for such intervention and greater coordination among member states, particularly in relation to the application of the European Convention on Human Rights in EU law. This is of particular importance in relation to laws impacting on public space.

- **More coherence across EU policy areas is necessary**, such as the programmes in education, employment and home affairs, in order to address tensions between basic human rights, respect for private and family life (Article 8 ECHR), freedom of religion and belief (Article 9 ECHR) and prohibition against discrimination (Article 14 ECHR).

- **An EU coordination mechanism on religious diversity and secular models** in the EU would provide a basis for sharing promising practices and policy experiences when handling common dilemmas posed by religious pluralism and discrimination. In particular the European Commission could ensure a stronger inter-DG coordination through setting up a permanent inter-service group on religious pluralism and secularism.

- **Further study is necessary** in order to examine on a comparative basis, the various effects that may be expected from a future entry into force of the horizontal Directive, in particular any negative or discriminating and/or unpredictable effects of such an instrument.
Annex I

RELIGARE Publications

» Policy Briefs
Religion, Family and the Law - Innovative Approaches to Law and Policy
A comparative legal study addressing religious or belief discrimination in employment and reasonable accommodations for employees’ religious or philosophical beliefs or practice
The Place of Religion and Belief in Public Spaces across the EU: Policy Dilemmas and Recommendations on Religious Symbols and Dress Codes

» Books and Journals
Religion in Public Spaces: A European Perspective
A Test of Faith? Religious Diversity and Accommodation in the European Workplace
The Burqa Affair Across Europe: Between Public and Private Space

» Working Papers
In pursuit of the pagans: Muslim law in the English context
Religion and the Myths of Secularization and Separation
Transnational family relations in migration contexts: British variations on European themes
Alternative Dispute Resolution in Europe under the auspices of Religious Norms
The Place of Religion in European Union Law and Policy
Cross-border family cases and religious diversity What can judges do?

» Presentations and Lectures
An Account of the International RELIGARE Symposium on “Religious Diversity & the European Workplace”
Fuzzy Law and the Boundaries of Secularism

» Reports and Documents
Mapping the Field of Religious Diversity in EU Law and Policies within the European Commission
Basic Tensions of Governance of Religious Diversity: Item-list for the socio-legal research (WP7)

» State of the Art Reports
State of the Art Report: Funding religious heritage
State of the Art Report: The Public Space. The Formal and Substantive Neutrality of the Public Sphere
State of the Art Report: The Family
State of the Art Report: Religion and the Workplace
## Annex II

### PROJECT INFORMATION

Project Coordinator: **Prof. Marie-Claire Foblets**  
Project Managers: **Dr. Myriam Witvrouw & Zeynep Yanasmayan**  
Institute for Migration Law & Legal Anthropology  
Law Faculty, K.U. Leuven  
Tiensestraat 41 (b 3416), B- 3000 Belgium  
Tel.: +32 16.32.52.07, Fax: +32 16.32.52.52  
E-mail: info@religareproject.eu  
European Commission Officer: **Louisa Anastopoulou**, Project Officer  
Duration of the project: **February 2010 - January 2013**  
EU contribution: **€2,699,943**

### COORDINATOR

<table>
<thead>
<tr>
<th>Institution</th>
<th>Coordinator</th>
<th>Country</th>
</tr>
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### PARTNERS

<table>
<thead>
<tr>
<th>Institution</th>
<th>Coordinator</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centre for European Policy Studies (CEPS) <a href="http://www.ceps.eu/content/justice-and-home-affairs">http://www.ceps.eu/content/justice-and-home-affairs</a></td>
<td>Sergio Carrera</td>
<td>Belgium</td>
</tr>
<tr>
<td>International Center for Minority Studies and Intercultural Relations (IMIR) <a href="http://www.imir-bg.org/">http://www.imir-bg.org/</a></td>
<td>Antonina Zhelyazkova</td>
<td>Belgium</td>
</tr>
<tr>
<td>University of Copenhagen (UCPH) <a href="http://www.teol.ku.dk/english/dept/ceit_eng">http://www.teol.ku.dk/english/dept/ceit_eng</a></td>
<td>Jørgen Nielsen</td>
<td>Denmark</td>
</tr>
<tr>
<td>Centre National de la Recherche Scientifique: Politique, religion, institutions et sociétés: mutations européennes (PRISME) <a href="http://prisme.u-strasbg.fr/actu.htm">http://prisme.u-strasbg.fr/actu.htm</a></td>
<td>Francis Messner</td>
<td>France</td>
</tr>
<tr>
<td>Universität Erlangen-Nürnberg (UEN) <a href="http://www.zr2.jura.uni-erlangen.org">http://www.zr2.jura.uni-erlangen.org</a></td>
<td>Mathias Rohe</td>
<td>Germany</td>
</tr>
<tr>
<td>Università Degli Studi di Milano (UNIMI) <a href="http://www.unimi.it/ENG">http://www.unimi.it/ENG</a></td>
<td>Silvio Ferrari</td>
<td>Italy</td>
</tr>
<tr>
<td>Vrije Universiteit Amsterdam (VUA) <a href="http://www.rechten.vu.nl/en/">http://www.rechten.vu.nl/en/</a></td>
<td>Adriaan Overbeeke</td>
<td>The Netherlands</td>
</tr>
<tr>
<td>Universiteit van Amsterdam (UvA) <a href="http://www.imes.uva.nl/index.html">http://www.imes.uva.nl/index.html</a></td>
<td>Veit Bader</td>
<td>The Netherlands</td>
</tr>
<tr>
<td>Universidad Complutense Madrid (UCM) <a href="http://www.ucm.es/">http://www.ucm.es/</a></td>
<td>Javier Martinez-Torrón</td>
<td>Spain</td>
</tr>
<tr>
<td>Middle East Technical University (METU) <a href="http://www.metu.edu.tr/">http://www.metu.edu.tr/</a></td>
<td>Aykan Erdemir</td>
<td>Turkey</td>
</tr>
<tr>
<td>Queen Mary, University of London (QMUL) <a href="http://www.law.qmul.ac.uk">http://www.law.qmul.ac.uk</a></td>
<td>Prakash Shah</td>
<td>UK</td>
</tr>
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Religious Diversity and Secular Models in Europe – Innovative Approaches to Law and Policy

Research funded under the Socio-economic Sciences and Humanities Call of FP7
Religious Diversity and Secular Models in Europe
Innovative Approaches to Law and Policy

Project Coordinator: Prof. Marie-Claire Foblets
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Institute for Migration Law & Legal Anthropology
Law Faculty, K.U. Leuven
Tiensestraat 41 (b 3416), B- 3000 Belgium
Tel.: +32 16.32.52.07
Fax: +32 16.32.52.52
E-mail: info@religareproject.eu
European Commission Officer: Louisa Anastopoulou, Project Officer