



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

Religare Working Paper

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



The Place of Religion in European Union Law and Policy Competing Approaches and Actors inside the European Commission

Sergio Carrera and Joanna Parkin¹

RELIGARE Working Document No. 1 / September 2010

Abstract

While the EU has no explicit legal competence in the sphere of religion and the management of relations with faith communities, religious concerns have taken on increasing importance within the legal and institutional framework and policy discourses of the European Union in the last years. This paper provides an overview of how religion and issues of religious diversity are being framed and addressed in EU law and policy by undertaking a critical analysis of the ways in which EU law and policy deal with, engage and understand religion at the policy level of the European Commission. Through an examination of EU legislation and both formal and informal policy initiatives in the fields of citizenship and fundamental rights, non-discrimination, immigration and integration, social inclusion and education and culture, this paper demonstrates that there is a complex and highly heterogeneous patchwork of EU normative approaches delineating the relationship between religion and the EU. These competing framings, very much rooted in the institutional structures of the Commission services, have important implications for discretionary power and sovereignty of the EU member states and for the coherence of European Union policies.

This Working Paper falls within the scope of RELIGARE (Religious Diversity and Secular Models in Europe – Innovative Approaches to Law and Policy), a three-year project funded under the Socio-economic Sciences & Humanities Programme of DG Research of the European Commission's Seventh Framework Research Programme. For more information about the project, please visit: www.religareproject.eu.

¹ Sergio Carrera is the Head of Section and a Research Fellow at the Centre for European Policy Studies (CEPS) in Brussels. He is also a Visiting Lecturer at the University of Kent (Brussels). Joanna Parkin is Research Assistant at CEPS. A draft version of this paper was first presented at the RELIGARE seminar at Queen Mary, University of London on 24th - 25th June 2010. The authors would like to thank the seminar participants, and particularly the discussant Prof. Tariq Modood, for their inputs into this paper. The authors are also grateful to Prof. Marie-Claire Foblets, Prof. Elspeth Guild and Anaïs Faure Atger for their comments on the preliminary version. We would also like to express our gratitude to all the European Commission officials who were interviewed for the purposes of this paper.

Table of Contents

- Introduction1**
- 1. Mapping relations between religion and EU law and policy4**
 - 1.1 A citizenship and fundamental rights approach4
 - 1.2. A non-discrimination approach8
 - 1.3. An immigration and home affairs approach14
 - 1.3.1. European immigration law14
 - 1.3.2. The EU Framework on Integration and Intercultural Dialogue17
 - 1.4. A Social and employment policy approach22
 - 1.5. Education and culture approach27
 - 1.5.1. Culture27
 - 1.5.2. Education.....30
- 2. Religion and EU law and policy: Approaches and actors in competition33**
 - 2.1. Advancing Europeanisation in new policy domain34
 - 2.2. Competing framings shaped by institutionalised approaches34
 - 2.3. A lack of conceptual clarity and concepts in competition.....35
 - 2.4. Implications of competing approaches and concepts for policy coherence36
 - 2.5. Differentiating an ‘active’ and ‘passive’ role for religions37
 - 2.6. A central role for the general principles of EU law and fundamental rights.....38

Introduction

The relationship between religion and Europeanisation remains contested and is in constant evolution. The ways in which the European Union (EU) has dealt with ‘religion and religious affairs’ in law and policy have been subject to dynamic processes of policy-making, particularly during the last 11 years of European integration. The EU has no expressly recognised competence in the treaties to enact legislation covering the religious domain, and member states retain sovereignty over the status of churches and religious associations or communities. Nevertheless, since the entry into force of the Amsterdam Treaty in May 1999 and the Treaty of Lisbon in December 2009, the relationship between ‘religion’ and European law, and the multifaceted linkages of the latter with several EU policies, have been profoundly transformed. These transformations challenge preliminary assumptions about the limited, or supposedly ‘non-existent’ role that the EU is presumed to have over religion.

The last decade of European cooperation saw a dynamic development of EU law in fields such as European citizenship, non-discrimination and immigration. The Amsterdam Treaty provided the legal basis for the EU to adopt a set of European directives regulating certain elements of these domains, which have caused deep (and to a certain extent unexpected) repercussions over the level of discretion that EU member states enjoy when granting EU freedoms and guaranteeing non-discrimination to individuals in Europe. These areas of European law have dimensions where ‘religion’ interacts (in different forms and fashions) with the aims and fundamental rights contained within EU legislation. In addition to formal European law, the Union has moved ‘Europeanisation’ forward in areas where the treaties do not expressly recognise a Commission competence to enact legislation, but rather to ‘support’ and provide ‘incentives’ to guide national processes of policy-making within EU member states. The prevalence of the principle of subsidiarity in fields such as employment, social inclusion, education, culture and the integration of third country nationals (TCNs) has not prevented the Commission from advancing Europeanisation through ‘alternative governance strategies’ and ‘soft-policy’ mechanisms, which in some cases take the form of a prominent coordination function of national policies and fall (formally or partly) within the scope of ‘the Open Method of Coordination’ (OMC). In this context ‘the exchange of information’ on ‘best practices’ (subject to evaluation mechanisms and supported by EU funding) is playing an important role.

Consequently, Europeanisation no longer takes place solely through the classic EU-decision making configurations and expected structures enshrined in the treaties, but also through alternative methods and strategies which, while lacking a legally binding nature (enforceable upon the EU member states) are nevertheless progressively ensuring a voice for ‘Europe’ in new fields. There is, at times, a very thin line between what can be considered a matter of ‘exclusive’ national competence or of ‘shared’ competence between member states and the Union in light of the treaties. The incursion of the Union into new policy areas (through law, policy or other ‘softer’ governance techniques) in turn have multifaceted repercussions for the level of discretion enjoyed at the national level, and limits (to varying degrees) the margin of appreciation of national authorities in relation to the use of ‘religion’ or ‘secularism’ as exceptions to European rights, freedoms and the general principles of EU law.

Alongside this process, since the Delors presidency of the European Commission almost two decades ago, channels of ‘dialogue’ between the EU and religious and faith communities have been established and formalised. Several initiatives have been launched over the last 20 years to engage religious groups, driven primarily by the political agendas of the various presidents of the Commission. With

the arrival of Jose Manuel Barroso to the presidency in 2004, the responsibility for dialogue with “religions, churches and humanisms” was transferred to the Bureau of European Policy Advisors (BEPA), reporting directly to the Commission president. The relations between the Commission and the organisations that fall under this “religions, churches and humanisms” dialogue have played an important role in the emergence of EU umbrella civil society organisations, which to varying degrees (and depending on their ‘degree of representation’) aim at having an input into the formation and implementation of certain EU policies. This ‘dialogue’ has now been expressly formalised by the inclusion of Article 17.3 of the Treaty on the Functioning of the European Union (TFEU), which calls on the EU to recognise the identities and specific contributions of religious groups, and to maintain an open, transparent and regular dialogue with these churches and organisations.

So far the academic literature has focused on the political role of ‘religion and religious affairs’ at EU level, and the ways in which the religious dimension has played out (and become a ‘policy issue’ and a matter of political concern) in the work of several European institutions (primarily the Commission and the European Parliament). Attention has also been paid to the emergence of civil society religious actors at EU level and the impact of their participation in processes of consultation and dialogue around specific Union policies (Silvestri, 2009; Leustean & Madely, 2009; McCrea, 2009; McCrea, 2008; Foret, 2007; Schlesinger & Foret, 2006; Jansen, 2000; Luyckx, 2000). What is lacking in the literature is a deeper understanding and critical analysis of the ways in which EU law and policy deal with, engage and understand ‘religion’, and the way in which these interactions take place at the policy level of the European Commission. This paper aims at addressing some of these gaps by examining the conceptual and political approaches guiding EU normative processes on ‘religion’ across various policy areas and the work of relevant Directorates General (DG) and services of the Commission. It aims at locating the RELIGARE project within the current legal and policy landscape dealing with ‘religion’ at EU level by addressing the following four research questions:

- 1) Does the EU have an express competence to legislate on religion? ‘How’ is religion framed in EU law and policy?
- 2) What are the guiding approaches behind these framings and what is the place and function that religion plays in each of them?
- 3) Which Directorates General (DG) and services in the European Commission are working on these domains and from which perspectives and conceptual (normative) foundations?
- 4) What are the implications of these approaches for the discretionary power and sovereignty of EU member states with respect to policy domains encompassing a religious dimension?

In order to answer these questions, the paper relies on a methodology of desk research and in-depth analysis of key official (legal and policy) discourses using (directly or indirectly) religion or religion-related concepts in the scope of EU law and policy, including the use of these concepts in relevant jurisprudence by the Court of Justice of the EU in Luxembourg. This research is complemented by a set of interviews carried out with key EU officials in those DGs of the European Commission whose work is relevant to the questions under scrutiny in this paper. Interviews have been conducted with representatives of different services in DG Education and Culture (DG EAC), DG Employment, Social Affairs and Equal Opportunities, DG Home Affairs, DG Citizenship, Fundamental Rights and Justice, and BEPA. The paper takes a cautious approach to the conceptual dimension surrounding the term

‘religion’. There is no commonly agreed definition of what ‘religion’ means in EU law and policy.² The *undefined* categories used at EU policy level to deal with religion are hugely diverse, heterogeneous and contested as regards both their material and personal scope. When assessing the relationship between religion and EU law and policy the paper does therefore not advocate for the use of a particular working definition of ‘religion’, but rather focuses on providing a mapping of the ways in which European laws and policies (and EU official discourses) engage with this area as a policy issue, as well as their guiding approaches and outputs within the work of the European Commission.

In assessing the interplay of religion in EU law and policy, the paper makes a distinction between the ‘place’ of religion as a passive object of EU policy, and ‘role’ of religion as an active agent in the policy-making process, a role which materialises largely through the participation of religious civil society actors in policy formation and implementation. This paper focuses primarily on the ‘place’ of religion as an object of policy responses at EU level, and leaves the active ‘role’ of religious civil society groups to be developed more thoroughly at a later stage. Nevertheless, it must be acknowledged that when examining the ‘place’ of religion, a partial examination of the involvement of civil society stakeholders is inevitable and this is reflected in the content of the paper. Finally, the paper does not cover the role of religion (and particularly the EU policy category of ‘intercultural dialogue’) in the context of the EU’s internal security policy strategies (the ‘prevention dimension’ of the EU counter-terrorism strategy and the so-called ‘radicalisation of violence’), nor its linkages with the EU’s external relations (Euro-Mediterranean Partnership).³

Following this introduction, Section One of the paper provides an overview of the relations between European law and policy and religion. It critically assesses the main approaches and functionalities which determine the form of these relations and maps out the relevant DGs and services in the Commission responsible for their development. As the paper will demonstrate, there is a widely heterogeneous patchwork of EU normative approaches in the work of the European Commission which define and understand the interaction between religion and the EU in diverse and competing fashions. In light of these findings, Section Two identifies what the main factors might be for understanding the existence and nature of this ‘patchwork’ and puts them in relation to the very principles upon which the EU has been built, i.e. rule of law and fundamental human rights.

² The sole definition of religion we have identified in EU law is that which is provided in the Commission Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 2004/83/EC which states in Article 10.1 that the concept of religion shall include “the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief”.

³ The subject of religious-based violence and the legal and policy response in the EU is not a central focus of the RELIGARE project and therefore is not addressed in this paper, although we acknowledge the not insignificant place that religion takes within the European Commission’s counter-terrorism strategy, and the broader implications for religious groups of an increasingly security-oriented agenda. This question has been addressed extensively elsewhere in the literature (see, for example, Bigo & Bonelli, 2008; Carrera & Geyer, 2007; Cesari, 2009).

1. Mapping relations between religion and EU law and policy

The Amsterdam Treaty (1999) established in its Declaration 11 that “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.”⁴ In this way, for the first time the EU made an explicit statement in the treaties that the regulation of religion and religious matters is primarily a question for the member states, a statement which has been reaffirmed with its insertion in Article 17 of the Treaty on the Functioning of the European Union (TFEU). There is no EU policy on religion; nor is there an express legal competence in the treaties on the Union to encroach on religion and religious affairs. That notwithstanding, since Amsterdam a set of harmonised European laws and common policies have emerged dealing with (or having implications for) religion and religious affairs in different framings and institutional configurations, including those of the European Commission. This has resulted in an evolving range of normative approaches around which some of the internal policies of the EU have engaged directly or indirectly with ‘the religious dimension’. The following five can be highlighted: i) citizenship and fundamental rights; ii) non-discrimination; iii) immigration and home-affairs; iv) social inclusion and protection; and v) education and culture.

1.1 A citizenship and fundamental rights approach

European citizenship constitutes the fundamental status of the nationals of EU member states (Kostakopoulou, 2007; Guild, 2004).⁵ The right to move and reside freely between the territory of the member states is one of the fundamental rights of the EU citizenship *acquis*, now enshrined in Article 21 of the TFEU, and combines the right of entry into another member state, a free-standing right of residence and the right to be treated on equal (non-discriminatory) terms with nationals of the receiving state. This package of rights and freedoms attached to the status of European citizenship is now codified in the Citizens’ Rights Directive (CRD) of 2004.⁶ The centrality of free movement for the fundamental rights of EU citizens and third country national family members⁷ is reflected in paragraph 31 of the Preamble to the CRD which calls on member states to

implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs...

EU law on free movement penetrates deep into policy dimensions which, while formally falling within the remit of national competence, are brought within the scope of EU law when they interplay with the free movement of persons.

Despite the primacy of EU law in this domain, the treaty does recognise interests of ‘public policy’ as legitimate grounds for member states to derogate from the obligation to permit the free movement of

⁴ Declaration on the status of churches and non-confessional organisations, Declaration No.11 to the last act of the Treaty of Amsterdam, Official Journal C 340, 10/111997 P.0133.

⁵ Case C-184/99 *Rudy Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve* [2001] ECR I-6193.

⁶ Council and European Parliament Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2004 OJ (L 158) 77.

⁷ See for example Carrera and Wiesbrock (2010) for an account of how the act of mobility is playing a central role in expanding European citizenship rights to third country nationals.

goods and services and the CRD itself also includes these exceptions.⁸ An examination of the case law of the Court of Justice in Luxembourg reveals that an accommodation of religious perspectives through the recognition of notions of ‘morality,’ ‘ordre public’ and ‘public policy’ could be used (under certain circumstances) as valid grounds for granting exceptions to EU free movement law and freedoms (McCrea, 2009). In the case *Her Majesty’s Customs and Excise v Schindler*,⁹ the Court of Justice recognised that particular national religious and cultural notions of morality in relation to gambling were a valid basis for the Court’s considerations concerning restrictions to the freedom to provide gambling services, stating that “it was not possible to disregard the moral, religious or cultural aspects of lotteries, like other types of gambling in Member States.”¹⁰ However, while the Court recognised a “sufficient degree of latitude” for national authorities to determine the level of protection for players in light of their “specific social and cultural features,” it also stated that any restriction should not be discriminatory. In the case *SPUC v Grogan*¹¹ the Court dealt with the question of abortion as a service and whether the prevention of distributing information concerning abortion provision abroad constituted a violation of the EU principle of free movement of services. The Court agreed that abortion as a medical service provided legally in another member state for remuneration meets the definition of a service under EU law, and that arguments of a moral nature should not influence that assessment by national courts.

The leeway granted to member states to apply derogations to European freedoms envisaged in EU free movement law in order to enforce national moral or religious norms is therefore limited, particularly by the general principles of EU law of non-discrimination and proportionality (Trimidas, 2006). For example, the Advocate General Van Gerven stated in the context of the *Grogan* Case that any ban on pregnant women going abroad or made subject to unsolicited examinations on their return “would be disproportionate and would excessively impede the freedom to provide services.”¹² Similarly, in *Jany and Others v. Staatssecretaris van Justitie*¹³ the Court held that in terms of its treaty obligations, the Dutch government could not refuse residence permits to self-employed prostitutes from Poland and the Czech Republic, stating that prostitution could be categorized as a service under EU law. At the heart of the judgment was the acknowledgment by the Court of the state’s discretion on questions of public morality. But noteworthy is the role that discrimination on grounds of nationality played as a factor in the Court’s judgment and in undermining any claim for moral considerations to be taken into account in the Court’s ruling. As the status of prostitution was legal under Dutch law, non-nationals could not be accorded more restrictive treatment than nationals.

Thus, differing ethical and moral choices by member states are to be assessed on the basis of their compatibility with the general principles of EU law. The margin of discretion accorded to member states with regard to demands for recognition of a ‘religious interest’, is subject to the limits imposed by EU law, and in particular the principles of non-discrimination and proportionality. While it could be

⁸ Ibid., see paragraph 22 of the Preamble and Article 27. See also Section 3 of the Commission communication on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States COM(2009) 313/4, Brussels.

⁹ Case C-275/92 *Her Majesty’s Customs and Excise v Schindler* [1994] ECR I-01039.

¹⁰ Ibid., paragraph 60.

¹¹ Case C-159/90 *SPUC v. Grogan* [1991] ECR I-8615.

¹² Case C-159/90 *SPUC v. Grogan* [1991] ECR I-8615, Opinion of Advocate General Van Gerven, para 29.

¹³ Case C-268/99 *Jany and Others v. Staatssecretaris van Justitie* [2001] ECR I-8615.

argued that religious perspectives are accorded a privileged role within EU free movement law (McCrea, 2009), the degree to which religious and moral grounds can be used to justify derogations from legal norms and fundamental freedoms which lie at the heart of EU citizenship rights and the rights of family members is limited. Therefore, the general principles of EU law can be seen to take precedence over the claims for accommodation of member states' religious, moral and ethical special interests.

Fundamental rights are also central tenets of the general principles of EU law. The Court of Justice has proactively developed (and expanded) the classical and traditional configurations of European citizenship law, especially by applying general principles of EU law when interpreting derogations by EU member states to EU free movement rights and freedoms (Carrera & Wiesbrock, 2010). As early as 1975 the Court held in the case *Prais v. Council*¹⁴ that religious discrimination is prohibited in EU law as contrary to the fundamental rights of the individual. These general principles, previously a set of unwritten norms developed by the Court of Justice over time, have been reaffirmed and strengthened with the entry into force of the Lisbon Treaty, which now makes the EU Charter of Fundamental Rights¹⁵ legally binding. The Charter guarantees freedom of religion as a fundamental human right to be enjoyed by all individuals, not only those who hold the nationality of an EU member state and therefore fall formally under the category of European citizen. Of particular relevance are Articles 10 (Freedom of Thought, Conscience and Religion), 21 (Non-Discrimination) and 22 (Cultural, Religious and Linguistic Diversity). Any law, policy and practice of EU institutions, and perhaps most importantly of member states falling within the scope of EU law (in its transposition and implementation phase), will now be subject to closer judicial scrutiny and evaluation from a fundamental rights perspective.

The Directorate General of the European Commission for Justice, Fundamental Rights and Citizenship has a central role to play in this task. Previously known as DG Justice, Freedom and Security (DG JLS), this service was split into two at the beginning of July 2010, creating a new DG inside the Commission dealing specifically with citizenship and fundamental rights aspects.¹⁶ The protection of fundamental rights is a core responsibility of the new DG, and services within the Directorate 'Fundamental rights and Union Citizenship' are charged with carrying out a systematic monitoring of Commission policies to ensure their compliance with fundamental rights. To this end, officials working in this Directorate report engaging in close relations with a range of actors across the Commission working on a broad spectrum of policy issues. The services on Fundamental Rights are consulted (and have intervened) in policy areas as diverse as agriculture (for example dealing with issues of animal welfare and religious practices) to those covered by the Directorate General for Transport (on the use of body scanners at airports) to ensure that fundamental freedoms – including the freedom of religion and freedom from religion - are taken into account at an early stage of policy formation.¹⁷ The now legally binding nature of the Charter of Fundamental Rights could reinforce this 'proof reading' of Commission policy proposals, with Viviane Reding, the Commissioner responsible

¹⁴ Case 130-75 *Vivien Prais v Council of the European Communities* [1976] ECR 1589.

¹⁵ Charter of Fundamental Rights of the European Union O.J. (2010/C 83/02), 30.03.2010.

¹⁶ See Press Release of the European Commission 'Commission creates two new Directorates General and reshuffles Senior Managers' IP/10/660, Brussels, 2 June 2010.

¹⁷ Interview with officials of DG Justice, 2010.

for Citizenship and Fundamental Rights, calling for the Charter to become “a compass for all EU policies” by which to “guide the actions of all services.”¹⁸

Another key responsibility of DG Justice is the implementation of the EU’s policy against racism, xenophobia, anti-Semitism and other related intolerance, including Islamophobia.¹⁹ The EU policy on combating racism and xenophobia is primarily based on funding actions under the programme on Fundamental Rights and Citizenship,²⁰ and the Framework Decision on combating racism and xenophobia which was adopted by the Council in 2008,²¹ and which is due to be transposed into national legislation by the end of 2010. The Decision criminalises all intentional behaviour (including speech) aimed at inciting violence or hatred on the grounds of race, colour, religion, descent or national or ethnic origin. Such crimes are cited as direct violations of the principles of liberty, democracy, respect for human rights and fundamental freedoms.²² DG Citizenship and Fundamental Rights is expected to work in close cooperation with the European Union Agency for Fundamental Rights (FRA) to monitor implementation of the Framework Decision. As successor to the European Monitoring Centre on Racism and Xenophobia (EUMC),²³ the Agency’s expertise in data collection and monitoring of the fundamental rights situation in EU member states will provide an important source of information in light of limitations and inconsistencies in official data collection on racist and xenophobic crimes at national level (Goodey, 2007).²⁴

The Framework Decision may be viewed as an important new tool in the protection of ‘religious diversity.’ However, the Decision does not provide for unqualified protection. Article 7 states that the Decision “shall not have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression.” The insertion of this article during negotiations in the Council followed expressions of concern by several member states regarding the Decision’s implications for freedom of speech²⁵ and can be seen as a reflection of the tensions that can arise between competing freedoms enshrined in the Charter.

¹⁸ Speech of Viviane Reding, Commissioner for Justice, Fundamental Rights and Citizenship of 22 June 2010 ‘How to make the Charter of Fundamental Rights the compass for all EU policies?’ delivered at the hearing of the Committee on Civil Liberties, Justice and Home Affairs, European Parliament, Brussels.

¹⁹ See for example, Commission Communication of 13 December 1995 on racism, xenophobia and anti-semitism COM(95) 653, Brussels.

²⁰ The funding programme includes as one of its overarching objectives to “fight against racism, xenophobia and anti-Semitism and promote better inter-faith and inter-cultural understanding and improved tolerance in the EU”. See European Commission Decision on adopting the 2010 work programme for the specific programme Fundamental Rights and Citizenship, C(2009) 9862 of 11 December 2009.

²¹ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328 , 06/12/2008.

²² Recital 1, preamble to the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328 , 06/12/2008.

²³ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Agency for Fundamental Rights OJ L 53, 22/2/2007.

²⁴ The FRA has also developed a body of knowledge through reports, structured dialogue with civil society, and expert seminars on religious based hatred, including anti-Semitism and Islamophobia, which is expected to feed into the monitoring of the Decision. See, for example, the ‘Anti-Semitism Summary overview of the situation in the European Union 2001-2009,’ and the Report on ‘Muslims in the European Union: Discrimination and Islamophobia 2006’ available on the FRA website at: http://fra.europa.eu/fraWebsite/home/home_en.htm.

²⁵ House of Lords (2003), “The Proposed Framework Decision on Racism and Xenophobia – an Update”, 32nd Report of the Select Committee on the European Union, 1 July 2003, Stationery Office, London.

The place of religion in the Decision is also qualified. The Decision provides for the protection of individuals from becoming the target of hatred or violence on the grounds of their religion. However, the legislation falls short of providing protection of religious *belief* as such, covering only those instances where religion is a pretext for hate based on other factors mentioned in the text of the Decision.²⁶ Thus, religion in this regulation is framed not as a fundamental right but as a marker on the basis of which groups or individuals may be singled out for abusive treatment. This qualification has been subject to criticism from certain religious organisations, both for not going far enough to protect the freedom of religion and for the difficulties foreseen in implementation, given that abuse for reasons of religion, race or ethnicity are often intertwined.²⁷

There are therefore several linkages between religion and European citizenship law and the EU Charter of Fundamental Rights. In particular, we can identify the following three functions of religion when looking at EU law on citizenship and fundamental rights: first, the freedom of religion is seen as a fundamental human right to be enjoyed by all individuals; second, the exercise of some of the freedoms enshrined under the status of European citizenship (e.g. freedom to provide services) can be subject to exceptions or derogations in the hands of EU member states including on grounds of ‘public policy’ linked with ‘morality’ (and to a certain extent ‘religious’) considerations if they comply with the general principles of EU law; third, the protection of the freedom of religion (through instruments such as the EU Framework Decision) is not absolute, but is to be put in relation to other fundamental rights enshrined in the Charter, including the right to freedom from religion and the right to freedom of expression.

1.2 A non-discrimination approach

Religion constitutes one of the grounds within the general European framework on non-discrimination (Schiek, Waddington & Bell, 2007; Vickers, 2006). The roots of European cooperation in the field of non-discrimination originate in legal mechanisms to facilitate the operation of the internal market, focusing on protection of migrant (member state nationals) workers and on gender discrimination, particularly in the context of labour market participation (More, 1999). However, the insertion of Article 13 into the Amsterdam Treaty for the first time provided the necessary legal basis for the Union to take legislative action to combat discrimination based on wider grounds, including ‘religion or belief.’ This led to the adoption, in 2000, of two Directives: the Racial Equality Directive²⁸ which combats racial and ethnic discrimination in a variety of societal domains and the Employment Equality Directive, which addresses various forms of discrimination in employment, including “on the grounds of religion or belief.”²⁹ The literature has noted the inconsistencies stemming from the formal

²⁶ See Article 1(3) of the Council Framework Decision 2008/913/JHA which states that “the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.”

²⁷ See for example, CEJI (A Jewish Contribution to an Inclusive Europe), “Policy Response to the Framework Decision on Racism and Xenophobia”, Brussels, 20 April 2007 (retrieved from <http://www.ceji.org/publications/2007-04-20%20CEJI%20Policy%20Response.pdf>).

²⁸ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19/7/2000.

²⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303/16, 2/12/2000.

distinction between the different grounds of discrimination, i.e. religion, race and ethnic origin, even though the actual boundaries between these categories are not always crystal clear (Waddington and Bell, 2001). There is, furthermore, a gap in protection from the perspective of non-discrimination on the basis of religion when comparing the material scope (and ‘areas of life’ covered) of both Directives. This piecemeal approach has led commentators (see for example de Witte, 2010) to identify a ‘hierarchy’ in the level of protection, with certain grounds of discrimination mentioned in Article 13 (i.e. race and gender) subject to a more comprehensive coverage than others (disability and religion). According to de Witte, this uneven approach is the result of a compromise reflecting the different levels of commitment to different forms of discrimination among the member states.

Consequently, religion is covered *only* by the Employment Equality Directive, which provides a general framework for combating discrimination on the grounds of religion or belief as regards employment and occupation. Equality of treatment in labour relations is therefore the underlying approach. According to Article 3.1, the Directive applies to the procedures regarding access to employment, self-employment and vocational training as well as employment conditions (including dismissal and pay). It prohibits direct and indirect discrimination, as well as harassment, instructions to discriminate and victimisation “on grounds of religion and belief”. No provision is included concerning the definition of religion or belief in the scope of the Directive and therefore the interpretation of each of these concepts will very much depend on national courts and tribunals. The material scope of the Employment Equality Directive is far more restrictive than that of the Race Equality Directive, as the former only covers the dimension of employment and not those of social protection (social security and health care), social advantages, education and access to public goods and services (including housing).

The Directive allows for the application of certain exceptions to the principle of non-discrimination on grounds of religion and belief, which serves to substantiate arguments highlighting its limits toward the objective of full equality of treatment. Direct discrimination will be permitted in the scope of the Directive under the three following circumstances:

First, Article 2.8 of the Directive states that

general measures laid down in national law which in a democratic society are necessary for public security, the maintenance of public order and the prevention of criminal offences for the protection of health and the protection of the rights and freedoms of others.

Second, under the genuine occupational requirement, a religious characteristic is a ‘genuine and determining occupational requirement’ in light of Article 4, provided that “the objective is legitimate and the requirement is proportionate.”

Third, where the requirement is not essential but the employer is a church or a public or private organisation with an ‘ethos’ based on religion or belief and which requires that the employees are ‘loyal’ to the organisation’s ethos. Difference in treatment will not be regarded as discrimination

where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos.

No definition of what ‘ethos’ means is provided in the text of the Directive. However, this exception is subject to important limitations “taking account of Member States’ constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination

on another ground.” As Waddington and Bell (2001) have stressed, this provision has been formulated in this way in order to reassure religious employers and constitutes a direct expression of an attempt to ‘balance’ the freedom of religion with the right to non-discrimination.

However, the ambiguity surrounding the loyalty requirement leaves the door open for the possibility of legislative discrepancies from member state to member state and represents a source of potential litigation, particularly where it concerns situations where national legislation allows organisations with a religious ‘ethos’ to discriminate on the basis of sexual orientation (Waldijk & Bonini-Baraldi, 2006). Indeed, several such cases appear to be currently under examination by the European Commission.³⁰ Although it is not yet known whether the Commission will launch infringement proceedings against the member states in question, should these cases reach the Court of Justice, a careful judicial assessment will be required in order to negotiate the intersection of rights to religious freedom and equal treatment. According to Bell (2002), the Directive leaves much discretion to the courts to decide on the facts of the case and therefore this assessment would need to be carried out largely on a case-by-case basis. However, the courts interpreting this provision will need to keep in mind the fundamental human rights implications of this exception (for instance over the right to family and private life).

At times of determining the kind of measures that could be used as an exception to the Employment Equality Directive, the general principles of EU law of proportionality and non-discrimination will, here too, play a central role. Although there has not yet been one single case before the Court of Justice in Luxembourg dealing with the freedom from discrimination on grounds of religion in the scope of Directive 2000/78,³¹ the Court has been active in reviewing and interpreting certain national laws and practices on other grounds (e.g. age discrimination) within the scope of this Directive. An examination of this case law could prove useful when anticipating a potential interpretation by Court on the religions dimension of the Directive. For instance, in the case *Küçükdeveci*,³² the Court was asked to review the compatibility between German national legislation under which periods of employment completed by an employee before reaching the age of 25 were not taken into account in calculating the notice period of dismissal and the 2000/78 Employment Equality Directive. Relying on the previous ruling in *Mangold*,³³ the Court confirmed that the principle of non-discrimination is a general principle of EU law, and that Directive 2000/78 gives specific expression to that principle. The Court concluded that while the member states enjoy a broad discretion in the choice of the measures capable of achieving their objectives in the field of social and employment policy, the national legislation was not *appropriate* and *necessary* for achieving its intended public goal and therefore failed to pass the principle of proportionality, which “requires every derogation from an individual

³⁰ See for example, the European Commission press release ‘Employment equality rules: reasoned opinion to the UK; cases closed for Slovakia and Malta’ IP/09/1778 of 20/11/2009, Brussels.

³¹ However, the emergence of such cases in the future should be anticipated. Indeed, in 2008 a case was presented before the Appeal Labour Court of Hamburg against *Diakonie* (the Federal Association of the Church Municipality) contesting the association’s use of the “genuine occupational requirement” exception to refuse the job application of an individual of Turkish, Muslim background. The claimant’s complaint was ultimately overturned, alongside the request for a preliminary ruling by the Court of Justice, however the likelihood of a similar such case reaching the Court in the future is high. See <http://www.taz.de/1/politik/deutschland/artikel/1/muslima-verklagt-diakonie/>.

³² Case C-555/07, *Küçükdeveci v. Swedex*, [2010].

³³ Case C-144/04, *Mangold v. Helm*, [2005] ECR I-9981.

right to reconcile, so far as is possible, the requirement of the principle of equal treatment with those of the aim pursued.”³⁴

A new proposal for a Directive was presented by the European Commission in July 2008 which would provide a more horizontal framework of protection and address the gaps in the material scope of the Employment Equality Directive (Bell, 2009).³⁵ The initiative would therefore cover not only the employment dimension but all the other areas of life which now fall under the scope of the Race Equality Directive, in particular, social protection, social advantages, education, access and supply of public goods and services (including housing). The Directive would also call on member states to establish a body or bodies for the promotion of equal treatment on the basis of religion and belief. The obligation on national governments to establish independent bodies to support those discriminated against on the grounds of ethnic and racial origin was an innovative feature of the Racial Equality Directive, establishing an “unprecedented infrastructure for sustained litigation on racial discrimination” (de Witte, 2010, p. 732). In many member states, these bodies have gone further to cover a broader range of discrimination, including on the grounds of religion (Bell, 2008). The proposed Directive would have the potential of introducing greater coherency in this respect, implying a more rigorous monitoring of religion-related discrimination, and establishing a professionalised service supporting claimants in religious discrimination cases. However, it appears that negotiations inside the Council over the proposed Directive are currently blocked as a result of subsidiarity concerns on the part of the German government. Consequently, the future of the proposal is at present unclear.³⁶

The Directorate General within the Commission responsible for non-discrimination is that of Employment, Social Affairs and Equal Opportunities,³⁷ and more specifically Directorate G. This Directorate monitors not only the development and implementation of the legislative framework, but is also responsible for ‘soft law’ elements developed alongside this framework which aim to maximise the impact of EU anti-discrimination law (see Guiraudon, 2007). In the context of this broader anti-discrimination policy, the 2005 Commission Communication “Non-Discrimination and Equal Opportunities for All”³⁸ called for increased awareness-raising and dissemination of information concerning the provisions of EU and national anti-discrimination law. To drive forward this agenda, 2007 was designated the ‘European Year of Equal Opportunities for All’ and was based on four overarching objectives: Rights (‘raising awareness of the right to equality and non-discrimination’); Representation (‘Stimulating debate on ways to increase the participation in society of groups that are victims of discrimination’); Recognition (‘Facilitating and celebrating diversity and equality’) and

³⁴ Ibid. Para. 65.

³⁵ Proposal for a Council Directive (2008) on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM/2008/426 of 2.7.2008, Brussels.

³⁶ The position of the German government is linked to the presence of a specific clause inserted in the 2009 Coalition pact between the Christian Democratic party and the Free Democratic Party which prevents agreement of the proposed Directive, invoking reasons of subsidiarity and lack of an adequate legal basis. See A. Rettman (2010), “Brussels keen for Berlin to unblock gay rights law”, *EU Observer*, 10.06.2010 (retrieved from <http://euobserver.com/851/30254>).

³⁷ See the DG Employment, Social Affairs and Equal Opportunities website (<http://ec.europa.eu/social/main.jsp?langId=en&catId=423>).

³⁸ Commission Communication on Non-discrimination and equal opportunities for all – a framework strategy COM(2005) 224 final, Brussels, 01.06.2005.

respect ('Promoting a more cohesive society').³⁹ The European Year of Equal Opportunities (EYEO) was to mark the first time an EU activity had attempted to address all six grounds of discrimination (gender, sexual orientation, age, ethnicity, disability and religion) under one initiative and an emphasis was placed on ensuring all grounds of discrimination were dealt with equally.⁴⁰ Despite this, the coverage of discrimination on the grounds of religion represented the weakest aspect of the Year's actions. This assessment is based on the evaluation report of the EYEO commissioned by DG Employment and Social Affairs⁴¹ and by internal Commission assessments, which found that out of the 434 actions selected by the National Implementing Bodies, only 12 actions focused either exclusively or mainly on religious issues.⁴² Examples of projects include a two day conference on religious tolerance in Estonia, an awareness-raising campaign about accommodating religious dietary practices in Norway and a study commissioned to track manifestations of xenophobia and intolerance on religious grounds in Lithuania.

One explanation for the weaker focus on religious issues during the EYOE has been attributed to the relative absence of faith-based groups participating as stakeholders in the preparation and implementation of the Year. Member states were called upon to design a national strategy to implement the EYEO in close cooperation with civil society. However the EYEO evaluation report found that religious organisations were the groups least consulted during the preparation of the national strategies.⁴³ Involving civil society stakeholders in the design and implementation of the EYEO activities was also deemed to be crucial at EU level and therefore the Commission formed an Advisory Group of NGOs and Social Partners with whom it held regular discussions, meeting formally six times from June 2006 to July 2008 and distributing questionnaires to help prepare the Year's activities.⁴⁴ This Advisory group comprised umbrella NGOs active in the anti-discrimination field, including platforms specialising in five out of the six grounds of discrimination, however none of the NGOs represented a specific focus on religious discrimination.⁴⁵

The European Commission has well-established relations with EU level NGO networks in the anti-discrimination field. The links between these European platforms to national level NGOs are seen to provide not only a global view of the issues at stake but also a means to influence national level lobbying efforts. As a result, both national and international NGOs are judged to have played an important role in the formation of the EU's anti-discrimination legal and policy framework over the

³⁹ Decision No 771/2006/EC of the European Parliament and Council establishing the European Year of Equal Opportunities for All (2007) – towards a just society OJ L 146/1, Brussels, 17.05.2006.

⁴⁰ Ibid. Article 5.

⁴¹ Report for DG Employment, Social Affairs and Equal Opportunities 'On-going Evaluation of the 2007 European Year of Equal Opportunities for All,' Final Report, December 2008, Ramboll Management, Eureval-C3E and Focus Consultancy.

⁴² European Commission, '2007 European Year and Religion Issues: Actions Focusing on Religion' DG Employment, Social Affairs and Equal Opportunities, Unit G.4.

⁴³ Report for DG Employment, Social Affairs and Equal Opportunities 'On-going Evaluation of the 2007 European Year of Equal Opportunities for All,' Final Report, December 2008, Ramboll Management, Eureval-C3E and Focus Consultancy, p. 39.

⁴⁴ Commission communication on Implementation, results and overall assessment of the 2007 European Year of Equal Opportunities for All, COM(2009) 269 final, Brussels, 19.06.2009.

⁴⁵ The NGOs in question are AGE (Age Platform Europe), EDF (European Disability Forum), EWL (European Women's Lobby), ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association), YFJ (European Youth Forum), ERIO (the European Roma Information Office) and ENAR (The European Network Against Racism). It should be noted that ENAR includes religious discrimination within its mandate and one of its members is a Jewish NGO (CEJI) working on discrimination issues.

past two decades (Niessen & Chopin, 2004; Bouget & Prouteau, 2002). Indeed, Unit G.4 of DG Employment, Social Affairs and Equal Opportunities is specifically responsible for “action against discrimination and civil society”, including the management of relations with key NGO stakeholders. Five NGO umbrella networks⁴⁶ active in anti-discrimination are currently funded under the PROGRESS Programme with the stated aim “to boost the capacity of key European level networks to promote, support and further develop Community policies and objectives, where applicable.”⁴⁷ These organisations participate in bi-annual meetings and other events organised on an ad hoc basis and are formally consulted on particular policy initiatives. The NGO networks in question specialise in discrimination on the basis of race and ethnicity, age, sexual orientation and disability however, again, there is no NGO network representing specifically religious discrimination although this aspect is included within the mandate of the European Network Against Racism (ENAR).⁴⁸ In addition to the anti-discrimination NGO umbrella networks, the Commission also engages in dialogue with the Social Platform on questions linked to equal opportunities and non-discrimination and the Social Platform was also included in the Advisory Group during the EYEO. Within the Social Platform there is a representation of the religious dimension as two of the seven members of the management committee are senior representatives of Caritas and Eurodiaconia, two large Christian civil society platforms, and member organisations of the Social Platform include several faith-based (predominantly Christian) networks.⁴⁹

The lack of an NGO network focusing explicitly on religious discrimination is possibly reflective of the difficulties encountered when meeting the criteria of the call for proposals, which stipulates that platforms should be broadly representative, with a wide range of member organisations. This requirement may pose particular obstacles to the formation of multi-faith groups into a platform at European level. More broadly, it has also been suggested during the course of interviews with policy officials that particular sensitivities arise with the formalisation of partnerships with faith groups. By way of illustration, officials have noted that extra care is taken to ensure that the main area of focus of a faith-based NGO or charity is the policy issue at stake, for example poverty reduction or questions related to social inclusion. These ‘secular’ requirements may pose greater obstacles for certain faith based organisations than others, particularly those without a long-established tradition of policy advocacy or institutionalised interaction with European states (Silvestri, 2007).⁵⁰

Religion is therefore directly addressed within the European Union’s policy on non-discrimination, both within the legislative framework and ‘soft law’ mechanisms. Religious freedom is protected through the non-discrimination directive on employment and at the same time religious organisations are subject to exemptions from the obligations within the directive on the basis of their special status. However, exactly how this exemption plays out in practice will need to be put in relation to the

⁴⁶ These are AGE, ENAR, EDF, ILGA and ERIO.

⁴⁷ Commission call for proposals for the European Union Programme for Employment and Social Solidarity: PROGRESS: establishment of 3 year framework partnership agreements with EU level NGO networks 2011-2013, VP/2010/012. PROGRESS is the EU’s employment and social solidarity programme and consists of 5 strands: employment; social inclusion and protection; working conditions; non-discrimination; and gender equality. Projects under each strand are managed by the relevant unit in DG Employment, Social Affairs and Equal Opportunities.

⁴⁸ See the European Network Against Racism website (<http://www.enar-eu.org/>).

⁴⁹ See the website of the Social Platform (<http://www.socialplatform.org/>).

⁵⁰ By contrast, the role of the Catholic Church as a political interest group, with a history of lobbying decision-makers on aspects of social policy-making is well documented (see Steven, 2010; Warner, 2000).

fundamental rights laid down in the Charter. A potential intervention by the Luxemburg Court in the future might light shed light on the form this relation will take. Religion is also a focus within the Commission’s broader policy on anti-discrimination, although it appears that the religious dimension plays a less prominent role in policy actions when compared with other grounds of discrimination.

1.3 An immigration and home affairs approach

1.3.1 European immigration law

Within the scope of European immigration law and the EU Framework on Integration, religion occupies a distinctly different place, and fulfils a different function, from those identified in the European citizenship and non-discrimination approaches. On the basis of the Amsterdam Treaty (former Article 63 EC Treaty), and the political mandate granted by the Tampere European Council in 1999, the European Commission has developed a common European immigration policy composed of a group of Directives regulating certain administrative aspects surrounding the conditions of entry and residence of Third Country Nationals (TCNs) in the Union. For the purposes of this paper, the following two legal measures are of special relevance: Directive 2003/86 on the right to family reunification⁵¹ and Directive 2003/109 on the status of TCNs who are long-term residents.⁵² The first Directive establishes the conditions for the exercise of a right to family reunification by TCNs regularly residing in the EU (Wiesbrock, 2010). The second directive has established a common European status of long-term resident for those TCNs regularly residing in a member state for a period of five years and a package of related European rights and administrative guarantees. The DG in charge of this dossier inside the Commission is DG Home Affairs, established since the beginning of July following the separation, as mentioned above, of DG Justice, Freedom and Security (DG JLS).⁵³

What is the approach to religion in each of these Directives? Concerning the Directive on the right to family reunification, the Preamble (Recital 5) starts by highlighting that member states are obliged to put into practice the provisions outlined in the directive without discrimination on the basis “of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.” However, provisions contained in the directive indicate that practices associated with certain religions may be singled out as grounds upon which member states can deny the rights provided in the directive to individuals. For instance, when dealing with the categories of family members that can benefit from the right to family reunion, Article 4.4 calls on the member states not to accept the reunion of a spouse “in the event of polygamous marriage, where the applicant for family reunification already has a spouse living with him in the territory of a Member State.” Moreover, Recital 11 of the Preamble stipulates that:

The right to family reunification should be exercised in proper compliance *with the values and principles recognised by the Member States, in particular with respect to the rights of*

⁵¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251/12.

⁵² Council Directive 2003/109/EC of November 2003 on the status of third country nationals who are long-term residents OJ 2004 L16/44.

⁵³ Press release of the European Commission, “Commission creates two new Directorates General and reshuffles Senior Managers”, IP/10/660, Brussels, 2 June 2010.

women and of children; such compliance justifies the possible taking of *restrictive measures* against applications for *family reunification of polygamous households*. (Emphasis added)

Furthermore, integration functions inside the Directive as a condition or a measure in immigration law for the applicant to enjoy family life (Groenendijk, 2004). Thus Article 7.2 of the directive stipulates requirements that the TCN applying for family reunion may need to meet in order to enjoy family life, stating that:

Member States may require third country nationals to comply with *integration measures*, in accordance with national law. With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied *once the persons concerned have been granted family reunification*.

The Directive does not provide a definition of what integration actually means. It has been left to the discretion of each member state to apply their own interpretations and philosophies within their national policies. As a result, the third country national will be tested against the national concept of integration, which in many EU member states includes an obligation by the applicant to pass a civic integration test, programme or contract including a section testing knowledge on national values, way of life and liberal democratic principles, including constitutional provisions and fundamental rights (see Van Oers, Ersboll & Kostakopoulou, 2010).

Integration therefore becomes a norm in immigration law conditioning access to the European right to family reunification and social solidarity. This has resulted in the paradox whereby integration is gradually separated from associations of socio-economic participation, functioning instead as grounds for exception in immigration law to rights and socio-economic inclusion of TCNs in Europe. Indeed, Article 7.2 has served to legitimise the use and introduction of national integration laws and policies using ‘civic integration’ measures, applied both on the territory of the member state (in the form of a programme, test or contract for having access to permanent residence permit) or abroad (in the form of a course or test conditioning access to a visa in embassies), including the requirement to demonstrate knowledge on ‘national and European values.’ This requirement has been seen to come into conflict with certain religious values and practices (McCrea, 2007). Indeed, although there is a great deal of divergence between national approaches to civic integration, with some member states displaying a greater degree of ‘neutrality’ in their integration tests and contracts than others, the measures employed by certain member states have been accused of an implicit (and in some cases explicit) targeting of Muslim applicants.

Among the clearest examples include the integration test introduced by the *Land* of Baden-Württemberg in 2006 which comprised interview questions intended for use only by those migrants originating from Muslim countries. Questions asked applicants whether they condoned practices such as arranged marriage, patriarchy, homophobia, veiling and the 9/11 acts of terrorism. What came to be known as the ‘Muslim test’ was heavily criticised for its focus on immigrants with an Islamic background (Van Oers, 2010). In addition, the original instructional video disseminated by the Dutch government for ‘Integration Abroad’ included pictures of men kissing and topless women, although following complaints this was later censored for Islamic viewers. The immigration test that accompanied the video requires applicants for family reunification to show awareness of Dutch norms linked to sexual liberalism and gender equality (Joppke, 2007; McCrea, 2007). The Danish integration test for family reunification meanwhile tests migrants’ knowledge of Danish norms and values, including principles of individual freedom, personal integrity, gender equality and freedom of religion,

as well as practical facts such as the prohibition of female circumcision and forced marriages – elements which could be linked to certain religious beliefs and practices (Ersboll, 2010).

That notwithstanding, as confirmed by the European Commission in the first evaluation of the national transposition of the Directive,⁵⁴ and by the ruling of the Court of Justice European *Parliament v. Council Case 540/03*,⁵⁵ the degree to which member states may use integration requirements in national legislation to condition access to the European freedoms, rights and administrative guarantees envisaged by the directive is limited. They will first need to meet the general objectives of the directive, and duly respect the general principles of EU law of proportionality, non-discrimination and fundamental human rights (Carrera & Wiesbrock, 2009).

The role of religion in European immigration law could therefore be seen as constituting grounds for an exception in the hands of EU member states in granting recognised European rights and freedoms to TCNs. Religion (and in particular, practices ascribed to certain non-Christian religions) is potentially framed as proof of a lack of integration, as a reflection of failure on the part of the immigrant to show acceptance of key liberal democratic values, and therefore as an obstacle for the individual to have access to security of residence and family reunion.

Integration (and its difficult relationship with religious diversity) function in a similar fashion inside the Directive 2003/109 on the long-term resident status. The Preamble (Recital 5) starts in similar terms as those of the family reunification Directive, alluding to the requirements by member states to give effect to the Directive without discrimination on various grounds, including those of religion and belief. However, while the length of residence (five years of continuous and legal residence) is considered to constitute the main factor for determining eligibility for the common European status (and its accompanying rights and security of residence against expulsion), integration functions as a *measure* and *condition* for the applicant to access the rights, freedoms (quasi-equality of treatment with citizens of the receiving member state in a number of socio-economic areas) and guarantees foreseen by the Directive. Article 4.2 of the Directive provides that, in addition to the duration of residence, “Member States may require third-country nationals to comply with integration conditions, in accordance with national law.” Again, these integration conditions have materialised in the form of civic integration programmes, tests and contracts (stressing the importance of knowledge of ‘national values and liberal democratic principles’ in the national arenas of some EU member states determining applicants’ access to a permanent residence permit (Guild, Carrera & Groenendijk, 2009). In some cases member states have gone further. The Netherlands for example requires “aliens in a religious office” to pass an integration test even if they do not intend to acquire long-term residence but only remain on a temporary basis. The definition of this category is neutral, applying to any individual employed as a religious functionary regardless of the particular faith. However, Besselink (2009) has suggested that this apparent equal treatment may constitute mere window dressing of what is an implicit targeting of imams, linked to fears of importing fundamentalist strands of Islamic teaching.

⁵⁴ European Commission (2008), Report on the Application of the Directive 2003/86/EC on the Right to Family Reunification, COM(2008) 610, Brussels, 8 October.

⁵⁵ Case C-540/03, *Parliament v Council* [2006] ECR I-5769.

1.3.2 The EU Framework on Integration and Intercultural Dialogue

Concepts underpinning the place of religion in immigration law are replicated and elaborated in the Commission's soft law policy instruments on integration. Since 2002 the European Commission has built (in cooperation with the Council) the so-called 'EU Framework on Integration' (Carrera, 2009). The latter constitutes a quasi-OMC whereby the Commission (the new DG Home Affairs) coordinates the exchange of information (and 'best practices') between ministries of the EU member states in charge of integration matters, which takes place primarily through the National Contact Points on Integration (NCPs) and the organisation of inter-Ministerial Conferences. This cooperation has resulted in the adoption of a list of common basic principles on integration (CBPs) which aim to provide a common European understanding of what integration means at EU level as well as the publication of various soft-policy instruments such as Commission Communications, Annual Reports on Migration and Integration and Handbooks on Integration for Practitioners and Policy-makers. These tools are complemented by the existence of a European Integration Fund, run by the European Commission, which supports national integration programmes and projects. Moreover, the EU Framework on Integration is supported by an annual European Integration Forum which embraces EU umbrella civil organisations (some of which are of a religious nature) and which is coordinated in cooperation between the European Economic and Social Committee and DG Home Affairs of the Commission (Carrera, 2008).

The eleven CBPs were adopted in November 2004 by the Justice and Home Affairs Council.⁵⁶ Among them, the following are of particular relevance for the purposes of this paper:

- CBP 1: "Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States";
- CBP2: "Integration implies *the respect of the basic values of the EU*";
- CBP4: "Basic knowledge of the *host society's language, history, and institutions* is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration";
- CBP 7: "*Frequent interaction* between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, *intercultural dialogue*, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens";
- CBP8: "*The practice of diverse cultures and religions* is guaranteed under the Charter of Fundamental Rights and must be safeguarded, *unless practices conflict with other inviolable European rights or with national law*" (Emphasis added).

From this list we can discern a similar approach to the relation between religious diversity and integration, as that identified in European immigration law. Religious and cultural diversity is both recognised and protected. However, this protection is subject to clear conditions based on 'European values' and "other inviolable European rights or national law". 'European values' are generally understood as 'neutral' liberal democratic norms such as human rights, freedom, of speech, tolerance, equality and respect for democracy (Morano-Foadi, 2010). However, the use of this concept in official

⁵⁶ Council (2004) Conclusions of the 2618th Council Meeting – Justice and Home Affairs of 19 November 2004, 14615/04.

EU documents is often undefined, and used alongside terms such as ‘heritage’, ‘identity’ and a requirement to respect the cultural aspects of the host country. This approach has been confirmed by the Communication “A Common Agenda for Integration: Framework for the Integration of Third Country Nationals in the European Union”,⁵⁷ of 2005 where the Commission proposed several actions at national and EU level “to put the CBPs into practice.” The following actions were proposed in relation to the implementation of CBP2:

Emphasising *civic orientation in introduction programmes* and other activities for newly arrived third-country nationals with the view of ensuring that immigrants *understand, respect and benefit from common European and national values*...and...Exploring effective ways to raise public awareness about *the basic values of the EU* (Emphasis added).

In relation to CBP4 the Commission recommended:

Organising introduction programmes and activities for newly arrived third-country nationals to acquire basic knowledge about *language, history, institutions, socioeconomic features, cultural life and fundamental values*...and...Supporting innovative integration programmes or models incorporating language and communication training, and the *cultural, political and social characteristics of the host country* (Emphasis added).

To support the realisation of CBP 8, the Communication called for the development of “constructive intercultural dialogue and thoughtful public discourse” and the promotion of “inter- and intra-faith dialogue platforms between religious communities and/or between communities and policy making authorities”. At EU level the Commission proposed the facilitation of “intercultural and inter-religious dialogue at European level, including various stakeholders. Further developing the Commission’s dialogue with religious and humanist organisations.”

‘Values’ were also at the heart of the political priorities of the European Commission and the French presidency in the second half of 2008, which was directly reflected in the Commission’s contribution to the Vichy Ministerial Conference on Integration and the Declaration which resulted.⁵⁸ The Commission Staff Working Document “Strengthening Actions and Tools to meet Integration Challenges: Report to the 2008 Ministerial Conference on Integration”⁵⁹ of October 2008 highlighted that “Civic programmes focusing on the host society’s history, institutions and the common shared values of the EU should also be fostered.” The Declaration which was finally adopted focused on the promotion of European fundamental values “such as human rights, freedom of opinion, democracy, tolerance, equality between men and women, and the compulsory schooling of children,” and stated that:

In compliance with the Charter of Fundamental Rights of the European Union, *which defines the values shared by the Member States of the European Union*, measures that help to promote and publicise them should be enhanced. Work will begin on developing an *information material featuring content common to the Member States on European values*,

⁵⁷ European Commission (2005) Communication on A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union, COM(2005) 0389, Brussels, 01.09.2005.

⁵⁸ Official Declaration of the European Ministerial Conference on Integration, Vichy of 3 and 4 November 2008. (Retrieved from http://www.ue2008.fr/webdav/site/PFUE/shared/import/1103_Ministerielle_Integration/conference_integration_041108_Final_declaration_EN.pdf)

⁵⁹ Commission Staff Working Document ‘Strengthening Actions and Tools to meet Integration Challenges: Report to the 2008 Ministerial Conference on Integration’ SEC(2008) 2626 of October 2008.

intended for use during the immigrant introductory phase under practical arrangements to be defined by each Member State, which could also include their own values. (Emphasis added).

The focus on integration and values was maintained in the French presidency's European Pact on Immigration and Asylum of 2008, which also underlined as a political priority the need "to encourage integration" through integration policies that "stress respect for the identities of the Member States and the European Union and for their fundamental values, such as human rights, freedom of opinion, democracy, tolerance, equality between men and women, and the compulsory schooling of children."⁶⁰ Finally, the priority given to the 'promotion of national and European values' in 'integration policies' has been confirmed by the Stockholm Programme, the third multi-annual programme establishing the political priorities of the EU's Area of Freedom, Security and Justice for the next five years and endorsed by the Council in December 2009.⁶¹ The Programme included a section on integration where it expressly called on the Commission to support member states' actions "to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts at all levels."

The concept of 'European values' is therefore at the core of the Commission's – and DG Home Affairs' – approach to the integration of migrants and migrant communities. Where these 'values' concern an emphasis on the protection of fundamental rights, and religious and cultural diversity, this is to be welcomed. Indeed, Morano-Foadi (2010) has suggested that as a set of universal principles common to every individual regardless of nationality or faith, European values could constitute a foundation upon which to build a common European citizenship and to promote social cohesion. However, she also notes that the notion of a common set of 'European values' is not always clearly defined nor is the extent to which these values are shared and upheld by the member states themselves always so straightforward.⁶² This is problematic from the perspective of legal certainty and compliance with the general principles of EU law. Meanwhile, conflation of values with the evocation of culture, heritage and identity inserts room for ambiguity and could leave the door open for an exclusionary use of this concept, in contrast to the current EU motto of "unity in diversity." Requirements on the 'other' to respect a constructed set of national or European liberal democratic histories, principles and values, which are automatically considered to be alien to them, puts into question the relationship of such requirements to the very values they seek to impose, such as cultural and religious pluralism, tolerance and non-discrimination (Guild and Carrera, 2010).

'Values' are also invoked within the exchange of practices on 'intercultural dialogue' in place within the EU Framework on Integration since 2007. The Justice and Home Affairs (JHA) Council called on member states in the conclusions of Potsdam ("promoting unity in diversity") to intensify cooperation in the field of intercultural dialogue as an instrument to foster integration.⁶³ It was stated that "Intercultural dialogue has become an important instrument in fostering the successful integration of

⁶⁰ Council of the European Union, European Pact on Immigration and Asylum, 13440/08, Brussels, 24 September 2008.

⁶¹ Council of the European Union, The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 17024/09, Brussels, 2 December, 2009.

⁶² For example, member states adopt different positions on issues such as stem cell research and gay marriage (Morano-Foadi, 2010). The Polish government's opt-out from the Charter of Fundamental Rights resulted from concerns that some of the provisions relating to 'moral' or 'family' policy areas, namely same-sex marriages, would contradict domestic law in Poland (see Steven, 2010).

⁶³ Council conclusions of the Ministers responsible for integration, informal meeting on the strengthening of integration policies in the EU by promoting unity in diversity, May 2007, Potsdam.

citizens of different origins, culture and religion in Europe and in counteracting racisms and extremism”. The personal scope of action on intercultural dialogue therefore appears goes beyond the so-called ‘legally residing TCNs.’ While no definition was provided of the actual meaning of intercultural dialogue in the context of the EU Framework on Integration, a report drafted by the German Presidency and annexed to the Vichy Declaration, puts the emphasis on “items such as common related values, the creation of a common identity, the promotion of civic participation through the acquisition of the main national language, etc”.⁶⁴

The Council agreed that experts (the same representatives of the relevant ministries participating in the NCPs) should regularly share “their experience” in using ICD as a tool for integration. The conclusions called on the member states to start a “regular exchange of experiences and practices” in this area and to establish a “flexible procedure capable of reacting to intercultural problems or conflicts with a potential cross-border dimension”. In this context, Germany organised two expert meetings on the matter on 3-4 December 2007 in Nuremberg and on 24-25 April 2008 in Berlin to discuss national approaches to intercultural dialogue. Concerning the NCPs’ activities, it was agreed that an annual meeting would address ICD, complemented by two further sub-meetings. Two sub-meetings have been organised so far, one in the UK on the theme of “resilient communities” and another in Denmark covering “institutionalized dialogue and dialogue with young people”. As regards the issue of “conflicts with a potential cross-border dimension”, the above-mentioned ‘Vichy Declaration’ also discussed ‘transnational intercultural challenges’ and the setting up of “first call – contact points” in the EU member states (who would also be the NCPs). No definition was provided of what an ‘intercultural challenge’ might be in this context, but it seems that the latter was motivated by the perceived need to manage incidents such as the ‘Danish Cartoons Affair’ (see Modood et al., 2006) and has so far been used only once for ‘the Belfast Affair’ when over 100 Roma were subject to racist attacks in June 2009.⁶⁵

Furthermore, as confirmed by the Communication “The Consolidation of the EU Framework on Integration – Report to the 2010 Ministerial Conference on Integration”⁶⁶ of March 2010, the European Integration Fund is also supporting national integration programmes “introducing” TCNs and which aim to “help them to acquire basic knowledge regarding the host society’s language, history, institutions, socio-economic features, cultural life and fundamental norms and values”.

This has been complemented by the financing of specific research projects. According to the Commission,

Transnational projects directly engaging immigrants and their associations in the exchange of various aspects of integration with host societies, such as common values, the understanding of diverse cultures and dialogue between religions, are promoted.⁶⁷

⁶⁴ Annex to the Official Declaration of the European Ministerial Conference on Integration, Vichy of 3 and 4 November 2008, “Intercultural Dialogue as an Instrument to Foster Integration: Report to the Ministerial Conference on Integration”.

⁶⁵ Amnesty International, “Belfast Roma attacks highlight European racism issue”, 19 June 2009 (<http://www.amnesty.org/en/news-and-updates/news/belfast-roma-attacks-highlight-european-racism-issue-20090617>).

⁶⁶ Commission Staff Working Document, “The Consolidation of the EU Framework on Integration – Report to the 2010 Ministerial Conference on Integration”, SEC(2010) 357 of 19 March 2010, Brussels.

⁶⁷ Ibid.

In the same Communication, the Commission also highlighted the importance of ‘promoting European values’ in the context of fundamental rights and intercultural dialogue and underlined that:

Effective intercultural dialogue contributes to building mutual understanding, reducing prejudice, enhancing participation of immigrants in the formulation of integration policy, finding common ground, *and agreeing on values at both EU and national levels*. Intercultural exchange must be enhanced, since it can represent an opportunity for sharing views between immigrants and host societies and *for preventing misunderstandings of values within a diverse society*. Due to the increase in interactions between people of different backgrounds, solutions are often found *for combating actual or presumed conflicts of values*. (Emphasis added).

Examples of actions financed under the European Integration Fund which explicitly target religious groups include the transnational projects MIRACLE and Direct. The MIRACLE project (Models of Integration through Religion, Activation, Cultural Learning and Exchange) was co-ordinated by the Churches Commission for Migrants in Europe and examined ‘the possibilities of Christian churches and communities playing a decisive role in integration and explores transferability of existing [integration] models into a faith-based context.’⁶⁸ Consisting of seminars and training workshops, the target subjects of this project were primarily Christian organisations and communities, although an inter-faith dimension was introduced at the final stage of the project. The DIRECT project (Dialogue for Integration: Engaging Religious Communities) is led by the International Organisation for Migration and targets religious leaders as ‘integration agents,’ seeking to create a ‘fora for dialogue and networking between religious leaders from all denominations, national and local authorities and policy makers to increase their contribution in advancing core European values, including the rights of women and youth.’⁶⁹ The project builds on an earlier EU-funded project ‘Integration: a Multi-Faith Approach’ whose overall objective was to “foster integration among migrant communities in the EU by familiarising immigrant religious leaders with the core European values (such as democracy and the rule of law) and the multicultural and multi-faith environment of the EU.” The first of the specific objectives of the project listed was to “provide migrant religious leaders with a greater understanding of the history, culture, core European values and multicultural, multi-faith nature of their host societies.” Although the project placed an emphasis on multifaith training rather than initiatives targeted at one specific religion in order to “defuse suspicions over hidden agendas”, the majority of the events that took place at national level comprised Christian and Muslim representatives.⁷⁰

Overall, the plethora of policy initiatives on integration and the formal function of integration conditions within EU immigration legislation denotes a particular framing of religion and religious groups. Religious diversity is protected and religious freedom guaranteed, provided that individuals respect ‘European values’ and ‘liberal democratic principles’. This emphasis on the primacy of ‘values’ within the Home Affairs approach is deeply rooted in Commission President Barroso’s

⁶⁸ See the website of the Churches’ Commission for Migrants in Europe: <http://www.ccme.be/areas-of-work/uniting-in-diversity/miracle/>

⁶⁹ European Commission ‘European Fund for the Integration of Third Country Nationals: 2008 Community Actions – Selected Projects’ Directorate General Justice, Freedom and Security, Unit B.4, retrieved from: http://ec.europa.eu/home-affairs/funding/integration/projects_2008_en.pdf.

⁷⁰ IOM (2009), “2007-2009 Project Report: Integration - a Multifaith Approach”, International Organization for Migration, Helsinki.

approach to religion and religious groups more broadly⁷¹ and is reflective of an approach taken by the Interior Ministries of the member states, which is perhaps to be expected given the inter-governmental nature of policy formation in the field of migrant integration. Where there is a risk that certain religious beliefs and practices might be seen as 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. Intercultural dialogue is seen as fundamental to this process. However, intercultural dialogue, as conceived within an immigration and home affairs approach, materialises as a process that places the emphasis of adjustment on one party – wherever this party actually is in our imaginary (i.e. the migrant ‘other’) rather than the so-called ‘two-way process’ of mutual learning and development that is proposed in the CBPs on integration and is stressed in much of the policy discourse in the field of integration at EU level.

1.4 A social and employment policy approach

Promoting inclusion and combating exclusion are central priorities of the EU’s Social Agenda.⁷²

Religion plays both a direct and active role in policy formation as well as being indirectly implicated by the focus of social inclusion policies on ethnic minority groups.

While the EU has no explicit competence in social policy, the treaty does provide, in Article 153 TFEU (ex Article 137 EC Treaty) for the EU to “support and complement the activities of the Member States” in this area, including in the field of social exclusion. This support has taken the form of a combination of instruments including EU legislation (for example through the Directives on non-discrimination – see Section 1.2 above), but also through cooperation between member states within the Social and Employment OMCs, as well as financial support, through the EU’s Structural Funds, the European Globalisation Adjustment Fund and the PROGRESS Programme on employment and social solidarity.⁷³ Within these soft policy instruments, the European Commission has placed an emphasis on “partnership, dialogue and communication (involvement and consultation of non-governmental organisations, regional and local authorities and other stakeholders)”⁷⁴ which in practice has also included civil society stakeholders presenting a religious dimension. In addition, the EU has expressly

⁷¹ In this context, it is interesting to note a speech delivered by Commission President Barroso in 2006, in which he identifies “an increasing number of challenges to European values” and issues a “wake-up call to the defence and preservation of our values”. Noting the “mutterings of fundamentalisms” he concludes that “it is important to defend respect for diversity. But at the same time we must not lose sight of the fact that this respect is based on a deeper respect for certain principles which cannot be negotiated”. Speech by Jose Manuel Barroso, “A soul for Europe”, Berlin, 17 November 2006.

⁷² See the Commission communication on the Renewed social agenda: opportunities, access and solidarity in 21st century Europe COM(2008) 412 final, 2.7.2008, Brussels. The framework for a ‘Renewed Social Agenda’ brings together a range of EU policies to support action in seven priority areas. These priority areas include ‘combating poverty and social exclusion’ (priority 5) and ‘fighting discrimination and promoting gender equality’ (priority 6).

⁷³ See DG Employment, Social Affairs and Equal Opportunities’ webpage on funding instruments (<http://ec.europa.eu/social/main.jsp?catId=86>).

⁷⁴ Communication from the Commission on the “Renewed social agenda: opportunities, access and solidarity in 21st century Europe”, COM(2008) 412 final, 2.7.2008, Brussels.

called for the targeting of vulnerable categories of people within the framework of EU policies to fight against poverty and social exclusion.⁷⁵

The Open Method of Coordination in the employment field (the European Employment Strategy) and the OMC in Social Protection and Social Inclusion (henceforth the Social OMC) are the key tools by which the European Commission coordinates member states' policies on the basis of the Social Agenda (Lopez-Santana, 2006; de la Porte, 2002). Policy coordination under the OMC has been defined as "a decentralised but carefully coordinated process, involving the exchange of best practices, the use of benchmarking, national and regional level-target setting, periodic reporting and multi-lateral surveillance" (de la Porte, 2002, p. 38).

One of the three overarching objectives of the Social OMC is to "strengthen governance, transparency and the involvement of stakeholders in the design, implementation and monitoring of policy".⁷⁶ Progress under this objective has been labelled 'a success' by DG Employment, Social Affairs and Equal Opportunities, with the Commission taking a strong lead in fostering the involvement of stakeholders at both national and at EU level. This is accomplished, among other means, through the guidance note⁷⁷ provided to member states to assist them in the preparation of their national strategies which in turn feeds into the preparation of the Joint Report submitted to the spring European Council. Under the section on 'governance', member states are instructed to detail the arrangements they have put in place to include a broad range of actors in the policy process, including how they guarantee "a genuine participatory element." Although the Commission provides a broad guideline as to who these stakeholders or "essential actors" in the Social OMC at national level should comprise,⁷⁸ it is left to the discretion of the member states to choose which organisations they include in their dialogue at national level. Thus the degree to which charities and organisations with a religious dimension are represented in the policy process and preparation of reports at national level varies between member states.

The Commission also draws upon a group of European-level civil society networks of organisations active in the fight against poverty and social exclusion to offer policy inputs in the Social OMC at both EU and national level. According to DG Employment:

Such networks have an important contribution to make in the context of the Open Method of Coordination towards a better understanding of the most concrete forms of social exclusion, a regular monitoring of the implementation of the national action plans at a level closer to their main beneficiaries, a greater awareness of the European strategy in the public opinion, as well

⁷⁵ At the Nice Council in December 2000, the fight against poverty and social exclusion was elaborated in terms of four general objectives including to help the most vulnerable. See Presidency Conclusions, Nice European Council Meeting, 7-9 December 2000.

⁷⁶ See Commission Communication on "Working together, working better: a new framework for the open coordination of social protection and inclusion policies in the European Union", COM(2005) 706 final, 22.12.2005, Brussels, p. 5.

⁷⁷ European Commission 'Guidance note for preparing national strategy reports on social protection and social inclusion 2008-2010' DG Employment, Social Affairs and Equal Opportunities, pp. 9-10 (retrieved from http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2008/080207_guidance_note_nsrs_cln_en.pdf).

⁷⁸ These are listed as local and regional authorities; public, private and NGOs/voluntary social and health service providers; NGOs representing vulnerable and excluded groups, people experiencing poverty and social exclusion, including service users; social economy actors and professional associations working in the sector; and social partners, *ibid.*, p. 7.

as to ensuring that this strategy takes into account the experience of people exposed to social exclusion.⁷⁹

Concretely, monitoring and policy inputs by these networks take the form of thematic conferences organised at EU and national level, as well as the preparation by these networks of reports and recommendations concerning EU and national level policies which feed into the preparation of National Action Plans (NAPs) and the Joint Reports. Hence, the 2009 joint report noted that:

Several European-level civil society organisations active in the social field have provided and made public their assessments of the renewed Strategic Reports, in general drawing on contributions from network members at national level. Some of them examine the strategic reports as a whole, in most cases focusing in particular on the National Action Plan for social inclusion (NAPs).⁸⁰

The networks represent a formal partnership with the Commission and are supported by funding under the PROGRESS Programme 2007-2013. Of the 13 NGO umbrella organisations promoting social inclusion of vulnerable groups, two networks have an explicit religious dimension: Caritas Europa (a European confederation of Catholic relief, development and social service organisations operating in Europe) and Eurodiaconia (a federation of churches, non-statutory welfare organisations and NGOs providing social and health services and education based “on Christian values”). The networks are selected on the basis of their ability to meet the specific criteria of an official call for tender, and thus their selection is intended to primarily reflect the scope and quality of their work in the field of ‘social inclusion’ in EU member states. The partnership between these religious organisations and the Commission does not touch on the religious dimension of policies. Rather the intention is to focus solely on the issues of social exclusion and poverty and the implementation of these policies on the ground. Nevertheless, it remains the case that the interpretations of Caritas and Eurodiaconia of policy challenges and their resulting policy inputs may be heavily influenced by their overall approach to social policy issues, framed within a broader Christian narrative.⁸¹ In addition, the religious dimension of these organisations may have implications for their reach at grass roots level. This raises questions concerning representation, and more specifically the absence of a network representing other religious groups, particularly given the emphasis placed within the Social OMC on targeting ‘vulnerable’ categories of people, including ethnic minorities and migrants.

Indeed, the first policy objective under the category ‘eradication of poverty and social exclusion’ is to “ensure the active social inclusion of all by promoting participation in the labour market and by fighting poverty and exclusion among the most marginalised people and groups.”⁸² The very general nature of the phrasing of this objective is designed to allow member states to focus on the policy priorities most important in each national context, whether that be homeless people, youths, those with disabilities, ethnic minorities or immigrants. An emphasis on the social integration of ethnic minorities

⁷⁹ See the webpage “Key European Networks” of the official website of DG Employment, Social Affairs and Equal Opportunities (http://ec.europa.eu/employment_social/spsi/european_networks_en.htm).

⁸⁰ Commission staff working document – joint report on social protection and social inclusion accompanying document to the Communication from the Commission on a Proposal for the Joint Report on Social Protection and Social Inclusion 2009 (SEC(2009) 141, Brussels, 13.2.2009).

⁸¹ See for example the 2010 report, *Zero Poverty: Poverty Among Us*, Caritas Europa, Brussels (retrieved from <http://www.caritas-europa.org/code/en/publications.asp>).

⁸² Communication from the Commission on “Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union”, COM(2005) 706, 22.12.2005, Brussels. pp. 5-6.

and migrants has increasingly been present within the national reports of member states in recent years as well as in the work programme of the Social Protection Committee.⁸³ Member states have for instance identified important gaps between third country nationals and EU citizens as regards poverty, income, health, employment, unemployment, education and early school-leaving, and the 2009 National Action Plans confirmed this issue as a key objective.⁸⁴ Concern regarding gaps in the EU framework of data collection on “ethnic minorities” has led the European Commission to encourage member states to develop indicators on the situation of particular, vulnerable ethnic groups.⁸⁵ In this context, it should be noted that minority *faith* groups are not mentioned at all within the EU’s Social OMC as a potentially vulnerable or marginalised category.

Member state actions taken within the framework of the Social OMC are supported by a selection of financial instruments, including the PROGRESS Programme 2007-2013 and the European Social Fund (ESF) which is the main European financial instrument designed to support member states in the implementation of their national strategies. Funding to promote social inclusion is an essential part of ESF interventions in all member states. In the period 2007-2013, the ESF has focused on the social inclusion of disadvantaged groups, in particular by improving their opportunities for integration in the labour market, including through supporting actions to promote equal opportunities and anti-discrimination measures, including “awareness campaigns to fight discrimination, change attitudes and promote diversity in the workplace.”⁸⁶

Attention is now focused on strengthening the Social OMC, building on the current European Year for Combating Poverty and Social Exclusion. The Europe 2020 Strategy, as agreed upon by the 2010 March European Council, has made social inclusion, in particular through the reduction of poverty, one of the five key priority areas and proposes to transform the OMC into a ‘European Platform Against Poverty’. A central objective of this ‘flagship initiative’ is the design and implementation of programmes to

promote social innovation for the most vulnerable, in particular by providing innovative education, training and employment opportunities for deprived communities, to fight discrimination (e.g. disabled), and to develop a new agenda for migrants’ integration to enable them to take full advantage of their potential.⁸⁷

Given the overlap with policy fields of other DGs, the formal inter-service group led by DG Employment on mainstreaming social inclusion and social protection is expected to ensure

⁸³ Indeed, a thematic focus on migration had been scheduled to take place under the Social OMC, however it was postponed as a result of the outbreak of the financial crisis. See the Work Programme of the Social Protection Committee for the Year 2010 (SPC/2010/1).

⁸⁴ Commission staff working document – joint report on social protection and social inclusion accompanying document to the Communication from the Commission on a Proposal for the Joint Report on Social Protection and Social Inclusion 2009 (SEC(2009) 141, Brussels, 13.2.2009, p.36-37.

⁸⁵ Although it has been argued that the absence of common indicators agreed at EU level on minority groups prevents data comparability and identification of effective policies within the OMC (Cahn, 2004), it should also be acknowledged that the use of indicators and benchmarking techniques for such purposes raises important ethical and methodological questions (see for example, Carrera, 2008).

⁸⁶ See the webpage of the European Social Fund (http://ec.europa.eu/employment_social/esf/fields/employment_en.htm).

⁸⁷ Communication from the Commission on Europe 2020: A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 of 3.3.2010, Brussels.

coordination between DG Employment and other participating Commission services⁸⁸ including DG Home Affairs and DG Education and Culture on the development of the Platform Against Poverty initiative. In addition, religious stakeholders, via the formal networks, are set to play a role in offering their assessment of the needs and priorities of this new approach to poverty reduction.

An emphasis on the participation of civil society stakeholders (including religious organisations) is also a feature of the 2010 European Year for Combating Poverty and Social Exclusion.⁸⁹ Article 2 of the Decision on the European Year of the European Parliament and Council calls for:

Shared responsibility and participation – increasing public ownership of social inclusion policies and actions, emphasising both collective and individual responsibility in the fight against poverty and social exclusion, as well as the importance of promoting and supporting voluntary activities. The European Year will promote the involvement of *public and private actors*, inter alia, through *proactive partnerships*. It will foster awareness and commitment and create opportunities for contributions by all citizens, in particular people with direct or indirect experience of poverty.⁹⁰ (Emphasis added).

Formal civil society partners of the year include religious organisations, for example, Caritas Europe, Conference of European Churches Eurodiaconia, as well as associations such as the Coalition of Social NGOs across Europe, whose members include federations and organisations with a religious dimension. In addition, member states have selected ‘Ambassadors’ for the European Year whose role is to raise awareness and underpin the credibility of the activities undertaken in the member states.⁹¹ Among the Ambassadors selected, which include representatives of poverty, disability, migrant and youth and arts focused organisations, are representatives of religious bodies, such as the director of Diakonie and president of Caritas in Austria, a Capuchin monk in Germany and the secretary general of Caritas in Slovenia.⁹² The central place of religious bodies – and particularly Christian organisations – in the Year is reflected in the events agenda. For example, on the 27th September 2010 an EU level conference entitled “Ecumenical Alliance against Poverty and Social Exclusion” will be held, whose stated aim is to examine “what a holistic understanding of poverty and social exclusion could be, with a specific focus on children and migrants.”⁹³ The event is organised by Caritas Europe, the Church and Society Commission of the Conference of European Churches (CSC-CEC), the (joint) Commission of Bishops’ conferences in the European Community (COMECE) and Eurodiaconia. Here again, an examination of the formal partners, official ambassadors and events agenda for the European Year against Poverty reveals not only a role for religious groups, but a dominance among those groups of Christian organisations.

⁸⁸ See Communication from the Commission on A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion, COM(2008) 418, Brussels, 02.07.2008, for reference to the importance of ensuring the efficiency of this inter-service group for developing synergies between social inclusion and other policy areas.

⁸⁹ See the website for the 2010 European Year for Combating Poverty and Social Exclusion (<http://www.2010againstpoverity.eu/?langid=en>).

⁹⁰ Decision of the European Parliament and Council on the European Year for Combating Poverty and Social Exclusion, 1098/2008/EC, 22.10.2008, Brussels.

⁹¹ See DG Employment and Social Affairs website (<http://www.2010againstpoverity.eu/about/?langid=en>).

⁹² See DG Employment and Social Affairs website (<http://www.2010againstpoverity.eu/ambassadors/?langid=en>).

⁹³ See DG Employment and Social Affairs website (<http://www.2010againstpoverity.eu/calendarofevents/events/event188.html?langid=en>).

Against this background, several conclusions and questions may be drawn regarding the framing of religion within the Commission's policies on social inclusion and employment. First, where religious minority groups are implicated by Commission actions in this policy field, this occurs indirectly, through a social policy approach that aims to promote social inclusion through targeting ethnic minorities and immigrants, for example through policies that foster greater participation in the labour market. However, the question may be asked as to whether the current policy of the Commission within the Social OMC to avoid *directly* addressing the situation of 'religious minorities' is effective, when overarching priorities of the Social Agenda concern addressing marginalised groups, promoting equality and countering discrimination. Second, the religious dimension is present in policies on poverty through the formal and informal consultative roles played by networks of religious organisations. The lack of representation from groups representing non-Christian denominations must be questioned given the active role played by these networks in policy formation and evaluation.

1.5 Education and culture approach

1.5.1 Culture

The religious dimension is also present within the Commission's policies on education and culture, coordinated by DG Education and Culture (DG EAC).⁹⁴

Within the Commission's *cultural* policy, religion and religious diversity is addressed primarily through policy initiatives on intercultural dialogue (ICD), led by the Unit within DG EAC on "culture policy, diversity and intercultural dialogue". The notion of intercultural dialogue has gained currency in recent years in certain European countries as part of an effort to develop institutional and political relations that are sensitive to issues of cultural and religious pluralism and in the context of a broader attempt to foster an "intercultural mindset" in the actions of individuals and institutions (Silvestri, 2010). However, the specific role of ICD and its place within the Commission's cultural policies has been complicated by the ambiguity that surrounds this term, as well as the lack of a clear legal mandate to form the basis of policy action in this area. Although Article 167 of the TFEU provides that "The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore", this framing of cultural diversity by the treaty has largely been interpreted at official level as reflecting that of the UNESCO Convention of 2005: namely one concerned primarily with enabling member states to protect their own traditional national cultures and heritage.⁹⁵ An effort to move away from such an interpretation focusing on traditional understandings of 'culture' and towards the use of culture as a tool to promote diversity and ICD in the context of increased ethnic and religious pluralism can be witnessed in the more recent development of the EU's cultural policy. However, the strength and success of this process has been mixed and it is possible to detect a tension emerging between these two approaches to cultural diversity within the DG EAC's policies and priorities.

In 2007, the Commission laid down a framework for a "European Agenda for Culture", based on three sets of objectives. The first of these objectives comprised "the promotion of cultural diversity and

⁹⁴ See the DG Education and Culture website (http://ec.europa.eu/dgs/education_culture/index_en.htm).

⁹⁵ Interview with Commission official of DG Education and Culture, 2010.

intercultural dialogue.”⁹⁶ It should be noted here that the concept of intercultural dialogue and the framework of cooperation for implementing ICD within the scope of the Commission’s cultural policy is entirely separate from the use and interpretation of intercultural dialogue by DG Home Affairs. Indeed, the ICD objective in the ‘European Agenda for Culture’ includes aims such as the mobility of artists as a means to facilitate “the circulation of artistic expression beyond national borders”, and reflecting the largely arts-based interpretation of intercultural dialogue within the Agenda’s framework. As Article 167 does not provide for the harmonisation of laws and regulations in the field of ‘culture’, and in order to implement the 2007 Agenda for Culture, an Open Method of Coordination (OMC) was launched in 2007 to allow member states to develop policies with reference to common objectives and to share ‘best practices’. Given the special features of the cultural sector, this OMC is particularly flexible and is characterised by a very light reporting system, with a reduced role for the Commission in ministerial meetings and coordination activities.⁹⁷

ICD is not an explicit, central focus of the OMC on culture, and features neither as one of the priority areas set by the Council nor within the work of the expert working groups. This reluctance to deal directly with ICD is at least partly explained by the fact that the participants in the OMC working groups are representatives of the national ministries of culture, whose view of their mandate may not always extend to management of social diversity. Nevertheless, ICD is represented within the OMC by the so-called ‘Platform for Intercultural Europe’,⁹⁸ one of the three civil society platforms engaging in a formal consultative process with the Commission, known as a ‘structured dialogue’ which provides a channel for cultural stakeholders to provide inputs and policy recommendations within the framework of the OMC. The Platform for Intercultural Europe, (formerly known as the Rainbow Platform) comprises over 300 civil society groups and is part financed by the EU’s Culture Programme. With no criteria for membership, its members represent a broad range of interests from religious groups such as the ‘Jewish Contribution to an Inclusive Europe’ to Roma organisations, music and arts councils and youth associations – a reflection of the platform’s ‘cross-sectoral engagement’ approach to ICD. Nevertheless, the Platform proclaims ‘migration and minorities’ to be at the heart of its ICD approach and its recommendations focus on education as the primary site to counter segregation and discrimination and foster awareness and respect for diversity.⁹⁹ As a formal partner in the Commission’s structured dialogue on culture, a key policy input of the Platform has been the formulation of a definition of ICD as:

a series of specific encounters, anchored in real space and time between individuals and/or groups with *different ethnic, cultural, religious and linguistic backgrounds and heritage*, with the aim of exploring, testing, increasing and increasing understanding, awareness, empathy

⁹⁶ Commission Communication on a European agenda for culture in a globalizing world, COM(2007) 242 final, 10.5.2007, Brussels.

⁹⁷ Ibid., p. 12.

⁹⁸ See the website of the ‘Platform for Intercultural Europe’ (<http://www.intercultural-europe.org>).

⁹⁹ Thus within the Rainbow Paper II, Recommendation 2 calls for segregation by schools “on the grounds of ethnicity, religious affiliation and wealth...as a minimum measure to be countered by obliging all schools to promote intercultural education.’ Recommendation 4 calls for ‘the teaching of cultures and the history of religions, of migratory movements and of minority cultures.” “The Rainbow Paper: Intercultural Dialogue from Practice to Policy and Back”, Platform for Intercultural Europe, 25 September 2008 (retrieved from: <http://rainbowpaper.labforculture.org/signup/public/read>).

and respect. The ultimate purpose of intercultural dialogue is *to create a cooperative and willing environment for overcoming political and social tensions*.¹⁰⁰

Although this definition was intended to frame the EU's flagship initiative on intercultural dialogue led by DG EAC - the European Year of Intercultural Dialogue 2008 (EYID)¹⁰¹ – there is no evidence that the latter has been formally adopted and endorsed by the European Commission, a fact which might reflect the weak delineation of the concept of ICD under the wider EU's cultural policy.

The original rationale for the EYID, as stated in the Preamble to the Council and Parliament's Decision of 2006 was to “strengthen respect for cultural diversity and deal with the complex reality in our societies and the coexistence of different cultural identities and beliefs.”¹⁰² In order to meet these objectives, a total EU budget of approximately €10 million was employed to co-fund actions on a European and national level in the areas of culture, education, youth, religion, minorities, migration, multilingualism, the media and the workplace. Projects that explicitly targeted religion included two EU-level seminars examining the role and relevance of intercultural dialogue for religious communities. In the seminar “Intercultural Dialogue: a Challenge for Faiths and Convictions?” Commissioner Figel concluded that “inter-religious dialogue must be encouraged as a horizontal, concrete and constant aspect of EU actions and policies”.¹⁰³ He also underlined that education and activities promoting “active citizenship” play a fundamental role in building “a multi-cultural and multi-faith society.”¹⁰⁴

This ‘diversity’ focused approach to ICD has also been supported through projects funded under the Culture Programme 2007-2013 of which fostering ICD features as one of the three strategic objectives (alongside the promotion of cross-border mobility of cultural workers and the transnational circulation of cultural and artistic output). A key project falling under the intercultural dialogue objective has been the Council of Europe led ‘Intercultural Cities’ project running from January 2008 to December 2010, which established a network of 11 pilot cities to assess their governance models and policies, and to develop comprehensive strategies for ‘intercultural integration’.¹⁰⁵ These have been accomplished through expert reviews, study visits, city-to-city mentoring, thematic workshops and public events, such as those in which city leaders speak out publicly in favour of diversity and interculturality to local audiences. Participating cities have been encouraged to adopt, in discussion with relevant stakeholders, a slogan and a public statement expressing their pluralistic identity and intercultural engagement. One of the key outputs of the project is a set of indicators by which a city can evaluate its position in terms of fostering intercultural integration. Such indicators include the degree to which a city council may facilitate “intercultural governance” and participation of stakeholders, including faith groups, in processes of democratic representation and decision-making. The intercultural cities programme is now looking to extend the network to encompass a larger number of cities and participants.

¹⁰⁰ Ibid.

¹⁰¹ See the website of the European Year of Intercultural Dialogue (<http://www.interculturaldialogue2008.eu>).

¹⁰² Preamble to the European Parliament and Council Recommendation on key competences for lifelong learning 1983/2006/EC of 18.12.2006.

¹⁰³ European Commission (2008) ‘Brussels debate focused on inter-religious dialogue’ (retrieved from http://ec.europa.eu/culture/news/news1392_en.htm).

¹⁰⁴ National level activities also drew attention to religious pluralism, such as the Czech project ‘Our Islam’ which reflected on the role of Islam in Czech media and society.

¹⁰⁵ Council of Europe (2009), “Inter-cultural cities: governance and policies for diverse communities: 2008- 2009 final report” (retrieved from: http://www.coe.int/t/dg4/cultureheritage/culture/cities/finalreport_en.pdf).

Programmes such as the Intercultural Cities project and the EYID reveal an attempt to increase the focus on ICD (and by extension inter-faith relations) within the work of DG EAC in the last years. This approach emphasises diversity as an asset and employs the medium of arts and youth focused projects to facilitate the recognition of minority religious and cultural identities, aiming to promote awareness of minority cultures, and stimulate interactions between individuals and groups in order to foster mutual understanding and tolerance. However, a question mark currently hangs over the role of ICD within the Commission’s cultural policy, and its function as a mechanism to foster mutual understanding in a context of religious and ethnic diversity. Doubts regarding the long-term impact of the EYID were highlighted in an evaluation report commissioned by DG EAC which found that, although the year successfully mobilised stakeholders on a large scale and raised awareness of diversity issues, the potential for the year to have set in motion a sustained process of ICD related activity is in doubt.¹⁰⁶ Furthermore, a recent report by the platform for Intercultural Europe and Culture Action Europe, which examined projects with an IDC objective funded under the EU Culture Programme, found that they encompassed a myriad of interpretations of this concept. Lack of a clear definition of ICD means that intercultural dialogue does not form the focus of projects but rather is conceived as a by-product of working transnationally. The study found that, more often than not, “projects and work programmes claim to be about intercultural dialogue by virtue of entailing the mobility of artist/cultural operators or transnational circulation of artistic and cultural works and products.”¹⁰⁷ Two years after the EYID, the momentum and political will to pursue diversity related objectives under the Commission’s cultural policy appears to be waning and DG EAC is reportedly now looking to re-focus the ICD agenda back towards an ‘arts and heritage’ approach, comprising actions such as initiatives to promote the mobility of artists.¹⁰⁸ The weakening place of intercultural dialogue within the Commission’s cultural policy is not, it is interesting to note, accompanied by a parallel trend in the policy approach of DG Home Affairs. By contrast, ICD as understood by DG Home Affairs continues to occupy a central place in policy actions to support migrant integration.

1.5.2 Education

A religious dimension is (indirectly) present within the EU policy on *education* in two ways: first, in the targeting of ‘disadvantaged’ groups. Migrants and ‘children of a migrant background’ (which may include an overrepresentation of those belonging to certain religious groups) have increasingly been identified as a priority within the Commission’s education policies during the last decade. Secondly, religious aspects are implicated by the emphasis placed on ‘intercultural education’ and the acquisition of ‘intercultural competences’ through the OMC on education and EU funding instruments. Building on the link that is increasingly made in the literature between education, migrant integration and active citizenship (Faure Atger, 2009a; Tillie, 2004; Schiffauer et al., 2004), intercultural education aims to inculcate civic skills, including tolerance, through EU education systems in order to manage the impact of increasing diversity in the classroom.

¹⁰⁶ “Evaluation of the Year of Intercultural Dialogue 2008 – Final Report”, ECOTEC Research and Consulting Ltd, UK, July 2009 (retrieved from: http://ec.europa.eu/culture/key-documents/doc/evaluation/EYID_evaluation_final_report.pdf).

¹⁰⁷ “Intercultural Dialogue as an Objective in the EU Culture Programme: Summary of Study and Recommendations”, Platform for Intercultural Europe and Culture Action Europe, May 2010 (retrieved from: <http://www.intercultural-europe.org/docs/PIEICDstudy2010def.pdf>).

¹⁰⁸ Interview with Commission official of DG Education and Culture.

The entry into force of the Maastricht Treaty gave the European Union explicit competence to legislate in the field of education with Article 165 (ex article 149) TFEU calling on the EU to contribute to the development of education systems through the promotion of cooperation among member states. This is accomplished primarily through the OMC on education, launched as a means to achieve the Lisbon objectives of economic growth and social progress.¹⁰⁹ From the outset, social inclusion through education policies has been identified as a strategic objective for member states in official Commission documents, culminating in a focus on migrant groups in particular (See Faure-Atger, 2009b; Niessen and Kate, 2008). In particular, the Peer Learning Cluster on Social Inclusion and Access (a working group of delegates from national ministries created to exchange good practices within the Education OMC) has developed a focus on early school leaving and migration, organising activities on positive discrimination and migrant education, desegregation in education (with a focus on Roma) and measures to counter early school leaving.¹¹⁰

The European Council of 13-14 March 2008 called on member states to take concrete action to “improve the achievement levels of learners with a migrant background or from disadvantaged groups”.¹¹¹ This was followed in July 2008 by the Green Paper on ‘Migration and Mobility: Challenges and Opportunities for EU Education Systems’ in which the education of children from a migrant background was qualified as “an important challenge.”¹¹² The Green Paper identifies “the combination of linguistic and cultural difference with socio-economic disadvantage” as factors behind the persistent gaps in the educational attainment of children from a migrant background, vis-à-vis their peers. The need to address this gap is linked to risks of “widening social divisions which are passed down across generations, cultural segregation, exclusion of communities and inter-ethnic conflict.”

Alongside suggested policy responses such as strategies to avoid segregation and to increase numbers of teachers from migrant backgrounds, ‘intercultural education’ is proposed by the Green Paper in order to contribute to

building mutual respect, developing understanding of the negative effects of prejudices and stereotypes and cultivating the ability to take different viewpoints, while increasing knowledge of and seeking respect for the core values and fundamental rights of the host society.¹¹³

This approach builds on the 2006 Recommendation of the European Parliament and the Council on “Key Competences for Lifelong Learning” which highlighted the role of education in:

... preserving and renewing the common cultural background in society and to learning essential social and civic values such as citizenship, equality, tolerance and respect, and is particularly important at a time when all Member States are challenged by the question of how

¹⁰⁹ Council of the European Union, Presidency Conclusions of the Lisbon European Council of 22-23 March 2000.

¹¹⁰ The Peer Learning Cluster’s website provides more detailed information on these activities (<http://www.kslll.net/PeerLearningClusters/clusterDetails.cfm?id=15>).

¹¹¹ Council of the European Union, Presidency Conclusions of the European Council of 13-14 March, Brussels, 2008.

¹¹² European Commission Green Paper on Migration and Mobility: Challenges and Opportunities for EU Education Systems, COM(2008) 423 Brussels, 3.7.2008, p. 2.

¹¹³ *Ibid*, p. 11.

to deal with *increasing social and cultural diversity*. (Emphasis added).¹¹⁴

The Recommendation lists the type of attitudes, knowledge and skills with which education should provide to foster an individual's "personal fulfilment and development, active citizenship, social inclusion and employment in modern Europe." Competences number 1 (competence in the mother tongue), 2, (competence in a foreign language), 6 (Social and Civic Competences) and 9 (Cultural awareness) might be potentially relevant in the context of diversity. For example, the 2010 Joint Report assessing progress made by member states in their implementation of the Recommendation underlines the value of linguistic competences to strengthen "intercultural understanding" and "multicultural awareness."¹¹⁵ According to the Commission, social and civic competences comprise both the skills of "intercultural communication" and knowledge of core values and concepts such as democracy, human rights, gender equality, citizenship and civil rights. Civic education classes are highlighted by the Joint Report as one means to achieve this objective.¹¹⁶

EU-level funding instruments under the Lifelong Learning Programme, especially the actions Comenius (school education), Leonardo da Vinci (vocational training) and Grundtvig (adult education) and the Youth programme also support projects related to intercultural education, integration of migrant pupils and inclusion of disadvantaged youth.¹¹⁷ It may be relevant to note that faith schools are eligible for funding under the Comenius programme (as evidenced by the participation of a church school in Malta).¹¹⁸

DG EAC is now preparing the follow up to the 2008 Green Paper on Migration and Mobility drawing on the public consultation that was launched by the Green Paper. This consultation received 101 responses, the majority from stakeholders' organisations and a conference was held on the 20th October 2009 to discuss the results between the participant stakeholders and Commission representatives.¹¹⁹ As seen with other policy areas discussed in this paper, it is interesting to note the presence and nature of faith-based civil society organisations which participated in the consultation. EU level stakeholders with a religious dimension comprised Caritas Europe, the Commission of the Bishops' Conferences of the European Community and A Jewish Contribution to an Inclusive Europe (CEJI). National level contributors with a religious dimension included the Protestant Church of Germany, Caritas Germany, Caritas Italiana and the Dutch Catholic Bishops' Conference.¹²⁰ Although the consultation was open to all associations and participants were not pre-selected, the dominance of Christian organisations and the small number of organisations, religious or otherwise, specifically

¹¹⁴ European Parliament and Council Recommendation of 18 December 2006 on key competences for lifelong learning, 2006/962/EC, OJ L 394/10, 30.12.2006.

¹¹⁵ Commission staff working document, accompanying document to the Commission Communication on Key Competences for a Changing World: Progress towards the Lisbon Objectives in Education and Training, SEC(2009) 1598, Brussels, p. 43.

¹¹⁶ Ibid, pp. 61-64.

¹¹⁷ Relevant projects are listed in the Commission Staff Working Document accompanying the Green Paper Migration and Mobility: Challenges and Opportunities for EU Education Systems, SEC(2008) 2173, Brussels, 3.7.2008. For example, the Comenius project 'La Maleta Intercultural' developed a set of pedagogical resources to meet teachers needs in addressing intercultural challenges and topics. See the website: <http://www.sebyc.com/iesrch/intercultural/index.htm>

¹¹⁸ See the webpage of the Comenius programme on DG EAC's website (http://ec.europa.eu/education/comenius/doc859_en.htm).

¹¹⁹ Commission Staff Working Document on the results of the consultation on the education of children from a migrant background SEC(2009) 1115, Brussels, 05.08.2009.

¹²⁰ Ibid.

representing the migrant or ethnic minority groups which form the primary focus of the Green Paper is striking.¹²¹

The lack of participation of representative groups is all the more noteworthy given the call on member states in the “2009 Council Conclusions on the education of children with a migrant background” to develop “partnerships with the local communities, including the families of pupils with a migrant background and migrant associations.”¹²² The Council Conclusions also call for a closer monitoring of “the gap between native learners and learners with a migrant background” and “mutual learning on best practices for the education of learners with a migrant background.” These priorities will now be taken forward under the ‘ET2020’ – the strategic framework for European cooperation in education and training which sets out the strategic priorities guiding policy cooperation under the OMC from the period 2010-2020.¹²³ Promoting ‘equity and active citizenship’ has been designated one of the four strategic challenges guiding policy cooperation under the framework, under which is included the need to focus on the education performance of children from a migrant background and to “promote intercultural skills, democratic values, the respect of fundamental rights and the fight against discrimination, equipping all young people to interact positively with their peers from diverse backgrounds.” This growing focus on inclusion aspects within the Commission’s education policy is reflected in the creation of a new unit in DG EAC as of the 1st June 2010 to focus specifically on issues of ‘equity and equal opportunities’.

A religious dimension is therefore accommodated within the Commission’s education and culture approach in response to increasing ethnic, social and religious diversity in the EU. Here, too, European values emerge as a means to foster integration and social cohesion within policies prioritising intercultural dialogue and intercultural education, however within the education and culture approach the personal scope is wider, emphasising processes of mutual learning and a two-way exchange involving all members of society, European citizens and third country nationals. Certain religious groups are also indirectly targeted by the prioritisation of individuals from a migrant background within the education OMC. Despite this focus on ethnic and migrant communities, there is scope for more active involvement of the groups in question or their representative organisations in the policy-making process.

2. Religion and EU law and policy: Approaches and actors in competition

Section one of this paper has provided an assessment of the ways in which religion is being framed in EU law and policy and the guiding approaches and functions underpinning this framing, which is largely determined by the different perspectives, activities and work of the different DGs and services of the European Commission. The resulting scenario is a complex and highly heterogeneous patchwork of normative approaches delineating the relationship between religion and the EU. In order to facilitate an understanding and provide answers to the guiding research questions which frame this

¹²¹ The European Network Against Racism (ENAR), the Danish Advisory Centre on Race Discrimination and the France Terre D’Asile were the only participants of whom it could be argued are representative of these categories.

¹²² Council of the European Union, Council Conclusions on the education of children with a migrant background, 2978th Education, Youth and Culture Council meeting, Brussels, 26 November 2009.

¹²³ European Commission Communication on an updated strategic framework for European cooperation in education and training, COM(2008) 865, Brussels, 16.12.2008.

paper on the nature and origin of these approaches, their nexus with the religious dimension and their effects over member states' discretion, the following findings and factors must be taken into account:

2.1 Advancing Europeanisation in new policy domains

The EU has no legal competence to adopt common laws in the field of religion. That notwithstanding, as demonstrated in this paper, the adoption of harmonised European legislation in other domains and the development of policies covering certain socio-economic areas of life have brought the EU (and European freedoms and rights) to interact with religion in a multiplicity of ways depending on the kind of competence granted to the European Commission by the treaties. For example, the EU competence to legislate on matters of non-discrimination on the grounds of religion has not only resulted in EU legislation which directly constrains national law, but has fostered the development of networks of professionalised 'equality' bodies, specialised in supporting claimants in religious discrimination cases. This latter presents a striking example of how Europeanisation can penetrate deep into, and bring about a lasting impact on, national infrastructures, norms and practices touching on the religious dimension. The growth of these bodies may in turn bring about increased judicial involvement by the Court of Justice in the field of religious discrimination in the future.

While in the fields of European citizenship and free movement law, non-discrimination and immigration law, there is an express competence of the Union to enact common legislation in the shape of directives, the same does not hold true for other policies such as education and culture, social affairs and the integration of TCNs, where the Union is mandated only to support, complement and provide incentives to the member states. In addition to the lack of competence to legislate on religion, most of the domains presenting linkages (and interacting) with the religious dimension are also closely related to the principle of subsidiarity. As a consequence, the linkage between religion and EU policy has become a complex one. The Commission has dynamically developed soft-law or soft-policy (coordination) mechanisms of European governance favouring the exchange of practices between relevant ministries, consultation with stakeholders (EU umbrella civil society organisations) and supporting certain national policies and projects with EU funding. While in this context the impact of the EU over member states' competences (and the degree of Europeanisation being achieved) has remained blurred, the coordination of national policies and the linkage of soft policy with EU funding can be seen as effective alternative governance strategies (to varying degrees depending on each field) from the perspective of ensuring 'Europe' in domains conceived as firmly embedded in exclusive national competences. Moreover, the soft nature of these mechanisms has not prevented the emergence (and development) of distinct European normative approaches delineating the ways in which EU policy and religion should interact in certain socio-economic domains and contexts.

2.2 Competing framings shaped by institutionalised approaches

The presence of diverse normative approaches stems to a great extent from (and is deeply influenced by) the set of institutional structures (DGs and services) working on each of these policies inside the European Commission. The guiding focus and policy priorities of the DG responsible for the specific policy area remains in our view central in relation to the nature of the approach(es) pursued in each legal and policy area. This finding serves to confirm the view that the Commission is a multi-organisation comprising different 'orders of comprehension' and separate 'universes of discourse'

(Dunshire, 1978 in Geddes, 2000). In a majority of cases the rationale of the DG at hand is very much inspired by the national ministries of the EU member states with whom they engage. For instance, the activities of DG Home Affairs remain centred on the regulation of the conditions of residence of TCNs in Europe. Furthermore, the understanding of civic integration as a conditional norm in immigration law stressing the importance of ‘values and liberal democratic principles’, reflects the predominant approaches of the ministries of Interior of the EU member states. Here, the management or control of the phenomenon of migration and identity (through an emphasis on integration and values) constitute key priorities, which determines the nature of the approach of this DG to the relation between EU law and policy and religion (an immigration and home affairs approach). By contrast, the work of DG Employment, Social Affairs and Equal Opportunities, and its understanding of the interaction between religion and the EU, is one following a Ministries of Labour and Social Affairs perspective. This social and employment policy approach is one emphasising the importance of non-discrimination and the development of innovative policy strategies for overcoming social exclusion and poverty of particular vulnerable groups in society. A similar understanding is pursued by DG EAC, which also, to a certain extent, emphasises a social policy approach within its work on education. At the same time, the loss of momentum of the ‘diversity’ focused approach to intercultural dialogue within DG EAC’s cultural policy also constitutes an expression of the priorities of the national Ministries of Culture. Finally, the focus of DG Citizenship, Fundamental Rights and Justice is one centred on the respect of those fundamental human rights which are relevant from the perspective of religion (as proclaimed in the EU Charter) and in guaranteeing that the freedoms composing the status of European citizenship are duly protected from an equality of treatment viewpoint across the Union.

2.3 A lack of conceptual clarity and concepts in competition

The concepts used at EU policy level to deal with religion are hugely diverse (and contested) as regards both their material and personal scope. In this paper we have identified five different approaches around which some of the internal policies of the EU have engaged directly or indirectly with ‘the religious dimension’: citizenship and fundamental rights, non-discrimination, immigration and home-affairs, social and employment affairs and education and culture. There are no commonly agreed definitions around any of the key terms which are currently being used when ‘dealing with’ the religious dimension in EU policies. Intercultural dialogue is a prime example. Despite the use of the ICD concept by both DG Education and Culture and DG Home Affairs in its work on integration, there are marked (competing) differences in interpretation of intercultural dialogue between the two services. Under DG EAC, the target group for intercultural dialogue is broad, covering groups such as minorities, youths, those with disabilities or those from a low socio-economic background. The dialogue is conceived as a fluid process between those of diverse backgrounds and society at large, and does not place responsibility for adjustment on one party, as we have seen under the home affairs approach.

Concepts such as ‘intercultural dialogue’, ‘culture’ or ‘integration’ often intend to hide the political sensitivities and official reluctance to talk frankly about (and clearly identify) the actual religious issues that are at stake when addressing diversity and pluralism in Europe, and their intersection with fundamental rights and non-discrimination. There is a lack of willingness by the Commission to officially recognise (in particular in the scope of the social affairs approach) the implications and questions that the emerging ‘socio-cultural and ethical pluralism’ pose for the foundations of the EU, especially with regard to the vulnerability of certain religious groups as an EU priority in socio-

economic policies. This leads to dispersed and fragmented policies and priorities which challenge ‘policy coherence’ inside the Commission. Moreover, EU policy tends to differentiate (perhaps too easily) between the categories of ‘religion’, and ‘race and ethnic origin’, when focusing action on non-discrimination (non-discrimination approach), something which leaves certain policy responses blind to the obvious links that these dimensions (as contested as they might be) have concerning certain groups in European societies and the higher degree of social exclusion that these individuals face across the Union.

Certain of the European approaches surrounding the link between EU law and policy and religion are in a more difficult relationship with liberal democratic and rule of law principles that the EU is said to uphold, including the respect of the fundamental human rights of the individual. Some of the normative understandings of intercultural dialogue and integration (especially those driven by an immigration and home affairs approach) also aim at hiding the framing of religion as ‘the actual issue’ of concern. There is a tendency for the latter to be construed as an insecurity issue and a threat to European identities and ‘values’ (including fundamental right and rule of law). Intercultural dialogue is intertwined with what some call ‘Europe’s liberal values’ and is driven by a desire to ensure the respect by ‘religion’ and religious groups of those values. ‘Values’ (another concept which remains highly contested and undefined), and the integration of otherness into them serve a dual purpose, representing universal and inclusive principles of fundamental rights and equality, but which nevertheless risk functioning as an exception in the hands of the state for vulnerable groups to have access to these very ‘values’ (fundamental rights) and for overcoming social exclusion and poverty. By doing so, these policy approaches risk entering into tension with the very liberal democratic principles that they are said to safeguard, and into competition with the citizenship, fundamental rights and non-discrimination approaches identified above. Such approaches may place individuals (belonging to certain religions) in a particularly vulnerable status.

2.4 Implications of competing approaches and concepts for policy coherence

The five approaches identified here do not exist in separate, parallel spheres within the European Commission, but are often overlapping and interlinked, reinforced by the presence of networks of relations between officials working in different policy fields. Therefore, although Commission ‘actors’ within the different approaches may be impacting on and framing ‘religion’ in different ways, these framings are coming into contact – and sometimes competition – with one another on a regular basis. We posit that the existence of these competing approaches to religion within the Commission can be positive given the beneficial impact that the integration of alternative perspectives can have for policy coherence and efficacy. Indeed, competing approaches can contribute to a healthy policymaking process where such approaches are complementary (always providing that diverse standpoints remain within the limits set by fundamental rights standards). Indeed, Article 7 TFEU calls on the Union to “ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.” This concern is reflected in the Commission’s 2001 White Paper on Governance¹²⁴ which underlines the need to “ensure policy coherence and identify long term objectives” and can be seen in the increasing importance attached to

¹²⁴ European Commission White Paper on European Governance COM(2001) 428 final, 25.7.2001.

‘mainstreaming’ within the Commission’s internal governance strategy, which includes integrating considerations of culture, migrant integration and social inclusion (among others) across all EU policies.

In this light, it could be argued that regular and effective cooperation between Commission services that share responsibility for overlapping policy fields is central in order to exploit the synergies between different policy approaches. An attempt has been made within the Commission to formalise collaboration between the services through the establishment of ‘inter-service steering groups’ comprising representatives from the relevant units of different DGs. However, interviews with officials have revealed the practical success of these formal groups varies a great deal, and participation is often impeded by time constraints and resource limitations. Apart from these practical or administrative barriers, a closer analysis of the current nature of the interactions between the actors working on policy areas with a religious dimension inside the Commission and the impact of such relations on the framing of the normative approaches identified in this paper call for more in-depth research in order to ascertain the actual ways in which their relations and competition might exert certain influences over the normative framing of ‘religion’ in EU policy.

2.5 Differentiating an ‘active’ and ‘passive’ role for religion

When making an overview of the place of religion in EU law and policy, a dichotomy emerges between religion as active agent in the policy-making process and religion as the passive object of policy strategies. Our research reveals that those religions playing the role of active participants in the policy-making process are, on the whole, not the same as those religions and religious groups which form the targets of policy actions, particularly in the fields of integration, social inclusion, anti-discrimination and education and culture. The presence of EU umbrella networks engaging in policy dialogue with the European Commission, through both formalised, funded partnerships and through ad hoc contact and consultations, reveal a strong presence of Christian networks specialising in social welfare activities. Paradoxically, it is those (non-Christian) religious groups which form the (indirect) objects of policies targeting ethnic minorities within the context of social inclusion, anti-discrimination, integration and ICD initiatives, which appear to lack a voice in policy dialogues at the European level. Islam is the second largest religion in Europe and Muslim populations of immigrant descent face to a disproportionate degree the socio-economic problems, discrimination and racism that form the focus of the Commission policies discussed in this paper (Al-Hassani, 2005). Indeed, Silvestri’s (2007) assessment of the range of internal and external EU policies implicating Muslim groups has called attention to “an intermittent and fragmented, but constant, focus on Islam”.

The absence of organisations representing the interests of Muslim populations at EU level in key policy fields is indeed particularly striking. Investigating the reasons behind this imbalance is beyond the scope of this paper, but they are probably multiple and do not represent a calculated strategy on the part of Commission services. Indeed, it is rather a secular approach and an official reluctance to clearly identify the religious dimensions at stake when addressing policy challenges which may have given rise to this imbalance. The availability of access points, and technocratic design of avenues to representation play a large role in determining the influence of civil society stakeholders (Geddes, 2000). With this in mind, a more concerted effort by the Commission to foster a more representative selection of civil society actors may be warranted. Within the BEPA co-ordinated ‘religions, churches and humanisms’ dialogue, a conscious effort has been made by the Commission to achieve a balance

in the representation of religious groups. However, this dialogue has been characterised as largely symbolic (Foret, 2010) and the actual policy impact of this political level engagement is likely to be weak, particularly in view of the limited degree of coordination between BEPA and the Commission services. The religious imbalance reflected in dialogues with civil society stakeholders at the DG level on the other hand could imply a serious deficiency in terms of policy efficacy and lack of representation.

2.6 A central role for the general principles of EU law and fundamental rights

Finally, the interaction between EU law and religion is one subject under the scrutiny of EU courts and tribunals, and more particularly the Court of Justice of the EU. The judicial interpretation and control of European law is one that places the general principles of EU law, in particular those of proportionality and non-discrimination and fundamental rights at the centre of the legal process. A number of these approaches identified in this paper which use religion and/or ‘secular values’ as derogations to European freedoms and rights recognised in the scope of European citizenship, non-discrimination and immigration law will need to be tested against these very principles for them to justify their legitimacy and compatibility with the principles of legality and rule of law. This applies not only to the activities and legislation adopted by the European institutions themselves, but also to those of the member states when acting in the scope of EU law. Furthermore, the entry into force of the Treaty of Lisbon has renewed the institutional and legal foundations upon which the relationship between religion and EU law and policy might develop in the years to come, especially in light of the strengthening of the European Commission powers in fields that are considered to be relevant or have implications for religious pluralism (such as that of immigration), the expansion of the competences of the Court of Justice of the EU to interpret and review these laws, and the legally binding nature of the EU Charter of Fundamental Rights.

References List

- Al-Hassani, S. (2005), "Islamophobia in Europe", *European Network Against Racism Shadow Report 2005*, ENAR, Brussels.
- Bell, M. (2002), *Anti-Discrimination Law and the European Union*, Oxford: Oxford University Press.
- Bell, M. (2003), "Reflecting on Inequalities in European Equality Law", *European Law Review*, Vol. 28, No. 3, pp. 349-369.
- Bell, M. (2008), "The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model?" *The Political Quarterly*, Vol. 79, No.1, pp. 36-44.
- Bell, M. (2009), "Advancing EU Anti-Discrimination Law: The European Commission's 2008 Proposal for a New Directive", *The Equal Rights Review*, Vol. 3, pp. 7-18.
- Besselink, L.F.M. (2009), "Integration and Immigration: The Vicissitudes of Dutch 'Inburgering'", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate.
- Bigo, D. and L. Bonelli (2008), "Preventing violent radicalisation and terrorist recruitment in the EU – The threat to Europe by radical Islamic terrorist groups", Briefing Paper to the European Parliament, January.
- Bouget, D. and L. Prouteau (2002), "National and Supranational Government-NGO Relations: Anti-Discrimination Policy Formation in the European Union", *Public Administration and Development*, Vol. 22, pp. 31-37.
- Cahn, C. (2004), "Void at the Centre: (The lack of) European Union Guidance on Ethnic Data", *Roma Rights Quarterly*, Vol. 2, pp. 30-37.
- Carrera, S. (2008), *Benchmarking Integration in the EU: Analysing the Debate on Integration Indicators and Moving it Forward*, Bertelsmann Foundation, Berlin.
- Carrera, S. (2009), *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Leiden: Martinus Nijhoff Publishers.
- Carrera, S. and A. Wiesbrock (2009), *Civic Integration of Third Country Nationals: Nationalism versus Europeanisation in the Common EU Immigration Policy*, CEPS Liberty and Security Series, Centre for European Policy Studies, Brussels, October.
- Carrera, S. and A. Wiesbrock (2010), "Whose European Citizenship in the Stockholm Programme? The Enactment of Citizenship by Third Country Nationals in the EU", *European Journal of Migration and Law*, Vol. 12, pp. 337-359.
- Carrera, S. and F. Geyer (2007), *Terrorism, Borders and Migration: The Commission's 2008 Policy Strategy in the Area of Freedom, Security and Justice*, CEPS Policy Brief No. 131, Centre for European Policy Studies, Brussels, June.
- Cesari, J. (2009), *The Securitisation of Islam in Europe*, CHALLENGE Research Paper No. 15, Centre for European Policy Studies, Brussels.
- de la Porte, C. (2002), "Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?", *European Law Journal*, Vol. 8, No. 1, pp. 38-58.
- de Witte, B. (2010), "European Minority Rights", in M.C Foblets, J.F Gaudreault-Desbiens and A. Dundes Renteln (eds), *Cultural Diversity and the Law*, Brussels: Bruylant.
- Ersboll, E. (2010), "On Trial in Denmark", in R. Van Oers, E. Ersboll and D. Kostakopoulou (eds), *A Re-definition of Belonging? Language and Integration Tests in Europe*, Leiden: Martinus Nijhoff Publishers.
- Faure Atger, A. (2009a), *Education and Political Participation of Migrants and Ethnic Minorities in the EU: An Overview of the Literature*, CEPS Special Report, Centre for European Policy Studies, Brussels, September.

- Faure Atger, A. (2009b), *Education and Political Participation of Migrants and Ethnic Minorities in the EU: Policy Analysis*, CEPS Special Report, Centre for European Policy Studies, Brussels, September.
- Foret, F. (2007), *L'espace public européen à l'épreuve du religieux*, Editions de l'Université de Bruxelles: Brussels.
- Foret, F. (2010), "Religion: A Solution or a Problem for the Legitimation of the European Union?", in L.N. Leustean and J.T.S. Madely (eds), *Religion, Politics and Law in the European Union*, Oxford: Routledge.
- Geddes, A. (2000), "Lobbying for Migrant Inclusion in the EU: New Opportunities for Transnational Advocacy", *Journal of European Public Policy*, Vol. 7, No. 4, pp. 632-649.
- Goodey, J. (2007), "Racist violence in Europe: Challenges for official data collection", *Ethnic and Racial Studies*, Vol. 30, No. 4, pp. 570-589.
- Groenendijk, K. (2004), "Legal Concepts of Integration in EU Migration Law", *European Journal of Migration and Law*, Vol. 6, No. 2, pp. 111-126.
- Guild, E. (2004), *The Legal Elements of European Identity: EU Citizenship and Migration Law*, The Hague: Kluwer Law International.
- Guild, E. and S. Carrera (2010), "Are Integration Tests Liberal? The 'Universalistic Liberal Democratic Principles' as Illiberal Exceptionalism", in R. Baubock and C. Joppke (eds), *How Liberal Are Citizenship Tests?*, EUI Working Paper No. 2010/41, EUDO Citizenship Observatory, Robert Schuman Centre for Advanced Studies.
- Guild, E., K. Groenendijk and S. Carrera (2009), "Understanding the Contest of Community: Illiberal Practices in the EU?", in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Aldershot: Ashgate.
- Guiraudon, V. (2007), "Anti-Discrimination Policy", in P. Graziano and M. Vink (eds), *Europeanization: New Research Agendas*, Basingstoke: Palgrave Macmillan.
- Jansen, T. (2000), "Europe and Religions: The Dialogue between the European Commission and Churches or Religious Communities", *Social Compass*, Vol. 47, No. 1, pp. 103-112.
- Joppke, C. (2007), "Beyond National Models: Civic integration Policies for Immigrants in Western Europe", *West European Politics*, Vol. 30, No. 1, pp. 1-22.
- Kostakopoulou, T. (2007), "European Citizenship: Writing the Future", *European Law Journal*, Special Issue on EU Citizenship, Vol. 13, No. 5, pp. 623-646.
- Leustean, L. and J. Madely (2009), "Religion, Politics and Law in the European Union: An Introduction", *Religion, State and Society*, Vol. 37, Nos. 1-2, pp. 3-18.
- López-Santana, M. (2006), "The Domestic Implications of European Soft Law: Framing and Transmitting Change in Employment Policy", *Journal of European Public Policy*, Vol. 13, No. 4, pp. 481-499.
- Luyckx, M. (2000), "The EU and Islam: the role of religion in the emerging European polity", *Cambridge Review of International Affairs*, Vol. 13, No. 2, pp. 267-282.
- McCrea, R. (2007), *Limitations on Religion in a Liberal Democratic Polity: Christianity and Islam in the Public Order of the European Union*, LSE (Law, Society and Economy) Working Paper No. 18/2007, London School of Economics and Political Science, London.
- McCrea, R. (2008), "Limitations on Religion in a Liberal Democratic Polity: Christianity and Islam and the Partial Secularity of the European Union", *Yearbook of European Law*, No. 195.
- McCrea, R. (2009), *The Recognition of Religion within the Constitutional and Political Order of the European Union*, LEQS Paper No. 10/2009, LSE 'Europe in Question' Discussion Paper Series, September.
- Modood, T., R. Hansen, E. Bleich, B. O'Leary and J. Carens (2006), "The Danish Cartoon Affair: Free Speech, Racism, Islamism and Integration", *International Migration*, Vol. 44, No. 5, pp. 2-62.

- Morano-Foadi, S. (2010), "EU Citizenship and Religious Liberty in an Enlarged Europe", *European Law Journal*, Vol. 16, No. 4, pp. 417-438.
- More, G. (1999), "The Principle of Equal Treatment: from Market Unifier to Fundamental Right?", in P. Craig and G. de Burca (eds), *The Evolution of EU Law*, Oxford: Oxford University Press.
- Niessen, J. and I. Chopin (2004), *The Development of Legal Instruments to Combat Racism in a Diverse Europe*, Leiden: Martinus Nijhoff Publishers.
- Niessen, J. and M. Kate (2008), *Guide to Locating Migration Policies in the European Commission 2nd Edition*, Migration Policy Group Report, October.
- Schiek, D., L. Waddington and M. Bell (2007), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law*, Ius Commune Casebooks for the Common Law of Europe, Oxford: Hart Publishing.
- Schiffauer, W., G. Bauman, K. Kastoryano and S. Vertovec (eds) (2004), *Civil Enculturation: Nation State, School and Ethnic Difference in the Netherlands, Britain, Germany and France*, New York: Berghahn Books.
- Schlesinger, P. and F. Foret (2006), "Political Roof and Sacred Canopy? Religion and the EU Constitution", *European Journal of Social Theory*, Vol. 9, No. 1, pp. 59-81.
- Silvestri, S. (2007), "Asserting Islam in the EU: Actors, Strategies and Priorities", in François Foret (ed.), *L'Espace Public Européen à l'Épreuve du Religieux*, Brussels: ULB Publications.
- Silvestri, S. (2009), "Islam and Religion in the EU Political System", *West European Politics*, Vol. 32, No. 6, pp. 1212-1239.
- Silvestri, S. (2010), "Public Policies towards Muslims and the Institutionalisation of 'Moderate Islam' in Europe: Some Critical Reflections", in A. Triandafyllidou (ed.), *Muslims in 21st Century Europe: Structural and Cultural Perspectives*, London: Routledge.
- Steven, M. (2010), "Religious Lobbies in the European Union: from Dominant Church to Faith-Based Organisations?", in L.N. Leustean and J.T.S. Madely (eds), *Religion, Politics and Law in the European Union*, Oxford: Routledge.
- Tillie, J. (2004), "Social Capital of Organisations and their Members: Explaining the Political Integration of Immigrants in Amsterdam", *Journal of Ethnic and Migration Studies*, Vol. 30, No. 3, pp. 529-542.
- Trimidas, T. (2006), *The General Principles of EU Law*, Second Edition, Oxford: Oxford University Press.
- Van Oers, R. (2010), "Citizenship Tests in the Netherlands, Germany and the UK", in R. Van Oers, E. Ersboll and D. Kostakopoulou (eds), *A Re-definition of Belonging? Language and Integration Tests in Europe*, Leiden: Martinus Nijhoff Publishers.
- Vickers, L. (2006), "Religion and Belief Discrimination in Employment – the EU Law", European Network of Legal Experts in the non-discrimination field, European Commission, DG for Employment, Social Affairs and Equal Opportunities, Unit G.2, Brussels, November.
- Waldijk, C. and M. Bonini-Baraldi (2006), *Sexual Orientation Discrimination in the European Union: National Laws and the Employment Equality Directive*, The Hague: T.M.C. Asser Press.
- Waddington, L. and M. Bell (2001), "More equal than others: Distinguishing European union equality directives", *Common Market Law Review*, Vol. 38, pp. 587-611.
- Warner, C. (2000), *Confessions of an Interest Group: the Catholic Church and Political Parties in Europe*, Princeton: Princeton University Press.
- Wiesbrock, A. (2010), *Legal Migration to the European Union*, Leiden: Brill/Martinus Nijhoff.

Project Identity

Title:	RELIGARE - Religious Diversity and Secular Models in Europe. Innovative Approaches to Law and Policy
Funding Scheme:	Collaborative Project (CP): small or medium-scale focused research project
Coordinator:	K.U. Leuven (Faculties of Law and Canon Law), Prof. Marie-Claire Foblets
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 societies: mutations européennes (PRISME), France Universität Erlangen-Nürnberg (UEN), Germany Università Degli Studi di Milano (UNIMI), Italy Vrije Universiteit Amsterdam (VUA), The Netherlands Universiteit van Amsterdam (UvA), The Netherlands Universidad Complutense Madrid (UCM), Spain Middle East Technical University (METU), Turkey Queen Mary, University of London (QMUL), U.K.
Website:	www.religareproject.eu
EC Funding:	2,699, 943 €
EC Scientific Officer:	Mrs. Halina Walasek (Project Officer)