

# THIRD ENAR EQUAL@WORK MEETING

## REASONABLE ACCOMMODATION OF CULTURAL DIVERSITY IN THE WORKPLACE

Brussels, 8 December 2011

# REPORT



european network against racism

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The PROGRESS programme is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields. The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries. For more information see: <http://ec.europa.eu/progress>

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# Foreword



I am delighted to present the report of ENAR's 3rd Equal@work meeting (previously known as the Ad Hoc Expert Group on Promoting Equality in Employment), which presents the findings and recommendations of the meeting held in Brussels on 8 December 2011 on the theme 'Reasonable accommodation of cultural diversity in the workplace'.

The Equal@work initiative, launched by ENAR in November 2009, is a pioneering exercise in bringing together businesses committed to diversity and inclusion, trade unions, EU institutions, Member State governments and anti-racist civil society to find solutions to the full participation of ethnic minorities in the labour market.

Questions regarding cultural diversity are not new to companies and EU Member States. However, issues such as workplace dress, religious symbols, days off for religious/cultural celebrations, etc. often give rise to heated debates in companies, the media, politics and universities. The debates tend to focus on principles as well as the feasibility of reasonable accommodation, while many companies are left on their own, without guidance, to manage cultural diversity - sometimes innovatively, sometimes restrictively.

The third edition of the Equal@work expert meeting therefore focused on the use of reasonable accommodation of cultural diversity to combat discrimination in employment, by exploring measures, strategies and good practices in promoting working conditions to improve well-being at work for all. Participants assessed whether existing tools for accommodation of cultural diversity, particularly in relation to migrants and ethnic and cultural/religious minorities, are effective and suggested options for addressing the limitations identified.

This report of the meeting presents an overview of the discussions held and the preliminary research undertaken prior to the meeting, and puts forward a series of key recommendations to improve practices of reasonable accommodation of cultural diversity in the workplace. It also highlights a number of best practices addressing the challenges of reasonable accommodation of diversity.

We hope that EU decision makers, political leaders and all stakeholders involved will use and value this report and recognise the need for an informed debate to address the issues linked to reasonable accommodation of cultural diversity in the workplace. This meeting highlighted the value of a multiple stakeholder approach in identifying workable solutions that can positively contribute to the 'race towards equality and prosperity'. We are therefore very grateful to all the participants who contributed to the discussion and enabled this report to be produced with the support of our key partners: Adecco Group, Le Groupe La Poste, L'Oréal and Sodexo, as well as the European Union's PROGRESS programme and the Open Society Foundations.

**Chibo Onyeji**  
ENAR Chair

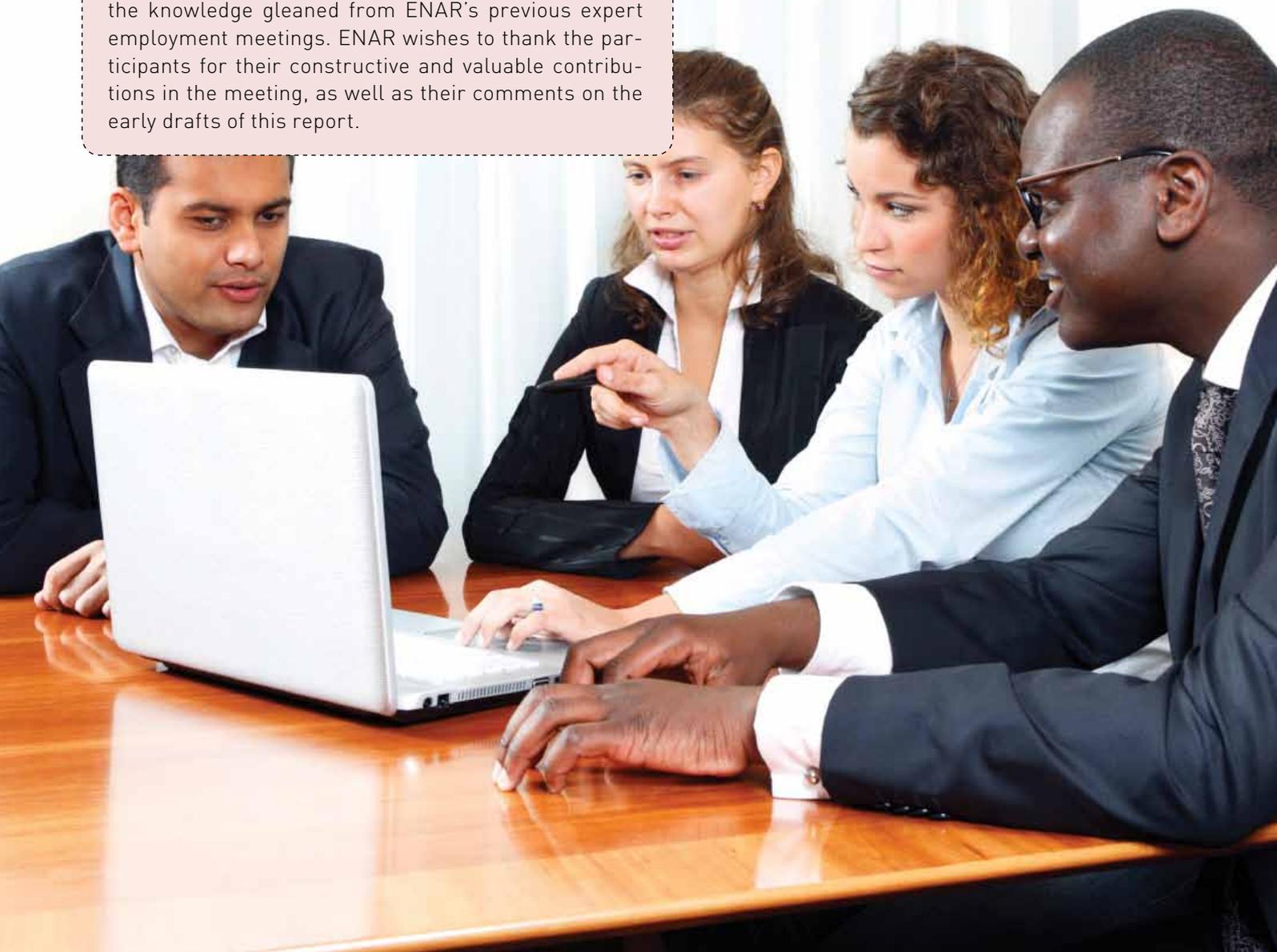
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# INTRODUCTION

## to ENAR's third Equal@work meeting

On 8 December 2011, ENAR convened the third European meeting in the framework of its Equal@work initiative (previously known as the Ad Hoc Expert Group on Promoting Equality in Employment). Experts on equality and diversity in the workplace from the European institutions, Member States, as well as representatives from multinational companies, trade unions NGOs, universities and equality bodies gathered for this meeting. This report serves as a summarised outcome from these meeting discussions and also draws on the knowledge gleaned from ENAR's previous expert employment meetings. ENAR wishes to thank the participants for their constructive and valuable contributions in the meeting, as well as their comments on the early drafts of this report.



# Introduction

## Background context

**Realising equality and diversity** continues to be one of the key challenges facing labour markets within the EU Member States. The integration of migrants and ethnic and religious minorities within their respective majority communities is determined to a large extent by their opportunities to actively participate in gainful employment.

**The ENAR Equal@work initiative** (previously known as the Ad Hoc Expert Group on Promoting Equality in Employment) is a pioneering initiative that brings businesses committed to diversity and inclusion and the anti-racist civil society together to find solutions to ensure the full participation of ethnic minorities in the labour market. It also enables the sharing of best practices and initiatives that have been undertaken by private companies, trade unions and governments.

**The first European meeting of the Equal@work initiative was set up in 2009** to reflect in a proactive and political way on the responses of different stakeholders in the field of employment in finding solutions to counter the structural problems related to accessing the labour market and enjoying equality in employment, which remains a particular obstacle for ethnic and religious minorities in the EU. This timely gathering of stakeholders came as the EU began to reflect on its Europe 2020 Strategy and as stakeholders increasingly recognised the need for a holistic approach and for joint actions to address the labour market inclusion of ethnic minorities.<sup>1</sup>

In agreeing on **87 practical recommendations and 4 key recommendations to the EU institutions, Member States, the private sector, and social partners**, participants of the ad hoc expert group expressed their commitment to promote these recommendations and monitor their implementation. ENAR and its partners plan to assess and report on progress towards the achievement of these recommendations by 2015. In the meantime, the process of mutual learning between the different stakeholders is continuing, with an in-depth reflection on key priority areas which were further addressed through a series of ENAR meetings.

For instance, **the second meeting of the Equal@work initiative in 2010** addressed the need to monitor and benchmark the situation of ethnic and religious minorities in employment in order to ensure progress towards equality and prosperity.<sup>2</sup>

**The third meeting of the Equal@work initiative in 2011** focused on current tools used to combat discrimination in employment, such as reasonable accommodation of cultural diversity, by exploring measures, strategies and good practices in promoting working conditions seeking to improve well-being at work for all. Based on the outcomes of the 1st ad hoc expert group meeting, the following recommendations related to the accommodation of diversity were identified:

- Foster a spirit of inclusion by organising interactive activities with various stakeholders, including NGOs, in order to encourage a better accommodation of diversity and facilitate exchanges;
- Ensure general good and fair management practices, including: clear rules and policies on acceptable behaviours; transparent and inclusive promotion and appraisal processes; and equal access to learning, development, and job opportunities;
- Ensure that training programmes accommodate diversity and the socio-cultural specificities of minorities.

Questions regarding cultural diversity are not new to companies and EU Member States. However, issues such as workplace dress, religious symbols, days off for religious/cultural celebrations, etc. have generated heated debates within companies, universities, media and political settings. These debates tend to focus on principles as well as the feasibility of reasonable accommodation, while an increasing number of companies are left on their own, without guidance, to manage cultural diversity, sometimes innovatively, sometimes restrictively. ENAR therefore felt it would be necessary to gather objective facts and compare practices across Europe to enable a demystification of these debates and an appeased discussion on reasonable accommodation of cultural diversity in employment.

<sup>1</sup> See the report of the first ENAR Ad Hoc Expert Group on Promoting Equality in Employment, available at [http://cms.horus.be/files/99935/MediaArchive/publications/AdHocGroup\\_report\\_final.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/AdHocGroup_report_final.pdf)

<sup>2</sup> See the report of the second ENAR Ad Hoc Expert Group on Promoting Equality in Employment, available at [http://cms.horus.be/files/99935/MediaArchive/publications/2nd\\_adHocreport\\_final.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/2nd_adHocreport_final.pdf)

### Key objectives of the 3rd Equal@work meeting

- Enable the sharing of good practices and initiatives on the accommodation of diversity that have been undertaken by NGOs, private companies, trade unions and public employers.
- Draw lessons from unsuccessful practices and initiatives on the accommodation of diversity that have been undertaken by NGOs, private companies, trade unions and public employers.
- Build the capacity of the members of ENAR and its partners by developing the knowledge of the issues at hand and empower them to proactively identify actions at national level through joint projects and initiatives.
- Develop recommendations that can:
  - Identify good practices in the field and facilitate their exchange and compilation with the view to enhance business and NGO efforts in the employment sector.
  - Enable the European Union, Member States, social partners, businesses and NGOs to better engage with the policy issues and processes.
  - Develop joint advocacy strategies on issues of reasonable accommodation in employment.

### Methodology of the 3rd Equal@work meeting

With the contribution of its partners, ENAR developed the research based aspects of the project. **To inform the debates in the 3rd expert meeting, ENAR designed a survey on reasonable accommodation of cultural diversity in the workplace.** The survey was disseminated to employers, trade unions, NGOs and other stakeholders. Over 80 responses were collected. Respondents highlighted the most challenging and frequent demands linked to reasonable accommodation, examples of good practices, the approach they favour, and how they think different stakeholders should be involved in the process. A background paper highlighting the main results of the surveys and an agenda were produced, while critical questions were collated for the experts to address at the Equal@work European meeting.

The second phase involved the facilitation of a one day European meeting gathering different stakeholders to discuss and develop 'standard setting' recommendations. The intention was to take an appreciative inquiry and solution-focused methodological approach. In other words, through a process of collaborative inquiry and powerful questions, we tapped into the thinking, experiences and expertise of the different stakeholders to identify workable solutions that can positively contribute to the debate on reasonable accommodation as an essential part of the race towards equality and diversity.

This report highlights the main results of both the preparatory surveys and the Equal@work European meeting. The first part defines the concept of reasonable accommodation of cultural diversity in the workplace, highlighting the philosophical and political debate. The second part looks at the development of this concept in the EU context, focusing on law and policy, but also on the different national approaches. In the third part, grassroots practices of employers and recommendations are presented. The fourth part looks at the way forward and the advantages and disadvantages of legislation. The report concludes with a series of recommendations to improve practices of reasonable accommodation.

# PART 1

## What is reasonable accommodation?

The first session of ENAR's third Equal@work European meeting explored the definition of the terms 'reasonable accommodation' and 'cultural diversity' by giving the participants an overview of the philosophical and political debates. An example of good practice in the United States was also presented.



## Defining the terms of the debate

### Defining the terms of the debate

Discrimination of migrants and ethnic and religious minorities in employment is a matter of access to the labour market as much as working conditions in the workplace. Respect of cultural diversity, specific habits, norms and beliefs is still one of the key challenges in promoting active participation of minority communities in the labour market and in society. Due to different concepts, legislation, categorisation and approaches, the protection of all workers' rights is not yet ensured in Europe. For this reason, it is all the more necessary to achieve a common understanding of definitions and identify tools and good practices in regard to reasonable accommodation, as this may lead to more inclusive labour markets and societies.

The term **cultural diversity** emerged in the middle of the 1980s, and is sometimes mistakenly understood as the existence of different cultures or societies in specific regions of the world as a whole. In some contexts it reflects the importance of valuing the many cultural differences, like language, religion, dress and traditions that make one group distinct from another. It puts forth that different cultural groups, as well as related cultural symbol formations and borders (often serving to divide cultural groups) are in a constant state of flux and transformation process, linking notions of identities, which are also not fixed in space or time.

The term **reasonable accommodation** refers to an adjustment made in a system to "accommodate" or make fair the same system for an individual based on a proven need. It thus effectively and practically addresses and challenges the invisibility of structural discrimination. Reasonable accommodation can be mandated by law. Each country has its own system of reasonable accommodation. The concept is most widely used to the benefit of persons with disabilities – whose issues were at the core of the reflections that led to the development of reasonable accommodation practices.<sup>3</sup>

In the context of cultural and religious diversity, there is no common legal framework in the EU, but it is possible to draw

on the concept of reasonable accommodation for disabled persons contained in the Employment Equality Framework Directive. A reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee, often (but not necessarily) of a cultural/religious background which is different from the majority population, to participate in the application process or to perform essential job functions on an equal basis with others and in accordance of his or her convictions.

In the present scenario, where the concepts of cultural diversity and reasonable accommodation are not well developed and there is no common regulation on these issues yet, employers may react to these requests in different ways according to their own beliefs and principles, needs and specific company policies. A request for reasonable accommodation is accepted under conditions, which could be related to the available budget and other staff, the amount of work to deliver and the continuity of production or services. These conditions are actually the most common responses to employees' requests. However, they are often left to the discretion of the employer and seldom make their way into the official diversity policy of companies.

Negotiation is a valuable tool that allows introducing and developing the concept of cultural diversity as well as arranging effective reasonable accommodation. The areas of possible accommodations represent only a few examples of possible fields for negotiation. These equality tools bring new perspectives as well as concrete instruments to improve workers' conditions. They can play a crucial role in the promotion of substantial equality in employment and well-being in the workplace. Recently, discussions on diversity in the workplace, and in particular cultural diversity, have spread throughout the European Union. These issues have been debated on different levels, by varying institutions and companies, both in the public and private sectors.

<sup>3</sup> The definition used by the United Nations in the Convention on the Rights of Persons with Disabilities is as follows: "Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

In addition, different approaches towards cultural diversity can be observed depending on the stakeholders and the countries. For example, the business approach tends to be 'diversity management' – which is conflict prevention based, while NGOs, governments and other institutions often focus more on measures that value the potential of cultural diversity and equality or seek to end discrimination. Different concepts of cultural diversity throughout the European Union are often linked to the majority populations' resistance toward 'others', different cultural and legal backgrounds, policy priorities, as well as specific interpretations of the concept of 'cultural diversity' itself. Measures taken thus differ throughout the EU according to the particular characteristics of each context. This is reflected in the work of the European Court of Human Rights (ECHR), which is increasingly involved in disputes centred on the identity of certain groups, which the applicants claim to defend, while the State contests either the mere existence of this group as distinct from the rest of the population, or the terms used by the applicants to describe the group.

According to the European Agency for Fundamental Rights (FRA), even though a wide range of approaches and practices promoting cultural diversity can be found throughout the European Union, it is possible to recognise some common areas of action:

- Access of minorities to the workplace and concrete working conditions;
- Anti-discrimination/measures promoting cultural diversity in the workplace; and
- Measures outside the workplace that influence conditions in the workplace.<sup>4</sup>

Considering this consensus, these areas seem to be a good starting point to evaluate adopted reasonable accommodation strategies.



*Eugenia Relaño Pastor - Spanish Ombudsman Office,  
and Gily Coene - Vrije Universiteit Brussel*

<sup>4</sup> Jochen Blaschke and Nathalie Schlenzka, Cultural Diversity and Mainstreaming in Employment, Berliner Institut für Vergleichende Sozialforschung e.V. Mitglied im Europäischen Migrationszentrum, FRA Publications, 2005.

# The philosophical debate

## The philosophical debate around reasonable accommodation and cultural diversity<sup>5</sup>

In order to provide insight on the main ideas in the philosophical debate around reasonable accommodation of cultural diversity and how to learn from this, **Dr. Gily Coene, researcher at the Vrije Universiteit Brussel**, highlighted two approaches to reasonable accommodation: the individual rights approach that is particularly developed within philosophy of law and the debate on multiculturalism and diversity policies within political theory.

### 1. The rights approach to equality and diversity

When dealing with socio-economic equality, translated into the granting of fundamental social rights, differential treatment is justified if it benefits socially disadvantaged groups. Gily Coene mentioned in this respect the famous philosopher John Rawls who developed in his 'Theory of Justice'<sup>6</sup> two principles for the basic structure of a just society:

- The equality principle of equal basic freedoms for all members of a society;
- A second principle that ensures equal opportunities and allows for differential treatment if this benefits the most disadvantaged groups in society.

Universalistic approaches, however, have been challenged, for instance by Iris Marion Young,<sup>7</sup> for they would not take into account existing differences between individuals in a society. As a consequence, formal equality does not necessarily lead to substantial equality but may reinforce social inequalities because it does not question dominant social and cultural norms, which provoke exclusion. According to Young, the problem of social inequality cannot be reduced to a question of socio-economic redistribution, but needs to be addressed by a 'politics of difference'.

Debates in political philosophy in the 20th century mainly focused on the issue of fair socio-economic redistribution. From the end of this century, the focus shifted to cultural differences and identities. Communitarians for instance criti-

cised liberal approaches because they focus on individual and universal human rights, and ignore the meaning of social and cultural values, commitments, traditions and common practices shared by a community. Accordingly, a human being is always situated in social practices which define and shape his or her identity, values and choices.

The Canadian philosopher Will Kymlicka integrates liberal concerns and an individual rights approach with the recognition of cultural diversity. According to his idea of liberal multiculturalism, cultural domination, denial and exclusion are elements of injustice that severely harm the well-being and integrity of individuals. As such cultural recognition is not antithetical to a liberal individual rights approach.<sup>8</sup> According to Kymlicka's idea of liberal multiculturalism, cultural claims should not, however, infringe upon individual liberties or human rights. Human rights should always be respected but must be complemented by cultural rights in order to protect minorities against economic and political domination. As such special group rights and multicultural policies can be justified. In order to be accepted in the framework of a liberal democracy, these special or group rights must respect certain conditions:

- They must respect the freedom of the members of the minority group; and
- They must respect equality between minority and majority groups.

### 2. The debate on multiculturalism: How should society relate to different claims?

Gily Coene continued in mentioning that criticism of multiculturalism has arisen especially regarding the situation of women within minority groups. She mentioned Susan Okin<sup>9</sup> who claims that cultural or religious communities are composed of diverse individuals, such as women, children, LGBTs and freethinkers, so-called minorities within minorities, who can have other specific interests or demands that are ignored in multicultural approaches.

5 This section draws from Coene G., 'Reasonable Accommodation, the philosophical debate', chapter 1 of 'La diversité culturelle sur le lieu de travail, pratiques d'aménagements raisonnables', Institute for European Studies (VUB) & Mètices-Germe (ULB), September 2010 (in French and Dutch), [www.ies.be/research/MigrationandDiversity](http://www.ies.be/research/MigrationandDiversity).

6 RAWLS J., (1971), A Theory of Justice, Harvard: University Press.

7 YOUNG I.M. (1990), Justice and the Politics of Difference, Princeton: University Press.

8 KYMLICKA W., (1995), Multicultural Citizenship, Oxford: University Press.

9 OKIN S. (2002), 'Mistresses of Their Own Destiny. Group Rights, Gender and Realistic Rights of Exit', Ethics, 112, pp. 205-230.

Critics have also pointed out that some approaches of multiculturalism are inspired by an essentialist view: cultures are conceived as closed and autonomous entities and deterministic structures which define the identity and the acts of the persons. Ann Phillips, for instance, advocates a 'multiculturalism without culture', i.e. multicultural policies should be based on individual claims and rights and not those of groups.<sup>10</sup>

Nancy Fraser<sup>11</sup> thinks that in order to distinguish legitimate from illegitimate demands for recognition, one needs to prove that institutional majority norms prevent individuals from participating fully in social life and also that practices that are asked to be recognised do not limit the possibilities of full participation in social life of the majority group or of other members from the minority group. Fraser advises that a public debate be held on this in order for majority and minority groups to formulate and argue what is relevant for them as far as equal treatment is concerned.

Joseph Carens<sup>12</sup> presents a contextual political theory, which highlights the confrontation between theoretical and abstract points of view and concrete political practices. He links this to an alternative concept of justice. He opposes a justice of impartiality and neutrality to a justice which takes an 'evenhandedness' approach that recognises particularities. The concept of 'evenhandedness' relies on democratic norms of balance, compromise and proportionality.

The objectives of a diversity policy are based on the idea that persons are different and that not everybody can correspond to the general expectations and common standards that are based on the image of the so-called average citizen. An inclusion policy therefore aims at reorganising structures and policies to include a diverse population. But such a policy has limits, as it is not always possible to include all individuals: what is good for somebody can be a restriction for somebody else.

Gily Coene added that the debate on reasonable accommodation further raises an important question on the particular meaning of

religion. Advocates for religious accommodation often claim that religious convictions are 'deep convictions' which are an integral part of a person's identity and dignity and are not mere preferences. According to this vision, to ask for a day off on the day of a religious festival is completely different from asking a day off to celebrate one's birthday. Nevertheless, the difference between 'personal preferences' and 'deep convictions' is not that obvious.

### 3. Conclusions

- Reasonable accommodation enables members of minority groups to preserve their identities without being marginalised. This vision opposes an assimilationist vision which requires individuals to assimilate and to put aside their own identities.
- Social environments are not neutral, so it is important to take into account cultural obstacles to promote social equality and to enable full participation in the labour market.
- It is important not to essentialise or ascribe fixed group identities to reasonable accommodation measures, as they should be linked to individual claims and not to those of groups.
- The obligation of accommodating cultural and religious diversity is limited to principled conditions - claims for accommodations that are discriminatory to other groups cannot be regarded as reasonable - as well as to pragmatic reasons.
- Religious beliefs should not be privileged over non-religious philosophical and ethical convictions either.

The participant discussion focused mostly on the concept of essentialism. It was highlighted that claiming rights always needs some sort of 'essentialism', some characteristics, properties, essences of group membership. It is difficult for minorities to claim rights if they do not define themselves as a group. But some participants worried that focussing on essentialism might result in undermining an individual claim as it demands protection for group membership. This highlights the need for case-by-case assessments of reasonable accommodation requests.

<sup>10</sup> PHILLIPS A. (2009), *Multiculturalism without Culture*, Princeton: University Press.

<sup>11</sup> FRASER N. & HONNETH A., (2003), *Redistribution or Recognition? A Philosophical Exchange*, London: Verso.

<sup>12</sup> CARENS J. (2000), *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford: University Press.

# Reasonable accommodation of cultural diversity in the US

## Reasonable accommodation of cultural diversity in the United States<sup>13</sup>

The United States has a long tradition of accommodating cultural and religious diversity. In her presentation, **Dr. Eugenia Relaño, from Complutense University and from the Spanish Ombudsman Office**, considered whether Europe can learn from the history and development of reasonable accommodation in the US and whether this good practice from the US experience can be transferred to Europe.

In US legal history, the meaning of the term 'reasonable accommodation' has developed due to the need of accommodating US religious diversity. The First Amendment to the US Constitution states two clauses: the free exercise of religion and the non establishment of religion.<sup>14</sup> The twin clauses have produced an immense amount of litigation concerning the tension between free exercise and establishment. In accommodating religion, courts have had an especially difficult time. While accommodating religious practice accords with the notion of free exercise of religion, constitutionally mandating the accommodation of religion could violate the establishment clause. Current Supreme Court jurisprudence holds that the Constitution does not require accommodating religious practices and that any accommodations must be created by legislators and policy makers.

### Key dates in the history of reasonable accommodation in the US

**1964:** Adoption of Title VII of the Civil Rights Act originally prohibiting workplace discrimination based on religion, national origin, race, colour, or sex, but religion is neither defined nor is the duty of reasonable accommodation mentioned. It leaves open the question of whether the employer has an affirmative duty to accommodate.

**1966:** Adoption by the Equal Employment Opportunity Commission (EEOC)<sup>15</sup> of guidelines on religious discrimination stating the obligation for an employer to accommodate the religious practices of its employees, except if it would create a 'serious inconvenience to the conduct of the business'. In 1967,

the EEOC revised these guidelines to state that an employer has an obligation to reasonably accommodate religious practices unless the employer can prove that to do so would create an 'undue hardship'.

**1972:** Amendment by the Congress of Title VII to incorporate the 1967 guidelines, stating: 'Employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an 'undue hardship' on the employer'.

**1978:** The EEOC conducted public hearings on religious discrimination in New York City, Milwaukee, and Los Angeles. The Commission found that:

- There is widespread confusion concerning the extent of accommodation.
- The religious practices of some individuals and some groups of individuals are not being accommodated (such as religious holidays, prayer break, dietary requirements, etc.).
- Many of the employers who testified had developed alternative employment practices which accommodate the religious practices of employees while meeting the employer's business needs.
- Little evidence was submitted by employers showing actual attempts to accommodate religious practices with resulting unfavourable consequences to the employer's business.

Dr. Eugenia Relaño also mentioned that a look into legislative history suggests that the intention of lawmakers was to protect employees from losing their jobs solely because their religious beliefs required them to do certain things, such as observing particular holidays, that the rules of their workplace otherwise might not allow. The common methods of religious accommodation in the workplace in the US are:

- Scheduling changes, voluntary substitutes, and shift swaps;
- Changing an employee's job tasks or providing a lateral transfer;
- Making an exception to dress and grooming rules;
- Use of the work facility for a religious observance;

<sup>13</sup> This section draws from Relaño E., 'Reasonable accommodation of cultural diversity in the US', paper prepared for ENAR's 3rd Equal@work European meeting on 8 December 2011, Brussels.

<sup>14</sup> The first Amendment to the US Constitution states: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech'.

<sup>15</sup> The EEOC is a federal law enforcement agency put in place to enforce laws against workplace discrimination. For more information, see [www.eeoc.gov](http://www.eeoc.gov).

# Reasonable accommodation of cultural diversity in the US

- Accommodations relating to payment of union dues or agency fees; and
- Accommodating prayer, proselytising, and other forms of religious expression.

Dr. Eugenia Relaño then highlighted some best practices taken from the US example, both benefitting the employers' and employees' sides.

## Employers' best practices

### Reasonable accommodation

- Employers should inform employees that they will make reasonable efforts to accommodate the employees' religious practices. Employer-employee cooperation and flexibility are key when it comes to reasonable accommodation. For example, employers should make efforts to accommodate an employee's desire to wear a kippah, hijab, or other religious garb. If the employer is concerned about uniform appearance in a position which involves interaction with the public, it may be appropriate

to consider whether the employee's religious views would permit him to resolve the religious conflict by, for example, wearing the item of religious garb in the company uniform colour(s).

- Employers should train managers and supervisors on how to recognise religious accommodation requests from employees.
- Employers should consider developing internal procedures for processing religious accommodation requests.
- Employers should individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.
- Employers and employees should confer fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation options.

## 'Undue hardship' under the Civil Rights Act

An accommodation would pose an undue hardship if it would cause more than 'de minimis' costs to the operation of the employer's business. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business. To prove undue hardship, the employer will need to demonstrate how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation does not suffice as evidence of undue hardship. If an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations. Employers must accommodate no matter what the customers think, religious freedom being more important than customers' choice. Resentment or jealousy of co-workers will not be considered as undue hardship either. Security requirements can create an undue hardship.

## 'Religion' under the Civil Rights Act

Title VII protects all aspects of religious observance and practice as well as belief and defines religion very broadly. Religion includes not only traditional, organised religions but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. An employee's belief or practice can be 'religious' under Title VII even if the employee is affiliated with a religious group that does not espouse or recognise that individual's belief or practice, or if few - or no - other people adhere to it. Title VII's protections also extend to those who are discriminated against or need accommodation because they have no religious beliefs. Religion typically concerns 'ultimate ideas' about 'life, purpose, and death'. Social, political, or economic philosophies, as well as mere personal preferences, are not 'religious' beliefs protected by Title VII. Although there is usually no reason to question whether the practice at issue is religious or sincerely held, if the employer has a doubt about the basis for the accommodation request, it is entitled to make a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincerely held, and gives rise to the need for the accommodation.

- An employer is not required to provide an employee's preferred accommodation if there is more than one effective alternative to choose from. An employer should, however, consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why his proposed accommodation is not being granted.
- Managers and supervisors should be trained to consider alternative available accommodations if the particular accommodation requested would pose an undue hardship. Employers should also train managers to identify alternative accommodations that might be offered to avoid actual disruption (e.g. designating an unused or private location in the workplace where a prayer session or Bible study meeting can occur if it is disrupting other workers).

### Undue hardship

The 'minimis undue hardship' standard refers to the legal requirement. However employers can go beyond the requirements of the law and should be flexible in evaluating whether or not an accommodation is feasible.

- An employer should not assume that an accommodation will conflict with the terms of a seniority system without first checking if there are any exceptions for religious accommodation or other avenues to allow accommodation consistent with the seniority system.
- Employers should train managers to be aware that, if the requested accommodation would violate the seniority system, they should confer with the employee to determine if an alternative accommodation is available. Although an employer may not upset co-workers' settled expectations, an employer is free to seek a voluntary modification in order to accommodate an employee's
- Managers and employees should be trained not to engage in stereotyping based on religious dress and grooming practices and should not assume that atypical dress will create an undue hardship.
- Employers should ensure that managers are aware that reasonable accommodation may require making exceptions to policies or procedures, where it would not infringe

on other employees' legitimate expectations. Employers should work with employees who need an adjustment to their work schedule to accommodate their religious practices. Notwithstanding that the legal standard for undue hardship is 'more than de minimis', employers may of course choose voluntarily to incur whatever additional operational or financial costs they deem appropriate to accommodate an employee's religious need for scheduling flexibility.

### Employees' best practices

- Employees should advise their supervisors or managers of the nature of the conflict between their religious needs and the work rules.
- Employees should provide enough information to enable the employer to understand what accommodation is needed, and why it is necessitated by a religious practice or belief.
- Employees who seek to proselytise in the workplace should cease doing so with respect to any individual who indicates that the communications are unwelcome.

### Conclusion

Since the attacks of September 11, 2001, the Equal Employment Opportunity Commission (EEOC) and state and local fair employment practices agencies have documented a significant increase in the number of charges alleging workplace discrimination based on religion and/or national origin. Many of the charges have been filed by individuals who are or are perceived to be Muslim, Arab, South Asian, or Sikh. In order to help people better understand their rights and to what extent they could apply for a reasonable accommodation, EEOC has posted detailed information on its website about national origin and religious discrimination, as well as information on how to file a charge. As mentioned above, whether the employer can accommodate one's religious practices will depend upon the nature of the work and the workplace. The employer is required to provide an accommodation unless it would impose an undue hardship on the employer's business. This means the employer is not required to provide an accommodation that is too costly or difficult to provide. The key is that the employee should work closely with the employer in finding an appropriate accommodation. In any case, the EEOC provides guidance on what constitutes illegal discrimination and positive steps one can take to exercise one's rights in the workplace.

# PART 2

## Reasonable accommodation in the EU context

The second session of the meeting placed the debate in the EU context. A presentation of the current state of play of approaches in law and policy as well as two national approaches were presented.



# A state of play of approaches in law and policy

## A state of play of approaches in law and policy<sup>16</sup>

### 1. Introduction: The RELIGARE project

**Katayoun Alidadi, researcher**, presented findings from the **European research project RELIGARE<sup>17</sup>** (Religious Diversity and Secular Models in Europe – Innovative Approaches to Law and Policy). This project, funded under the EU's 7th Framework Programme, focuses on the challenges presented by the increasing diversification of religious and other convictions and practices in Europe. Its aim is to draw up an inventory of the various contentious issues that have arisen in practice. The goal is to offer concrete policy perspectives, in the form of good practices or other recommendations, on how to manage Europe's increasing religious pluralism. One of the four areas explored by this project is the labour market. The project mainly has a state perspective, but the considerations for private companies and stakeholders are similar. The methodology used consists in a comparative legal research and sociological interviews.

The place of religion in the workplace remains controversial: some argue religion has no place in the economic context of the workplace while others emphasize the importance of freedom of religion in a setting where we spend a substantial amount of time.

### 2. The legal tools to manage, normalise or promote religious diversity

In order to address the possibility of adopting a legal duty of reasonable accommodation on the basis of religion in the workplace (both public and private workplaces), Katayoun Alidadi gave us an insight into existing measures at the national and European levels, which can already point to the existence of certain concerns, past attempts to address these concerns, and possible limitations of or gaps in these initiatives.

#### a. Human rights as a tool to protect or advance religious diversity

She mentioned that Article 9 of the European Convention

on Human Rights (ECHR) protects freedom of thought, conscience and religion<sup>18</sup> in its two aspects:

- the *forum internum* refers to the right to have inner thoughts and beliefs;
- the *forum externum* refers to expressions or manifestations of inner religious convictions in public and private spheres.



#### Religion in the workplace: Examples of case law in Europe

- Female Muslim teachers dismissed for wearing a headscarf in the classroom in a number of states;
- Female Muslim store clerks rejected for or dismissed from jobs in grocery stores because of their headscarves (Belgium, Denmark, France, etc.);
- The dismissal of a Sikh hotel employee for following particular dress and grooming practices (wearing a turban and carrying a beard) (The Netherlands);
- A female Muslim doctoral researcher/student's financial stipend being stripped because she - as a civil servant - wore a headscarf when conducting research at the University (France);
- The request of a Christian airline check-in assistant to wear a necklace with a large crucifix on the job rejected (United Kingdom);
- The refusal by a Muslim (higher education) teacher to shake hands with female students/colleagues;
- The accommodation of a Muslim grocery store clerk not to have to handle or be in touch with alcohol (Germany);
- The refusal and consequent dismissal of a Christian marriage registrar to officiate over same-sex partnerships or marriages (United Kingdom, the Netherlands);
- A Seventh-day Adventist wanting to observe a day of Sabbath.

<sup>16</sup> This section draws from Alidadi, K. (2011), 'Reasonable accommodation of cultural diversity in the EU context: the state of play of approaches in law and policy', paper prepared for ENAR's 3rd Equal@work European meeting on 8 December 2011, Brussels.

<sup>17</sup> The acronym RELIGARE seeks to evoke the original meaning of the word religion, that is, 'to link' or 'to form a bond'. The RELIGARE project started on 1 February 2010 and runs until 31 January 2013. More information and a number of project publications (including a policy paper on reasonable accommodation for religion or belief (May 2012)) are available at [www.religareproject.eu](http://www.religareproject.eu). 13 research teams from 10 States are involved: 9 EU Member States (Germany, France, the Netherlands, United Kingdom (England), Denmark, Spain, Bulgaria, Belgium and Italy) and Turkey.

<sup>18</sup> This covers "the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

## A state of play of approaches in law and policy

In the jurisprudence of the European Court of Human Rights, the ‘freedom to resign’ has been repeatedly found to be an adequate and sufficient protection of freedom of religion in the workplace. While there is nothing preventing a more accommodating position in this area, national courts have demonstrated a lack of enthusiasm in going beyond this interpretation. Consequently, in the current legal setting, freedom of religion - while recognised as a crucial right in Europe - can only be considered as a minor or merely supplementary tool when dealing with religious beliefs and practices in the workplace. It can be debated whether it is desirable to ‘rehabilitate’ this fundamental right by advocating for a more ‘maximal’ approach to human rights or rather to look at other instruments when it comes to protecting or advancing the interests of religious and non-religious employees in the workplace.

While the role of human rights is paramount in the legal systems of the EU Member States, a number of cases under Article 9 ECHR (freedom of thought, conscience and religion) and under Article 8 ECHR (right to respect to private and family life) illustrate that the language and technique of human rights is not necessarily sufficient or appropriate as a primary tool to protect or advance cultural diversity beyond shared common/minimum standards.

### b. Reasonable accommodation versus indirect discrimination

The right to a treatment free of discrimination on the basis of religion or belief has become firmly enshrined in the law: the **EU Council Directive 2000/78/CE** (‘Employment Equality Directive’ or EED) establishes a general framework for equal treatment in employment and occupation<sup>19</sup> and aims to combat discrimination in the employment field on the grounds of religion or belief, as well disability, age and sexual orientation. The Directive prohibits direct and indirect discrimination, harassment and instruction to discriminate on the listed grounds. Under EU law, individuals with disabili-



*Pascal Hildebert - ENAR, Ian Dodds - Ian Dodds Consulting, and Jozef De Witte - Belgian Equality Body*

ties benefit from reasonable accommodation in the workplace unless this would impose a ‘disproportionate burden on the employer’,<sup>20</sup> but there is no such right foreseen in the text on the basis of religion or belief. In several EU Member States, reasonable accommodation for religious beliefs and practices has been widely debated and remains controversial. While the EED has provided EU Member States with a largely unified discrimination language, interpretations under national anti-discrimination legislation can vary considerably. In addition, the European Court of Justice (ECJ) has not yet had an opportunity to decide on the scope and extent of protection against religious discrimination in the workplace. However, while there is no right to such accommodation under EU law,<sup>21</sup> the prohibition of indirect discrimination on the basis of religion or belief can and has in certain jurisdictions<sup>22</sup> indeed been interpreted as requiring a duty on the employer to provide reasonable accommodation to employees.

The prohibition of indirect discrimination is one of the cornerstones of EU non-discrimination law. This concept was developed through the jurisprudence of the ECJ since the 1960s in the area of gender equality and has been essential in tackling structural barriers for vulnerable groups. While ‘direct discrimination’ occurs when one person is treated less

<sup>19</sup> A new draft EU Equality Directive proposed to social protection, social advantages, education, and the access to and supply of goods and services available to the public, including housing. (Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM (2008) 426 final). In a number of EU Member States, the scope of application of the protection against religious discrimination is already aligned with the areas where racial or ethnic discrimination is prohibited.

<sup>20</sup> EED, art. 5.

<sup>21</sup> Also the new proposed EU Equality Directive 2008 does not include a duty on employers to reasonably accommodate.

<sup>22</sup> Including in The Netherlands and Germany.

favourably than another on the basis of one of the protected characteristics, 'indirect discrimination' refers to 'an apparently neutral provision, criterion or practice' which places persons because of such protected characteristic at a particular disadvantage compared with other persons.

The concept of indirect discrimination in fact would seem to be more encompassing and imply a much higher duty on employers compared with a duty to reasonably accommodate for some beliefs or practices. Indirect discrimination does require a group disadvantage (the claimant must show that a requirement would put persons of a particular religion or belief at a particular disadvantage compared with others). In contrast, reasonable accommodation can assist an individual religious employee and requires no such showing of group disadvantage. Because of this group disadvantage requirement, certain claims are blocked under the equality framework.

In principle, reasonable accommodation has a number of advantages compared to indirect discrimination, and would bring an 'added value'. Unlike the concept of indirect discrimination, accommodation is somewhat more intuitive and - even if controversial in some circles - less pejorative than discrimination: the reasonable accommodation rhetoric - that is currently not available in Europe - can be expected to resonate better in a conciliation mode of resolution than in the conflict-based discrimination framework. Indeed, a US employer can be approached for failing to reasonably accommodate an employee, while the European employer is responsible for *discriminating* against an employee on basis of his or her religion. Second, as indirect discrimination is an abstract concept - developed through the case law of the ECJ in the area of gender equality - it gains practical meaning only in concrete contexts and thus depends more on judicial decisions. This is not to say that the duty to reasonably accommodate requires no case-by-case interpretation.

### c. Reasonable accommodation versus 'deep equality' or the 'structural change approach'

To illustrate the critique offered by 'deep equality' advocates, Katayoun Alidadi gave the example of the official public holiday system which, in most EU Member States, is still broadly based on the Christian calendar. Under the rea-

sonable accommodation 'solution', the existing holidays would be kept in place but minorities would have the right to have time off during their religiously significant days, unless it would amount to an undue hardship on the part of the employer. The reasonable accommodation frame, even if sometimes seen as 'privileging', does not actually place these individuals in a similar position because:

- There are reasons in practice why an employee would decide not to ask for a day off for a religious holiday even if this is very important to him or her, even if he or she has the legal right to ask for it. Coping strategies can then mean exclusion.
- Employees adhering to majority religions or without any religion do not have to request or negotiate anything and they do not run the risk of a negative answer by the employer.

A 'structural change approach' could imply a change of the holiday schedule. It holds many benefits as opposed to the reasonable accommodation route but it implies a much more profound change, and it will be more controversial and arguably less feasible. This exercise is particularly challenging and difficult since this means that 'neutral' measures upon closer consideration will still disadvantage or advantage some.

In Europe, it seems, in terms of policy at least, that emphasis on a more concrete and immediate reasonable accommodation tool is justified as opposed to a 'structural or deep approach' which is a rather aspirational and underdeveloped perspective. This does not mean that when designing rules, the aim should be to include as many interests as possible and choose avenues that accommodate all (or rather, that do not restrict or disadvantage certain groups). This would basically consist of mainstreaming religious equality in new measures. Sometimes it is possible to choose concrete ways to avoid having to deal with reasonable accommodation as various interests have been taken into account when setting up the initiative.

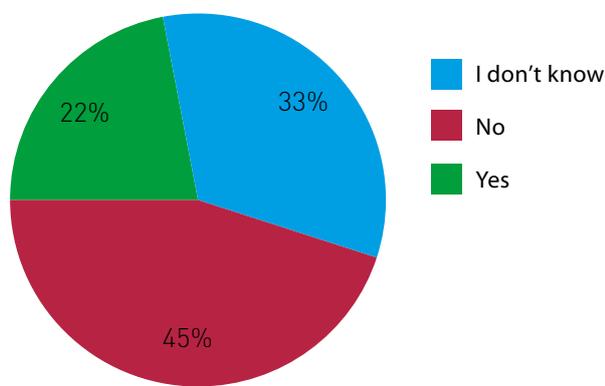
### d. Reasonable accommodation versus 'pragmatism'

Besides reasonable accommodation as a right, there are also (negotiated) accommodation measures in practice (or as the

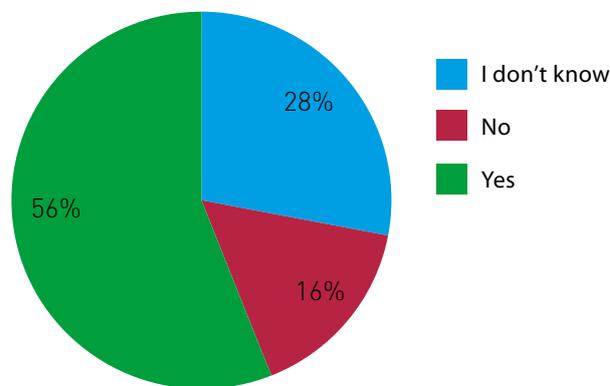
## A state of play of approaches in law and policy

### Survey results on legal standards for reasonable accommodation in Belgium and the United Kingdom<sup>23</sup>

In Belgium, are there clear legal standards to deal with reasonable accommodation?



In the UK, are there clear legal standards to deal with reasonable accommodation?



Canadian Bouchard-Taylor Commission called it, 'concerted adjustments'<sup>24</sup>). It is difficult to gain insight into their implementation on the ground (apart from some examples reported in the media), but the non-legal / non-conflict mode in which they are to be situated can be expected to offer many examples of good practices.

The 2010 Belgian study presented further in the report highlighted the importance of experiences on the ground by showing that most accommodations have been decided on a case-by-case basis. However, this study also shows that a discretionary way of dealing with requests leads to legal insecurity, unequal treatment and arbitrariness. It was argued that employers are more inclined to consider accommodation requests made by groups of employees (who often can also rely on the support of trade unions), and less those of individual workers. Practices remain fragile and often depend on the goodwill of stakeholders: nothing prevents a change

of heart and reversal of a voluntary accommodation, sometimes even at the whim of the employer. This also highlights the importance of transparent company policies.

It was also reminded that these solutions are to some extent also embedded in the law. The introduction of reasonable accommodation and a legal standard for its application does not mean that pragmatic, voluntary accommodation would become moot, meaningless or ineffective. Rather, the negotiation between parties (possibly one 'weaker' than the other) will then be transformed and from then on take place 'in the shadow of the law' (as in case of a break-down or change of heart legal redress will be available). The law could thus be seen to offer certain impulses to both employer and employee to negotiate accommodation: the knowledge of these protections and the possibility of legal action stimulates parties to negotiate in case of a problem. Here again, the socio-economic situation of minorities in Europe justifies that the law offers them redress. The adoption of a legally enforceable duty to accommodate religious observances in certain cases could thus affect the bargaining position of those employees who need it the most. Such a duty would also help in sending out the right signals to disadvantaged ethnic and religious groups.

<sup>23</sup> 44% of the respondents to the preparatory survey answered that there are legal standards to deal with reasonable accommodation in their country, whereas 37% judged there were not. Many respondents believed there was no legal standard in their country, especially in France, Belgium, Austria, Hungary, Poland, Cyprus and Greece. On the other hand, respondents from Ireland, Italy, the United Kingdom, Sweden and Germany believed there were indeed legal standards. It is also salient that a significant number of respondents did not know what to answer, making up to 20% of all the respondents.

<sup>24</sup> See Bouchard-Taylor Commission, Building the Future: A time for reconciliation, Montreal, 2004, [www.accommodements.qc.ca](http://www.accommodements.qc.ca) (chaired by the sociologist Gérard Bouchard and the philosopher Charles Taylor)

#### e. Other tools

Besides human rights, non-discrimination and reasonable accommodation, other tools could also serve to normalise, protect or advance religious diversity in the workplace: these include mainstreaming, positive actions, positive duties to promote equality on the basis of religion or belief and between various religious communities. Yet another option is to address the underlying power differences and structural (or taken-for-granted) rules, measures and practices in various areas (a type of mainstreaming but for existing rules). In fact, certain Member States have intensified their approach to religious discrimination and diversity by adopting one or more of these more proactive techniques of protection, advancement and mainstreaming of religious equality.

#### f. Conclusion: the EU context

Considering the often problematic socio-economic status of ethnic and religious communities (e.g. low participation rates, high unemployment, pay gaps, occupational segregation, lack of progression to senior levels), we should consider the actual opportunities and signals that are currently being sent out to religious minorities through law and policy, in order to fully include these individuals and groups by encouraging a meaningful participation in the labour market.

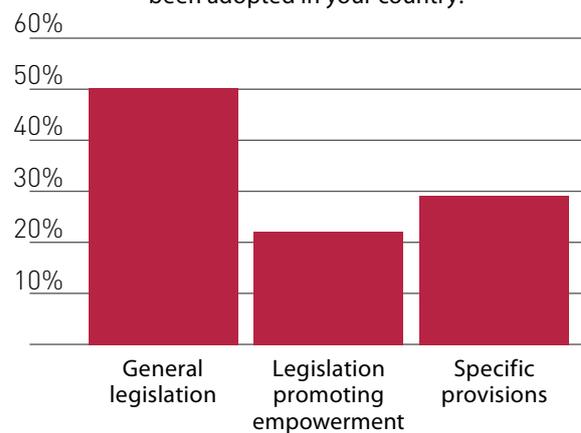
It is clear that reducing inequalities and fighting prejudice and discrimination is a key objective of labour law policy. More participation will allow society to tap into the skills and abilities of all individuals and groups without exclusion at a time Europe needs this most. Integrating Europe's workforce will reduce costs to the unemployment system as well as improve social cohesion in the long run.

Within its own limits, the tool of reasonable accommodation for religious beliefs, observance or practices in the workplace would be a good way of introducing more equal opportunities for minorities and thus a good tool for certain countries to manage cultural and religious diversity. This is also why reasonable accommodation is stressed by some as a means to realise substantial equality while others attack it as creating 'privileges' and jeopardising equal treatment (formal equality) between employees. This means that accommodation cannot be considered a limitless right to workplace

adaptation. Rather, it offers a frame for negotiation in labour relations on the ground. Reasonable accommodation enables negotiation of individual adjustments that will make life for religious individuals in the workplace possible, more practical and certainly more enjoyable. Katayoun Alidadi highlighted that the added value of the reasonable accommodation concept has to be evaluated in light of other available instruments (each with their pros and cons).

#### Survey results on the type of legal standards for reasonable accommodation<sup>25</sup>

What kind of legislation has been adopted in your country?



<sup>25</sup> The respondents who answered 'yes' to the previous question believed that, for the most part, legal standards dealing with reasonable accommodation were in place due to general legislation (51%). Legislation promoting empowerment was thought to be encompassed by the law in some cases, whereas specific provisions were seldom thought to be encompassed by the law.

# Concrete examples of different national approaches

## Concrete examples of different national approaches

### 1. Belgium

**Jozef De Witte, Director of the Centre for Equal Opportunities and Opposition to Racism (CEOOR)**, presented the Belgian equality body's approach to reasonable accommodation. The Belgian anti-discrimination law covers not only labour market and services but all aspects of social life. However, reasonable accommodation in Belgium is only foreseen for the ground of disability. In Belgium, public services should be neutral but this concept is sometimes misunderstood. As an example, some Belgian politicians argue that religious symbols should be banned on the ground of neutrality. The law should not be interpreted, however, to restrict freedom of religion and belief, or practices in private and public spheres.

The CEOOR is not in favour of having strong legislation for reasonable accommodation of cultural diversity. Its position is that each case should be handled separately. The discussion on what is religion and what is culture is endless. In addition, each job is very different as some allow for more freedom than others, especially high skill jobs which enable more flexibility. For this reason, De Witte encourages employers and employees to engage in a discussion. Reasonable accommodation should be a negotiation, but ideologies should be avoided. Often employers panic when religion is at stake. The legitimate interests of both parties should be considered and an attempt should be made to accommodate the interests of both sides. De Witte argued that there is a need to focus on common interests rather than contentions. However, values should also be taken into account, and moreover no infringements of other grounds and rights should transpire (e.g. gender).

The ultimate goal would be to find a universal design, where accommodation would no longer be necessary (i.e. the idea of deep equality), where there is no average employee and where differences are taken into account. De Witte believes the business case for diversity should be put forward and presented the example of a hospital's solution to the shortage in nurses in Belgium, as it allowed nurses to wear headscarves with the logo of the company on it. Being open to hiring Muslim nurses and developing a creative approach with the logo led to a competitive advantage and a win-win

solution for all involved. He continued by recommending that human resource policies need to change in Belgium and that trade unions must also adapt to the reality and embrace diversity.

The CEOOR is in favour of reasonable accommodation negotiations and of structuring it to some extent to ensure it is taken seriously. Nevertheless, De Witte does not agree with providing ready-made answers. It is difficult to predict what demands will be made, so rigid and strict legislation is not the answer. He concluded by saying that reasonable accommodation should be applied for all discrimination grounds, including having children. All stakeholders should bear in mind that when people ask for reasonable accommodation, it is against the background of being able to perform well and do a good job.

### 2. The United Kingdom

**Dr Ian Dodds, Chief Executive Officer of Ian Dodds Consulting (IDC)**, presented the UK approach. He started by highlighting the UK's powerful equality and human rights legislation:

- The Race Relations Act 1976 - protects against discrimination on grounds of race, colour, nationality, and ethnic and national origin.
- The Race Relations (Amendment) Act 2000 - introduces a statutory duty on public bodies to promote race equality, and to demonstrate that procedures to prevent race discrimination are effective.
- The Employment Equality (Religious or Belief) Regulations 2003 - protects against direct and indirect discrimination, harassment and victimisation on grounds of religion or belief in the work place.
- The Equality Act 2006 - outlaws discrimination in the delivery of goods, facilities and services on the grounds of religion and belief.
- The Equality Act 2010 - addresses, among other things, discrimination in recruitment issues, pay and conditions, promotion and references. The primary purpose is

to protect people from discrimination or harassment in the workplace. As part of the Equality Act 2010, the government issued a new public sector Equality Duty (2011). Under the Equality Duty, all public sector employees will be asked to state what their religion (and sexuality) is. The aim is to 'eliminate unlawful discrimination, harassment and victimisation' on grounds of age, disability, gender reassignment, pregnancy, race, religion, sex and sexual orientation.

Despite this vast array of legislation, discriminatory outcomes remain in the UK. Dodds reported that between 1971 and 2006, the non-white minority ethnic population tripled in Britain, representing 6.6 % of the total British population in 2006. In London, one out of four inhabitants was from a non-white minority ethnic population in 2006 (27.1% in 2006).<sup>26</sup> This shows that the United Kingdom's ethnic and cultural profile has changed a lot in the last decades. In parallel, inequalities have increased. According to recent research, black and Asian minority ethnic workers have lower pay than their white counterparts, are more likely to be unemployed,

and are less likely to be found in higher management. Many people from ethnic minority communities work in sectors where low wages are common. In the UK, over 25% of Pakistani and Bangladeshi employees, 15% of Indians and 11% of black people are low paid compared to 10% of whites. Low wages may be related to the difficulties ethnic minority workers face in gaining promotion to higher levels of management. Indeed, minority ethnic workers struggle to reach the top. A survey of Britain's 100 biggest companies by the Runnymede Trust suggests that just 1% of senior management posts were held by minority ethnic people, despite the fact that they make up 7% of the population as a whole. The difficulties that minority ethnic people face at work have led many to conclude that self-employment might be a better path. One in four Pakistani workers now say they are self-employed.

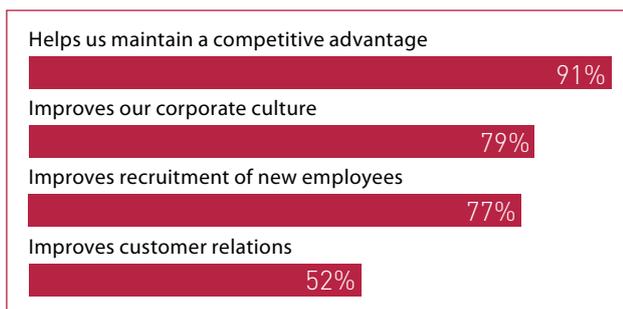
The question is how to tackle the challenge of managing cross-cultural differences, which is a reality in the UK, in order to decrease these inequalities. According to Dodds, the manager's behaviour is the main influence, affecting every employee and creating resonance with each individual. Ian Dodds Consulting has developed a process developing inclusive leadership behaviour to improve inclusive cultures in companies (see best practice example below). Dodds also emphasised the power of 'micro-messages' and unconscious bias as a major cause of inequalities. Indeed, the cumulative effect of positive and negative 'micro-messages' makes the difference. Whether the messages are intentional or unintentional, they convey value or devaluation. These messages let people know how we really feel about them. Hence, a person cumulatively receiving positive micro-messages will feel valued and respected, their self-esteem will be increased and they will feel included. Those who experience patterns of negative micro-messages (micro-inequities) from others will feel devalued and excluded.



In 2009, the programme '**Making the Most of Difference**' (MMoD), designed and delivered by Ian Dodds Consulting in over 160 countries and led by Ian Dodds for the Foreign and Commonwealth Office, was awarded the World Diversity Leadership Summit 2009 Diversity Innovation Award. The award was judged by a panel of Fortune 100 Companies and MMoD was recognised for its innovation and impact as a strategic intervention aimed at building a high performance, inclusive culture for people from different backgrounds, e.g. men, women, different races and ethnicities, different religions, different generations, different sexualities, different physical and learning abilities.<sup>27</sup>

<sup>26</sup> Source: 1996 Black Community Report - Amenta Marketing, Cosmopolitan London - London Research Centre, Labour Force Survey - ONS.  
<sup>27</sup> See [www.iandoddsconsulting.com/index.php?linkname=different-without-prejudice](http://www.iandoddsconsulting.com/index.php?linkname=different-without-prejudice)

A survey shows how serious diversity initiatives have impacted companies' bottom line:



Source: "Impact of Diversity Initiatives on Bottom Line", Society of Human Resource Management (SHRM)

Dodds mentioned some flashpoints for reasonable accommodation of diversity in the workplace in the UK:

- **Devotions and religious observance:** This includes the provision of places to pray and the granting of time-off to do this.
- **Appearance - dress and jewellery:** What is permissible to wear at work, whether as part of a uniform or an accessory.
- **Diet/food:** This involves the provision of workplace cafeteria/canteen food for those with religious sensitivity about what they may or may not eat.
- **Socialising:** This includes such things as meeting in pubs and physical contact between men and women, such as shaking hands.
- **Festivals, holidays and time off:** World religions do not share the same 'holy days'. Issues arise at the workplace when employees ask for additional days off to celebrate a festival which in the UK is not an official bank holiday.
- **Other issues:**
  - **Collecting data about employees' beliefs:** Government argues that in order to verify that anti-discrimination laws are working, it is necessary to find out the religious affiliation of employees.



### Examples of reasonable accommodation commitments in codes of ethics

**Thomson Reuters** is committed to reasonably accommodating employees' sincerely held religious practices. For purposes of this policy, a 'reasonable accommodation' is a modification or adjustment to a job, the work environment, or the way things usually are done that does not pose an undue hardship, so Thomson Reuters. If you believe you [...] need a religious accommodation, you should contact your Human Resources department or manager to request an accommodation. Thomson Reuters will work with you to identify any reasonable accommodations. Source: Code of Business Conduct and Ethics, Thomson Reuters, 2008

**US Foodservice** aspires to be an industry leader in cultural diversity and the quality of our workplaces. USF recruits, hires, trains, promotes, disciplines, and provides other terms and conditions of employment without regard to a person's race, colour, religion, sex, sexual orientation, age, national origin, disability, special disabled veteran or Vietnam veteran's status or other basis protected by federal, state and/or local laws. This includes providing reasonable accommodation for associates' disabilities or religious beliefs and practices. Source: Serving up Good Conduct, U.S. Foodservice, 2005

- **Recognition of affinity groups or networks:** Some companies formerly recognise religious affinity groups in the workplace as a means of informing management of issues around discrimination of a religious minority. For instance, the Ford Motor Company has supported these for more than a decade.
- **Proselytising issues:** This addresses the imperative of some religions for their adherents to try to convince others of the importance of their personal beliefs. Religious proselytising takes various forms. These can range from the distribution of literature and meeting invitations to 'witnessing' by speaking about faith to anyone - not only colleagues. An example is that of a nurse who shared her religious convictions with a patient and offered to pray with them.

## Perceived benefits and costs

During the discussions, Mohammed Aziz from ENAR UK mentioned a case in the European Court of Human Rights concerning reasonable accommodation, involving a Christian civil servant employed to register marriage licenses. She refused however to perform partners registrations for same-sex couples and lost her case in court. However, some argue that there was a way to accommodate, for example, by transferring this person to another position or to other tasks that would not affect any harm. Aziz concluded by saying that if accommodating does not harm anyone, it should be done. The harm principle should be guiding though it also depends on the context.

It was also suggested during the discussion that it was better to present reasonable accommodation as being available not only on a certain basis but for a variety of reasons. It should not matter why accommodation is requested as long as the intention is to enable an individual to perform well and do a good job. The issue of work life being important for everyone was also highlighted during the discussion. However, other participants argued that religious accommodation was more specific and has a special status. Discrimination because of religion creates the specificity, and religious freedom is one of the fundamental oldest human rights. Some participants also mentioned

that people sometimes panic when it comes to religion, especially when Islam and Muslims are concerned. Caution is thus needed; we have to be careful not to essentialise the issues as it would not bring concrete solutions for individuals. Accommodating religion can sometimes be seen as granting privileges, according to a UK participant, which can create tensions. Finally, it was highlighted that unconscious bias is about sustaining privileges and power. It is therefore important to create reasonable accommodation spaces where majority privileges can be counteracted.

### Perceived benefits and costs of reasonable accommodation in the workplace

The preparatory surveys from the Equal@work European meeting included a number of questions aimed at identifying the benefits and the costs of reasonable accommodation in the workplace. The majority of the respondents answered that these benefits are indeed very important, as they bring gains in terms of performance and stronger motivation among workers, who feel recognised and respected by their company or organisation. Reasonable accommodation is thus perceived to trigger stronger identification and loyalty to the company and increased productivity. Moreover, the respondents stressed the positive effects of reasonable accommodation of cultural diversity, as this creates greater cohesion and mutual respect in the workplace, allowing for alternative ways of thinking and behaving, and broadening people's minds. Different cultural views can even expand market borders, according to some respondents working in companies.

Half of the respondents believed there were no costs for employers in putting reasonable accommodation of cultural diversity in place (51% in companies and 41% in other areas). The other half noted some minor costs (a decrease in productivity due to leaves, trainings, prayer room spaces), but most argued that benefits actually outweigh the costs.



In December 2009 as part of their new diversity and inclusion communication strategy, **Sodexo UK & Ireland** embarked on **raising awareness of religion and belief** through the launch of a series of Inclusion Fact Sheets, e.g. December festivals, Ramadan, Easter. As a result of efforts to raise awareness of religion and belief in the workplace, a major client was able to successfully make accommodations for a number of Sikh staff potentially affected by a 'bare below the elbows' policy, because they wear the Kara bracelet. As a result of the negotiations between Sodexo UK & Ireland and the client, the outcome was a satisfactory compromise that allowed staff to continue wearing the bracelet while still achieving the aim of infection control. Sodexo UK & Ireland won the Employers' Forum on Belief 2010 Award for best private sector for this initiative.

# PART 3

## Looking into the grassroots practices of employers: Results of the workshops and surveys

The workshop objectives were to provide a forum for discussion, debate and exchange of ideas and good practices concerning reasonable accommodation of cultural diversity in the workplace. The intention was to define approaches to overcome barriers, to draw out good practices and lessons learned from different stakeholders that could be applied more generally when faced with a specific problem, and to establish a series of recommendations for action at macro and micro levels. In particular, the participants sought to:

- Realise the potential of the different tools available and ensure that they respond to the real needs of minority communities in Europe;
- Compare practices of reasonable accommodation, analyse the results of the survey and compare them with the participants' perspectives.



## The need to inform the debates

### The need to inform the debates with the reality of practices on the ground

**Professor Dr. Andrea Rea from the Université Libre de Bruxelles** presented a research study describing and analysing practices of reasonable accommodation of cultural diversity in Belgium. This research was done at a time when there was a need to inform the media and political debates in Belgium about the reality of practices on the ground and was commissioned by the Belgian equality body. In this research, examples of employee requests for reasonable accommodation of cultural diversity were collected. These requests, the responses, the solution processes, the involved actors, as well as the arguments were described and further analysed.

This qualitative study was not representative but characteristic. 417 requests were first collected and from these, a typology was constructed, looking for linkages between types of requests, types of solution processes, types of arguments and characteristics of the 'companies'. The results showed that the most frequent requests/practices were:

1. Leave because of religion (20.6%)
2. Extended holidays (mostly because of a family visits in the country of origin) (18.9 %)
3. Adjustment of dress codes (mostly headscarves) (17.5 %)

The applicants were mostly Muslims. A minority of demands came from Jews, Sikhs, Jehovah Witnesses and Catholics. There were also more requests for reasonable accommodation from low skilled workers. It was first reasoned that most Muslims in Belgium are low skilled, but this was not the reason attributed to their requests for reasonable accommodation. Rather, low skilled workers were perceived to be more likely supervised and thus had less autonomy than high skilled workers, as well as less timid in requesting reasonable accommodation in groups.

The analysis of responses shows that there is a large consensus about the limits of accommodation. No requests were granted which were in conflict with other fundamental rights. Most of the responses were informal, often dealt with case-by-case, sometimes unwritten, very seldom established concretely as a right or a rule. Dr. Rea assesses that this practice has both negative and positive consequences. On the one hand, it can lead to arbitrary decisions, inequality and uncertainty; on the other, it enables a contextual and flexible approach and less politicisation. The responses also show that the place of reli-



*Workshop participants*

gion in the public sphere is quite different in French-speaking and Dutch-speaking Belgium, the French-speaking adopting a strict neutrality concept, while Dutch-speaking promote active pluralism. From this analysis, Dr. Rea presented a list of solution processes, from the least formal to the most formal.

Reasonable accommodation accepted or refused after:

- Negotiation between colleagues
- Interventions by department heads
- Staff meeting deliberation following up on initiatives by the human resources department
- Consultation of a trade union representative or deliberation in the works council (inclusion in the work regulations)
- Intervention by the highest hierarchy
- Intervention by most senior level after consultation of external experts (imams; diversity professionals)
- Intervention by the court<sup>28</sup>

It was also found that when no solutions could be found, especially in the public sector, 'backstage practices' were developed. In companies, the reaction was very pragmatic, not ideological, except about the headscarf. In Belgium, where trade unions are very important, the opposition to diversity is often not by employers but employees. Conflicts between and among workers are a big problem. The Belgian

<sup>28</sup> Adaptation & elaboration of the typology of the Canadian jurist J. Woehrling (1998) to the Belgian context.

# Comparing practices of reasonable accommodation

trade unions, one of the main actors in promoting equality in employment, are not convinced of the need to defend claims for religious reasonable accommodation, according to Dr. Rea. On the other hand, imams and other mediators were found to be useful for companies to find solutions.

It is also interesting to see what kind of argumentation is used to accept reasonable accommodation or not. It was found that economic arguments prevail in both the public and private sector. Likewise, ideological principles were also mobilised (equality, neutrality, respect and recognition), as well as circumstantial argumentations (hygiene, fear of snowball effect, stigmatisation, etc.). Although not the most frequent, the most controversial issue identified was in relation to dress codes, especially wearing a headscarf.

## Comparing practices of reasonable accommodation

### 1. Identifying the most common challenges and different ways of addressing them

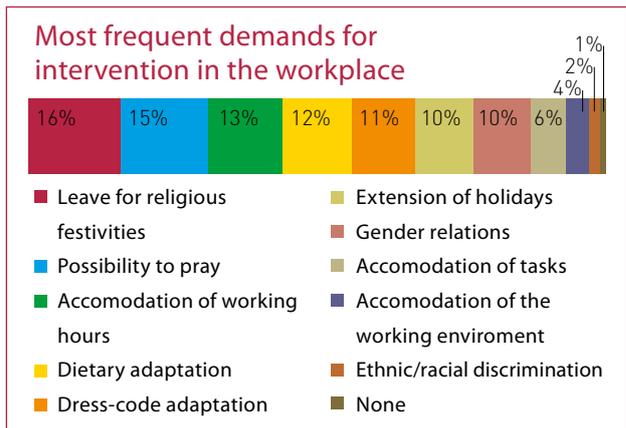
#### Setting the context

The preparatory surveys from the Equal@work European meeting included a number of questions aiming at identifying the most common challenges and different ways of addressing these. According to survey respondents, the most frequent demands for intervention in the workplace concern: leave for religious festivities (18%); possibilities to pray in the workplace (14%); accommodation of working hours (13%); and dress code adaptation (10%). The results showed that there are no real differences between the different stakeholders, though 'gender relation' problems stand out in some areas, while it remains of minor focus in other fields.

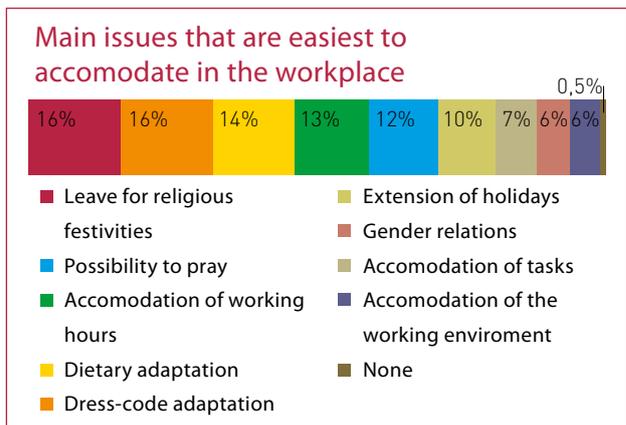
The main issues easiest to accommodate are dress code adaptation (16%), leave for religious festivities (16%) and dietary adaptation (14%). Possibility to pray in the workplace is also considered to be easy for stakeholders other than com-

panies to respond to, mainly in the UK. However, gender relations were seldom chosen as an answer.

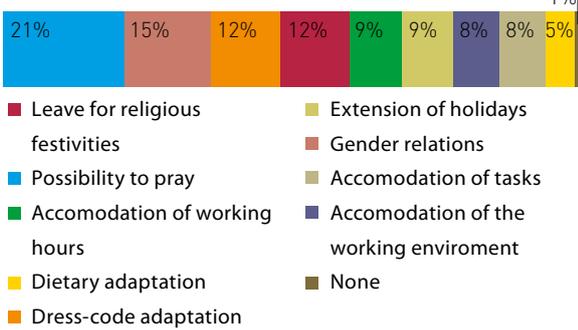
The most problematic issues to accommodate, according to the survey results, are the possibility to pray (21%), gender relations (15%) and leave for religious festivities (12%). However, in France and Belgium, dress code adaptation takes a more prominent place (almost 40%). In the UK, the possibility to pray is not considered to be problematic within the private sector (around 8%), whereas it is in the other areas.



The most frequent example of reasonable accommodation of cultural diversity in the company or organisation of the respondents was in relation to getting paid or unpaid time off for religious holidays or festivals/pilgrimage. A request for a chapel or a space to pray being made available in the organisation of the respondents was one of the most recurrent answers.

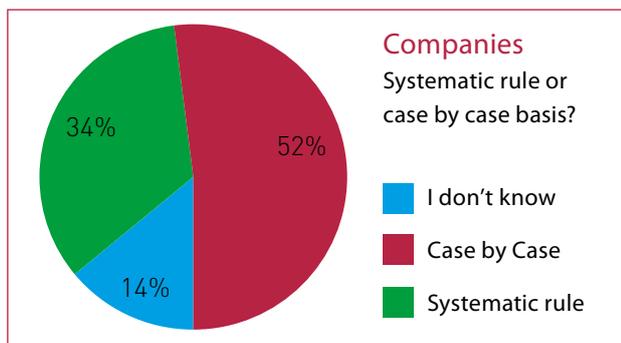
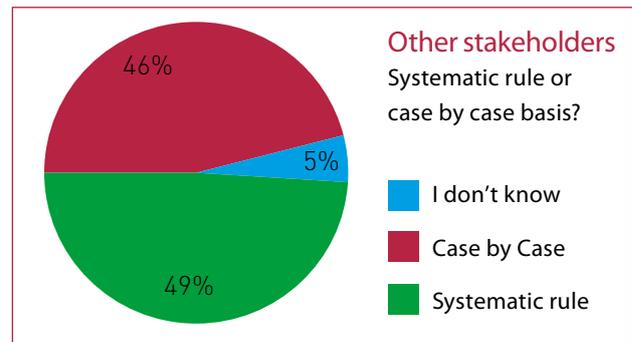


### Main issues that are problematic to accommodate in the workplace



According to the survey respondents, problems should preferably be dealt with on a case-by-case basis (49%), but still 42% of the respondents would prefer a systematic rule. Some respondents suggested applying a case-by-case analysis for the first cases that occur, which would make up a rule for similar situations. The case-by-case rule prevails in companies (with 52%), while the systematic rule prevails for other stakeholders (49%).

The respondents proposed a range of recommendations to improve the implementation of reasonable accommodation in the workplace. They suggested raising awareness among managers and in the employment sector (through trainings, workshops, communication campaigns, etc.) in order to show accommodation is beneficial and does not cost a lot of money. Fostering dialogue between employers and their employees was also encouraged, as were engaged talks with relevant community group.



### Summary of the discussions

Participants identified further challenges in relation to reasonable accommodation of cultural/religious diversity for which they were unable to find direct solutions. This included issues around sustaining the privileges of the majority; dealing with advantages and disadvantages of religious schedules; addressing the imbalance of power in negotiating rights; intersectionality and multiple discrimination; censorship and denial on the part of both employers and employees; and the major problem resulting from denying the existence of any problems.

### Challenges identified during workshop discussions and ways to address them:

Most common challenges	Ways of addressing them
Request for a prayer room	Propose a neutral room, not necessarily a 'prayer room', but a 'relaxation room' for example
Special dietary requirements	Propose a variety of different types of food that can meet these requirements
Cultural or religious dress	Establish a dress code guide
Others' perceptions regarding visibility of differences and specific practices	Organise diversity trainings and communication campaigns
Conflict of rights and demands	Address requests on a case-by-case basis in order to be inclusive with everybody while respecting broad standard guidelines

# Comparing practices of reasonable accommodation



Bruce Roch, Corporate Social Responsibility Manager of Adecco Group France, presented a case study of an employee who refused to shake hands with females. He presented a methodology developed by his company for employers to deal with such cases, involving the following questions:

- Is it a security problem?
- Is it linked to respect of safety of installations?
- Is it a hygiene problem?
- Does it impede on the person's mission/work?
- Does it prevent a good team organisation?
- Does it have an impact on the liberty of conscience of other colleagues or does it amount to proselytising?
- Does it prevent the company from achieving its sales target?

This is considered a best practice because of the process developed by the company to determine which types of requests for accommodation should be granted in future.

## 2. Strategies for stakeholders' participation in reasonable accommodation plans

### Setting the context

When considering who should be included in negotiations on reasonable accommodation, 'trade unions' was the most frequent response from survey respondents (around 30%). This was followed by the Company Board (2nd answer for companies / 4th for other stakeholders). The individual and the employer, and community groups were identified as the 2nd answer for the public sector, NGOs and other stakeholders.



### Summary of the discussions

The following stakeholders were identified during the workshops as key partners in implementing reasonable accommodation plans:

#### Internal stakeholders

- Employers and employers' associations
- Trade unions
- Employees
- Health and safety committees in partnership with NGOs
- Ad hoc committees within SMEs mobilised when there is an issue

#### External stakeholders

- Representatives of local governments
- NGOs
- Equality bodies and anti-discrimination bureaus
- Customers and majority groups
- Civil society
- Marginalised groups
- Consumer organisations

There was a common agreement that the question of who should be involved depends on the issue - there is no one size fits all. It should be tailored on a case-by-case basis. The practice of involving multiple stakeholders needs to become more widespread and there is a need to develop a code of practice for this. Participants agreed that in the case-by-case approach, three aspects should be respected: the right to non-discrimination, the business need, and the personal circumstance.

The **strategies** to be put in place with the different identified stakeholders entailed the following:

- Rapidly set up a committee mandated to answer questions regarding reasonable accommodation.
- Develop communication tools to deal with fears among employees and employers.
- Organise legal trainings of managers for them to understand the managerial implications of the law.
- Develop guidelines or codes of conduct to create a workplace that is sensitive to diversity.
- Develop transversal dialogues and create a safe space for such dialogues: this helps to anticipate and prevent further problems.
- Train managers in interactive behaviour skills.
- Create a flexible negotiation space with different parameters relating to the company.
- Use diversity labels.
- Use trained mediators (internal or external).
- Proactively offer an alternative to accommodation for issues that might arise in future, for instance, in company guidelines.
- Organise trainings for civil society and marginalised groups about their rights to enable them to participate in negotiations.
- Deal with individual cases as much as possible on a case-by-case basis, whilst keeping the business case in mind.
- Employ all diverse groups at all levels to ensure workforce diversity.
- Ensure more connection between top and bottom staff in order to better anticipate potential issues.
- Involve consumer organisations to make statements promoting diversity in the workplace.
- Organise awareness raising campaigns in partnership with multiple stakeholders.



*Workshop participants*

### 3. Methodologies for transferable practices and tools

Several methodologies were mentioned:

- Diversity conflict transformer training method;
- Company networks that gather, share and transfer good practices;
- Labels and certifications that help companies to identify their good practices in reasonable accommodation;
- Diversity management as an integral part of the management and business strategy and integrated in business schools.



Jean-Michel Monnot, Vice Chair of the Diversity and Inclusion group at **SODEXO**, presented the internal policy of **SODEXO** which seeks to accommodate several demands. Catering services being the core of its business, 90% of the staff works at the client's office.

Three years ago, the company decided to develop standard guidelines to accommodate different requests. These policies aimed to respect local cultural and religious aspects. **SODEXO** decided to develop a **catalogue for uniforms respecting all religious dress codes and symbols** that could be worn by every employee in all the 80 countries in which **SODEXO** is represented. The main purpose was to pursue a commitment to respect personal belief. Before the development of the catalogue, only the Swedish branch had a good practice example, as it designed a headscarf with **SODEXO's** logo for female employees.

# PART 4

## The way forward - Legislation and reasonable accommodation; advantages and disadvantages of legislating

The final session of the meeting explored further possibilities of approaching reasonable accommodation. In the light of the day's discussions and arguments put forward, a panel of experts presented the advantages and disadvantages of legislating on reasonable accommodation.

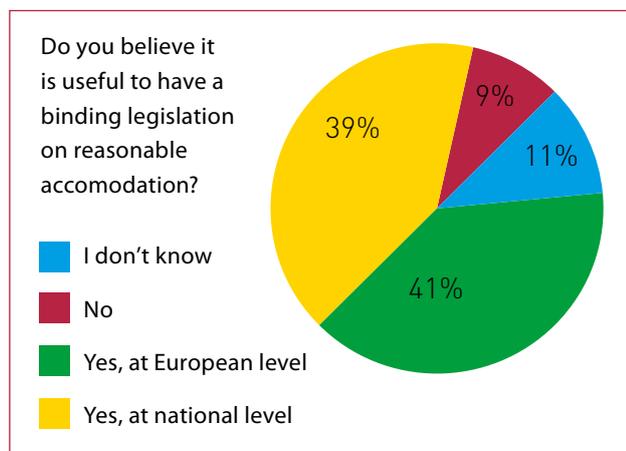


## Arguments in favour of legislating

### Arguments in favour of legislating at EU or national level on reasonable accommodation

Before the experts presented their arguments, participants in the room were asked to vote for or against legislation on reasonable accommodation. Eight persons were in favour. No one was against it. The rest of the audience was undecided. After the debate, however, several of the voters changed their minds and were swayed by the discussions, since six were in favour and three were against legislating on reasonable accommodation. The rest was still undecided.

The respondents to the preparatory survey consider it is useful to have binding legislation on reasonable accommodation at European level (41%) and at national level (40%), half of them choosing both answers. Few people think this is not useful at all (9%).



Moreover, survey respondents ask for more legislation coming from the government such as legislation that obliges employers to implement reasonable accommodation, and a call for defining reasonable accommodation in the law, since in the UK it could be mistaken for 'reasonable adjustments' which target staff with disabilities.

According to **Claudia Menne from the European Trade Union Confederation (ETUC)**, legislation provides a concrete framework with a reliable basis and security. On the business side and also for the public sector, it is easier to adapt to the legislation and respect it. But we know already from anti-discrimination legislation that implementation is difficult. It also depends on the kind of legislation intro-

duced, e.g. if sanctions are provided for or not. Legislation giving incentives would be easier in this case. It could be in the form of financial assistance, for instance.

**Gabriel N. Toggenburg from the European Fundamental Rights Agency (FRA)** mentioned that for the moment the FRA does not have any position on reasonable accommodation. Personally and with his legal background in mind, he thinks that the social model put in place for disability should be extended to other grounds and he sees no reason why it could not be. There is no argument against EU competence. Reasonable accommodation already exists in secondary law. Because of contradicting national systems, legal certainty would be an argument in favour of legislation.

**Andréas Stein from the European Commission** said that there is a legal approach and a pragmatic approach. We first have to assess whether legislation would really provide benefits and what it will bring to legislate more specifically and more explicitly. There is a link between indirect discrimination and reasonable accommodation and indirect discrimination is covered by the European Union Directives. To some extent they are two sides of the same coin. In Canada, reasonable accommodation was based on the concept of indirect discrimination. The advantage of legislating would be that something that could be considered as an invisible issue would become much more visible and would be put on the agenda. But the advantage is smaller than it seems.

Eugenia Relaño, from the Spanish Ombudsman Office, said that if the employer has a duty to accommodate, it is a positive mandate. Discrimination on the other hand is negative. If the employee knows that the employer has the duty to accommodate, she or he knows that she or he can come with demands. In the case of indirect discrimination, the employee has to prove it in court.

Mohammed Aziz from ENAR UK agreed with Andréas Stein, but cases in the European Court of Human Rights reduced the scope of reasonable accommodation compared to what was envisaged at the time of the Employment Equality Directive. If the European Court provides restrictive judgement, they make the legitimate ground to envisage a legal perspec-

## Arguments against legislating

tive. The spirit of the law is diminished so it might be worth legislating again. The adoption of the 2008 proposal for the Horizontal Directive would bolster the case for using indirect discrimination in the area of services for religion. If the proposed Directive is not going anywhere, it would be difficult to introduce yet another piece of legislation. It is better to push for the proposed Directive than push for new legislation.

Ian Dodds from Ian Dodds Consulting said that people likely to make requests are likely to be intimidated by the system. Legislation would make it easier for them. Due to economic circumstances, employers are going to be much more willing to take risks than before.

Mahamouda Salouhou from European Center for Leadership and Entrepreneurship Education (ECLÉE) added that legislation takes time to be adopted and implemented. We are dealing with human beings here and their demands evolve over time. Reasonable accommodation should be looked at as a process. Legislators need to be given the framework and the operational mode to work on a case-by-case basis.

Katayoun Alidadi mentioned that the economic crisis should not be an excuse to refrain from protecting vulnerable people. It is contradictory to the business case for diversity. There is no uniform application of the EU Equality Directives. In the UK, for instance, case law is generally commendable. But in a lot of other EU Member States, the situation is different. This is problematic in light of the freedom of move-



*Gabriel Toggenburg - FRA, Pascal Hildebert - ENAR, Claudia Menne - ETUC, and Andreas Stein - European Commission*

ment of workers. A directive should be transposed to achieve similar results in Member States even if different means are used. Legislation on reasonable accommodation would be an additional tool strengthening the equality framework. Of course there is the question of feasibility of adopting progressive legislation in this climate. In the meanwhile, equality bodies and civil society actors have a role to play in raising awareness of the concept of indirect discrimination.

Participants further mentioned that legislating will at least restrain power inequalities. It was also recognised that when there is no legal framework, it is more difficult for minorities to ask for reasonable accommodation because they are afraid of losing their jobs. Leaving everything to negotiations could be unfair as the most vulnerable will be most disadvantaged. Legislation would be useful to give employees the right to request accommodation.

### Arguments against legislating at EU or national level on reasonable accommodation

Gabriel N. Toggenburg from the FRA put forward two arguments:

- There is first an element of subsidiarity. Member States should maybe legislate, but it should be up to them to decide as religion and the way they deal with it is part of the identity of each Member State. Attempts to legislate might end up in conflict as there is no consensus on how the public space should look with regard to religion.
- If legislation on reasonable accommodation is introduced for private companies, it would be contradictory that states do not accommodate religion visibly and ask companies to do so as well.

Claudia Menne from ETUC said that the discussion on legislating reasonable accommodation would be difficult as the current political and economic circumstances are not favourable to passing any progressive legislation. We need a strong social movement and trade unions should be major partners. It is a difficult time for any piece of legislation to be adopted. It is strategically smarter to avoid presenting a shopping list of demands.

Andréas Stein from the European Commission added that there is no guarantee that having something written in EU legislation, along the lines of legislation for disabled people, would bring more legal certainty. Reasonable accommodation and undue hardship will always be unsure and blurred concepts. The question will shift to the definition of the terms 'reasonable' and 'hardship'. There are additional arguments related to the cost and benefit analysis. There is a big risk, no matter the political climate, of ending up in an ideological discussion. The outcome of this discussion is unsure and the process could do more harm than benefits.

Clearly, the political climate is bad at the moment. In the long term, the 2008 proposal for the Horizontal Directive could be adopted. But if we add an additional item (like reasonable accommodation), it would complicate the task of getting the proposed Directive adopted, according to Stein. The benefits of new legislation would depend on the level of awareness of employers and on their willingness to apply the law. If an employer is not receptive to the ideas, the way it is formulated in the legislation does not change much. He also noted that it is surprising that the European Court of Justice receives so few cases on the implementation of the Equality Directives. A lot of cases are in front of the European Court of Human Rights, but not of the European Court of Justice, which is not exploited enough. Strategic litigation in front of the European Court of Justice would be a good alternative strategy.

Wilf Sullivan from the Trade Union Confederation in the UK highlighted that an important part of any legislation is enforcement. We should first ask whether our current equality legislation has achieved everything it can. We already have a lot but there is still a long way to go. It would be more efficient to focus our attention on ensuring that current legislation is enforced.

Ian Dodds added that legislation would only complicate things, especially because many jobs come from SMEs, which have more difficulty taking legislation on board. At the moment, right-wing nationalism in the UK claims that minorities already have too many advantages under the current law.

Mohammed Aziz from ENAR UK encouraged strategic litigation in front of the European Court of Human Rights. It would help to direct jurisdiction in the right way. For the time being, it is smarter not to complicate things with the proposed Directive and to focus our action on promoting reasonable accommodation in the courts.

Eugenia Relaño from the Spanish Ombudsman Office also said that there is a need to redefine a duty of accommodation as part of the fundamental right of manifestation of freedom of religion. In Europe, there are different systems for church and state relations, but we still can work if we focus on the fundamental rights approach on a European level.

### Other instruments the EU could develop to facilitate progress in this area

The following instruments were mentioned by the panellists:

- Organise diversity awards which are powerful vehicles for progress in encouraging particularly large employers to take on good practices.
- Provide NGO support to complainants, referring them to the courts when EU equality legislation is infringed upon.
- Undertake strategic litigation in the European Court of Justice.
- Undertake strategic litigation in the European Court of Human Rights.
- Closely monitor what is happening in the EU Member States.
- Use implementation reports as a tool to assess practices, how the courts deal with certain matters, and identify how to react to it.
- Include reasonable accommodation in diversity charters.
- Organise awareness raising and promotion activities on equality legislation through equality bodies.
- Organise experts' debates on the implications of reasonable accommodation legislation.
- Develop a catalogue of possible situations of reasonable accommodation and how to deal with them.

# CONCLUDING REMARKS

The **President of the European Economic and Social Committee (EESC), Staffan Nilsson**, concluded the meeting by affirming the EESC's full support to this ENAR initiative. He himself has been focusing on equality since the start of his mandate, as a key aspect to social cohesion. He encouraged the partners of this initiative to put the recommendations on the table of the next European Integration Forum or push them forward in any another way. In Europe, we increasingly witness negative developments and hostile public discourse. The European Union needs more than ever to be strong about its values and this Equal@work initiative has a big role to play in this regard, to promote dialogue and participation - core values of the EU.

Considering comments from the participants and the successful promotion of ENAR's Equal@work initiative, it will be important for ENAR to continue to extend its outputs to legislators and policy makers, scientists and academics, trade unions and social partners, and to even more companies, especially SMEs. As ENAR members and participating companies are currently developing local partnerships to set up and implement common projects on the promotion of equality and diversity in the workplace at the national level, this transfer of best practices continues to be greatly needed. Despite steady progress, ongoing effort is necessary. ENAR's next Equal@work partnership project will be a mentoring programme to be launched soon in Sweden.



*Staffan Nilsson, President of the  
European Economic and Social Committee*

# KEY RECOMMENDATIONS

## Recommendations to EU institutions and Member States

1. Explore thoroughly the implications of reasonable accommodation legislation for public and private companies by organising experts' debates or funding dedicated research programmes.
2. Increase the knowledge of the practices in the national context by commissioning research describing and analysing practices of reasonable accommodation of cultural and religious diversity on the ground to objectively inform the debates.
3. Provide funding for the implementation of diversity task forces in the workplace, including training and awareness raising activities about the benefits of reasonable accommodation and the legislative framework.
4. Provide guidance and standards to public and private employers on how to integrate reasonable accommodation in the workplace, through guidelines and practical examples putting forward the business case for diversity, and elements to take into account to introduce reasonable accommodation serenely in the workplace.
5. Adopt proactive techniques of protection, advancement and mainstreaming of cultural and religious equality, inter alia positive action measures and positive duties to promote equality with incentives.
6. Include a reasonable accommodation approach in the implementation of public policies.
7. Influence national equality bodies to organise awareness-raising and promotional activities on equality legislation, especially on indirect discrimination and reasonable accommodation.
8. Organise public awareness raising and promotional activities on the benefits of diversity, inter alia diversity awards with reasonable accommodation best practices.
9. Include duty of reasonable accommodation in diversity charters and labels.
10. Invest more in anti-discrimination and diversity education and training, targeting the younger generation to eventually be able to raise the standards on diversity management.
11. Organise diversity awards promoting good practices of reasonable accommodation.
12. Adopt the 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.
13. Encourage and support strategic litigation in front of the European Court of Justice (ECJ) to set legal precedents on the scope and extent of protection against religious discrimination in the workplace.

## Recommendations to public and private employers and social partners

1. Collect and use diversity data in a transparent manner to identify good practices, set diversity priorities, support and sustain relevant and efficient diversity initiatives such as reasonable accommodation mechanisms.
2. Map out mechanisms for the requirements and possibilities of reasonable accommodation in the workplace.
3. Develop more systematic and meaningful multi-stakeholder cooperation to foster ownership. Sharing good practice between private companies and public employers could help design quality consultation and cooperation models.
4. Include in human resources policies reasonable accommodation mechanisms, or if this is not feasible, ways to grant alternative accommodation.
5. Use role models in the top level management to promote the accommodation of cultural diversity in the workplace.
6. Provide trainings developing inclusive leadership behaviours to top level management.
7. Develop negotiation and communication tools in the area of reasonable accommodation in the workplace.
8. Develop internal procedures for identifying and processing religious accommodation requests.
9. Organise awareness raising campaigns based on the value and reasons for reasonable accommodation.
10. Support strategic litigation in front of the European Court of Justice and the European Court of Human Rights.

# ANNEX 1

## List of participants

<b>NAME</b>	<b>ORGANISATION</b>	<b>COUNTRY</b>
Akif Silvia	SELOR	Belgium
Alidadi Katayoun	Catholic University of Leuven	Belgium
Aziz Mohammed	ENAR UK	United Kingdom
Broussillon George Axelle	L'Oreal	France
Caceres Gabrielle	Université Libre de Bruxelles	Belgium
Coene Gily	Vrije Universiteit Brussel	Belgium
De Witte Jozef	CEOOR	Belgium
Dodds Ian	Ian Dodds Consulting	United Kingdom
Ejalu William	ENAR Hungary	Hungary
El Morabet Imane	CEOOR	Belgium
Hassler Leah	ENAR Secretariat Policy Assistant	Belgium
Hildebert Pascal	ENAR / Strategest	Belgium
Johansson-Brikell Anna-Karin	Swedish Equality Ombudsman	Sweden
Kadar Tamas	Equinet	Belgium
Kammerer Sophie	ENAR Policy Officer	Belgium
Kawesa Victoria	ENAR Sweden	Sweden
Khan Zakia	ENAR Sweden	Sweden
Liefooghe Delphine	CEOOR	Belgium
Lindholm Pia	European Commission	Belgium
Marongiu-Perria Omero	ECLEE	France
Mauri Antoine	La Poste	France
Menne Claudia	ETUC	Belgium
Monnot Jean-Michel	SODEXO	France
Nemeth Peter	ENAR Slovakia	Slovakia
Nilsson Staffan	EESC	Belgium
Onyeji Chibo	ENAR Chair	Austria
Pascoet Julie	ENAR Secretariat	Belgium
Perchinig Bernhard	University of Vienna	Austria
Privot Michael	ENAR Director	Belgium
Rea Andrea	Université Libre de Bruxelles	Belgium
Relaño Pastor Eugenia	Universidad Complutense Madrid Spain	
Roch Bruce	Adecco Group France	France
Salouhou Mahamouda	ECLEE	France
Scagliotti Luciano	ENAR Italy	Italy
Serpieri Massimo	European Commission	Belgium
Siklossy Georgina	ENAR Communication Officer	Belgium
Stein Andréas	European Commission	Belgium
Sullivan Wilf	TUC	United Kingdom
Toggenburg Gabriel	FRA	Belgium
Tran Kristin	ENAR Secretariat Policy Assistant	Belgium
Van Droogenbroeck Geert	Adecco Belgium	Belgium
Wahlgren Juliana	ENAR Networking Officer	Belgium

# ANNEX 2

## Meeting programme

<b>13.45 - 15.45</b>	<b>Part 3: Looking into grassroots practices of employers</b>
	<b>Objectives</b> <ul style="list-style-type: none"><li>Realise the potential of the different tools available and ensure that they respond to the real needs of minority communities in Europe;</li><li>Compare practices of reasonable accommodation, analyse the results of the survey and compare them with the participants' perspectives.</li></ul> <b>Workshops on reasonable accommodation practices</b> <ul style="list-style-type: none"><li>Identifying the most common challenges and different ways of addressing them</li><li>Strategies for stakeholders' participation in reasonable accommodation plans</li><li>Methodologies for transferable practices and tools</li></ul>
	- Coffee -
<b>16.00 - 16.20</b>	<b>Reports from the workshops</b>
<b>16.20 - 17.30</b>	<b>Part 4: The way forward</b>
	<b>Legislation and reasonable accommodation - advantages and disadvantages of legislating. Panel with:</b> <i>Prof. Diletra Tesà, Clerk at the Italian Constitutional Court, Professor, University of Bologna / University of Milano-Bicocca</i> <i>Gabriel N. Togggenburg, Programme Manager, Research, European Union Agency for Fundamental Rights</i> <i>Claudia Menne, Confederal Secretary, ETUC</i> <i>Andreas Stein, Head of Unit Equal treatment legislation, European Commission</i>
<b>17.30 - 18.00</b>	<b>Concluding remarks</b> <i>Staffan Nilsson, President of the European Economic and Social Committee (EESC)</i>

<b>8.30 - 9.00</b>	<b>Registration of participants</b>
<b>9.00 - 9.15</b>	<b>Welcoming remarks, introduction and opening of the Equal@work Initiative Meeting</b> <i>Chibo Onyefi, ENAR Chair</i>
<b>9.15 - 9.30</b>	<b>Defining the objectives and methodology of the meeting</b> <i>Pascal Hildebert, Moderator of the Expert Group</i>
<b>9.30 - 10.30</b>	<b>Part 1: What is reasonable accommodation?</b>
	<b>The philosophical debate around reasonable accommodation and cultural diversity</b> <i>Gily Coene, Researcher, Vrije Universiteit Brussel</i>
	<b>Reasonable accommodation of cultural diversity in the US</b> <i>Eugenia Rebaño, Professor, Universidad Complutense Madrid</i>
	- Coffee -
<b>11.00 - 12.45</b>	<b>Part 2: Reasonable accommodation in the EU context</b>
	<b>A state of play of approaches in law and policy</b> <i>Katayoun Alidadi, Researcher, Religare network</i>
	<b>Concrete examples of different approaches</b> <ul style="list-style-type: none"><li>In Belgium: <i>Jozef De Witte, Director, Centre for Equal Opportunities and Opposition to Racism</i></li><li>In the United Kingdom: <i>Dr Ian Dodds, Chief Executive Officer, Ian Dodds Consulting</i></li></ul>
	<b>The need to inform the debates with the reality of practices on the ground, findings from a study commissioned by the Belgian equality body</b> <i>Andrea Rea, Professor, Université Libre de Bruxelles</i>
	- Lunch -

## european network against racism aisbl



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The European Network Against Racism (ENAR) is a network of some 700 organisations working to combat racism in all the EU Member States and acts as the voice of the anti-racist movement in Europe. ENAR combats racism, racial discrimination, xenophobia and related intolerance, promotes equal treatment between European Union citizens and third country nationals, and links local/regional/national and European Union initiatives.

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