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# **ACC DOCKET**

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## **Advancing DEI in Europe**

**Diversity and Inclusion**

**Employment and Labor**



original artwork for the *Docket* created by Eric Petersen

## Cheat Sheet

- **Recognize diversity, equity, and inclusion (DEI) myths.** Some say there are no DEI issues in Europe — they are wrong.
- **Despite each country's uniqueness, DEI programs can work across borders.** Local needs can and should be incorporated, but DEI can be approached as one program for all.
- **Implement an accelerator program.** Collect data and build consensus on goals and objectives. Craft a plan with action items, timelines, and action owners.
- **Institute a governance structure.** Get corporate buy-in, be on top of legislation and its effects on your program, and make DEI a part of your key performance indicators.

We know inequities exist everywhere, including in Europe. So, what does this mean for diversity, equity, and inclusion (DEI)? It means that a global approach to DEI programs will not always work. The principles of equity and inclusion should be universal, but the messaging and tools for implementation and engagement must be tailored to Europe.

After nearly two years of work on DEI in Europe, we will use our experience to save you time and to help answer the tough questions about how to make your DEI program successful in Europe.

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In the following section, we will outline the six most common myths we have encountered that currently limit the thinking around DEI in parts of Europe. We also will propose specific “DEI Accelerators” to break through these myths towards real change in Europe.

## **Myth busting: Overcoming stumbling blocks to successful DEI programs in Europe**

### **Myth 1: Problem? . . . What problem?**

In Europe, it is not a given that a lack of diversity in our workplaces is a problem. For many in the European power structure, a lack of diversity is simply a reflection of the society and the education system which may change over time.

In fact, the most common view among [10 European countries surveyed](#) is that cultural diversity is neither a plus nor a minus in terms of quality of life. In no nation does a majority say increasing diversity is a positive for their country. At most, roughly a third in Sweden (36 percent), the United Kingdom (33 percent), and Spain (31 percent) describe growing racial, ethnic, and national diversity in favorable terms.

By contrast, more than half in Greece (63 percent) and Italy (53 percent) say that growing diversity makes their country a *worse* place to live. Roughly four-in-ten Hungarians (41 percent) and Poles (40 percent) agree. Given these statistics, raising awareness of why diversity and inclusion matter within one’s company within Europe can be a challenge.

### **Myth 2: We don’t have “those problems” here.**

“Those problems” are the history of slavery and the resulting institutionalized racism that leads even today to the murder of people like George Floyd in broad daylight. For many in Europe, slavery and its tragic legacies are horrific and wrong, but they are a uniquely American problem. One that endures across the Atlantic and that well explains American companies’ push for DEI, but has little or no applicability in Europe.

In her book [African Europeans: An Untold History](#), Olivette Otele calls this attitude in Europe as the “un-remembering” of Europe’s involvement in human trafficking. It is a dangerous attitude because it allows Europeans to claim a cultural superiority and find little need to act to address problems of racism or discrimination based on skin color. While no one would say that the role of the United States and Europe in the slave trade and its implications were identical, we can be sure that there are enduring inequities and biases stemming from slavery and colonialism that limit the opportunities of non-white people in Europe.

The [European Union Agency for Fundamental Rights](#) has recognized in a [report](#) that “[p]ersisting widespread discrimination, intolerance and hatred across the EU threatens to marginalise and alienate many minority group members.” North Africans (45 percent) and Sub-Saharan Africans (39 percent) were particularly affected. Discrimination was greatest when it came to looking for work (29 percent). Another [report](#) found “Black people in the EU face unacceptable difficulties in simply finding somewhere to live or getting a decent job because of their skin colour.”

These lived experience of minorities in Europe may explain why the [Black Lives Matters \(BLM\)](#) movement sparked protests in Europe. The European protests differed in scope in that they ignited a

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myriad of domestic debates about post colonialism, violence against ethnic minorities, gender inequality, religious discrimination, racism, and the growth of the radical right in European countries.

Many of these themes overlap with those in the United States, but the history of colonialism, immigration, and the emphasis on country of origin are uniquely European. Whatever their distinction from BLM protests in the United States, the same call to action did not arrive on the doorsteps of European companies and in-house legal departments.

In most cases, we do not need a movement to tell us that inequity exists in our profession in Europe, all we need to do is look at and experience our own in-house departments to see that dominant populations continue to dominate. The reality of our professional environments means that leadership should increase awareness of equity and diversity issues and take a more curious and realistic view of societal issues and their business consequences.

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But, how do you raise awareness about a topic that is considered by many to be a non-issue?

[We can help: Learn about ACC's Diversity, Equity, and Inclusion Maturity Model.](#)

## **Accelerator for European DEI program: Awareness**

First, education about current inequities in Europe is key. Additionally, expanded understanding through the sharing of personal experiences or European colleagues is critical to accelerating awareness. Inequities cannot be eliminated by the education and sharing of personal stories alone, but these tools can help to raise awareness in a way that limits the negative effects of inequality on our workplaces.

### **Education**

In 2020, the European Union Commission's [Anti-Racism Action Plan](#) emphasized that "[d]iscrimination on the grounds of racial or ethnic origin is prohibited in the European Union (EU). Yet such discrimination persists in our society. It is not enough to be against racism. We have to be active against it." The EU Parliament provides [numerous statistics](#) that illuminate the discrimination that already exists in Europe. These statistics are compelling and may open some minds to the lived experiences of others.

Listen to the personal experience of colleagues. During DEI sessions over the past year, several of our European colleagues have shared — many for the first time — their experiences of being a social or ethnic minority in our legal profession. We have heard from gay men who had to lie about personal lives and remain silent during anti-gay jokes just to fit in at work. We have heard from non-white

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European women who are presumed always to be from somewhere outside of Europe and never from their European country of birth. We have heard from others in minority groups who said that they are just now learning to recognize the negative impact that societal views of minorities have had on them and their self-worth.

Creating listening opportunities in safe settings can help others in Europe tangibly understand that there are problems to be addressed, and they are very close to home (or the office).

### **Myth 3: Each country in Europe is different, so it is impossible to plan for diversity everywhere in Europe.**

While it is true that Europe is made up of many different countries and cultures, an insistence that DEI programs must be entirely localized could be hiding an insidious problem that will tank any DEI program — a lack of commitment to the fundamental principles needed to make DEI successful.

Those fundamentals include acknowledging that not everyone comes from the same starting point, discrimination exists, our cultures and institutions are not blind to our differences (no matter how much they say they are), and that it is the right thing to do for humanity and for business to have workplaces that are inclusive and diverse.

There are 44 countries in Europe. If we fall into the trap of believing that DEI in Europe can only be local to each country, then we may end up with a multitude of home-grown programs that defend the interests of the dominant groups and never embrace the fundamentals needed to make our profession and industries more equitable.

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If you hear that a country in Europe does not have “those problems” and so needs a local program that primarily focuses on age discrimination or gender discrimination, be wary. Focusing on certain local aspects of inequity likely are worthy critical causes, but they do not explain why a local program for a European country should not be built around broader DEI fundamentals that would result in helping people of color, immigrants, and those economically disadvantaged.

### **Accelerators for European DEI programs: Consensus and fundamentals**

#### **Building consensus on goals and objectives**

To be effective and represent objectives that are relevant to local operations, a global program needs to be structured to incorporate challenges that are locally relevant. This does not mean that an overall set of principles or ambitions need to be different depending on jurisdiction. The point is that once a set of principles is accepted, care needs to be taken for how local employees and leaders, on whom you might depend on your program’s success, are introduced to it and see it as relevant in solving local DEI challenges.

To understand local challenges, it is recommended that time is spent by the global team implementing the wider program to understand how local historical, societal, cultural, and potentially

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industry-specific factors might impact the success (or failure) of the global program. Once this is understood, including local management on goals and objectives will become a more collaborative process.

### **Understanding how to meet your objective**

While the general objectives of an existing DEI program may be widely similar, the processes and tools for reaching the objective may be different across countries. Implementation of any program will require a set of priorities, actions, and defined timelines. Actions that were considered and introduced in one country may not help to successfully attain similar objectives in another. As explained above, once consensus is achieved on overall and local objectives, it is recommended that a plan is created to reflect timelines, specific actions items, and action owners.

### **Myth 4: We don't have the data. We can't collect the data. So there is nothing we can do on DEI.**

Data challenges are quickly put forward in Europe as glaring red stop signs that are insurmountable hurdles to meaningful DEI programs. For some, their message is clear: Europe is not the United States, and European data protection laws are important, so it is too bad they frustrate plans for broad DEI initiatives.

For others, data collection challenges might be a convenient excuse, and for others, there may be a real nervousness about crossing lines with data protection authorities. Admittedly, collecting DEI relevant data can be challenging when employees live and work in different European countries with [different rules](#). But, it is not true that it is not possible to make progress on meaningful DEI *and* comply with data protection laws at the same time. In fact, it is even possible to collect and use some data to help identify and measure DEI priorities provided that data protection laws are understood and followed carefully.

As part of building a targeted DEI program, companies first need to measure their starting point. In other words, how diverse are we as a company, really? A good way to do this measurement exercise is through employee surveys. In addition to national laws, all member states of the European Union are subject to the General Data Protection Regulation (GDPR). According to Article 9, both of the following are prohibited: the processing of personal data revealing racial or ethnic origin ... or data concerning a natural person's race, ethnicity, sex life, or sexual orientation, among other restrictions.

But there are some important exceptions to this principle. One of which is when the data subject has given explicit consent to the processing of the personal data for one or more specified purposes.

### **Accelerator European DEI Programs: Using data**

#### **Voluntary disclosure**

A way to obtain the data important to DEI measuring and targeting is to ask employees to voluntarily share personal data about themselves, such as religious affiliation, ethnicity, national origin, sexual orientation, and gender identity to help drive diversity goals within their company while at the same time being transparent about how the data will be used and for how long it will be held.

#### **Diversity surveys**

Although GDPR and national privacy laws restrict the processing of personal data, diversity surveys



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are indeed possible. To increase the participation rate and, in particular, not to violate data protection law, surveys should be anonymized and voluntary.

A diversity survey is a good starting point because it helps a company to understand employee's thoughts on the topic. To understand what is happening in the workplace, it could be helpful to, instead of asking questions about the employee's identity, such as "Are you a member of a minority group or LGBTQ?" ask questions that illustrate how the employee's identity is impacted at the workplace, such as "Have you experienced bullying because of your sexual orientation or ethnicity?" Understanding the employees as a first step will help to establish a foundation for putting the right initiatives in place.

Carrying out the survey (or surveys) will also help build trust by creating a workplace where people feel safe to express themselves freely. But keep in mind that if your company has conducted surveys in the past but failed to result in meaningful action, building that trust around the survey about DEI will be difficult. Extra work needs to be developed to ensure surveys are culturally sensitive. Therefore, it may be necessary to make local adaptations of the survey. Before sending it out, it is wise to get feedback from country representatives on the questions to be asked.

### **Myth 5: We need to fix gender before we focus on other aspects of DEI.**

Many European nations have taken steps to make the corporate world more gender diverse. Some even [require a certain percentage](#) of corporate board seats to be filled by women. France, Germany, Italy, Spain, the Netherlands, Greece and Belgium, among others, all have imposed requirements for boardroom positions for women. As of early 2020 in France, [more than 40 percent](#) of board seats were filled by women. Norway and the United Kingdom also have [significant portions](#) of board seats filled by women.

This is not true for all European countries, however, and some have been slow to make headway on gender equality. For example, [in a comparison of 100 Italian, Greek, and Spanish companies](#), only 21 companies have a gender balanced board, and only seven companies have gender balanced executive teams.

Clearly, there is work to be done to improve gender equality, and that work must be done. But does this mean the DEI programs in Europe should focus only on gender equality? No.

For some, it may be heartwarming to promote that we are all the same and only our humanity matters, but it tramples the experiences of many people whose identities are visually evident and therefore always present whether due to skin color, religious markings, or non-conforming gender norms.

For many humans, their gender identity cannot be separated and addressed in complete isolation from their other identities, which may result in discrimination. Therefore, gender equality efforts that do not recognize the challenges of people of color, religious and ethnic minorities, and sexual orientation and gender identity, are ultimately for the benefit of women in Europe who belong to dominant identities. Also, as mentioned previously, the fundamental principles of DEI programs can simultaneously improve the lives and opportunities of people of many different identities in Europe without calling out one identity as the priority.

### **Accelerator for Europe DEI programs: Inclusive scope**

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## Engage with and listen to local employees

Successfully achieving an inclusive scope for your DEI Program and specific actions items will often depend on the support and initiative of local leadership and the participation of local employees. Much like the process for planning to enlist the support of local management, local employees should understand what issues are on their minds and what is holding them back. This will enable them to influence the goals and objectives of the program, along with how the company intends to achieve results.

### **Myth 6: We don't see differences. We only see people or citizens.**

It can be frequently heard from the existing European power structures that they do not see differences in people, only their humanity — or in some cases, such as France, people are citizens first, all other identities come second.

For some, it may be heartwarming to promote that we are all the same and only our humanity matters, but it tramples the experiences of many people whose identities are visually evident and therefore always present whether due to skin color, religious markings, or non-conforming gender norms. Claiming that we are all the same typically is the story of the dominant party who has less perceived interest in highlighting the differences and inequities of society. As Otele writes in her book, emphasizing our sameness, at the exclusions of considering our differences, is itself an act of domination.

[Case study research](#) in a Germany-headquartered multinational found that a lack of diversity among the “global elite” management made it more difficult for them to appreciate cultural differences in its UK offices. This evidenced the potential barrier to diversity posed by senior-level management and its ability to connect with local workforces. As a result, employees found it difficult to voice their concerns.

### **Accelerator for European DEI Programs: Training**

#### **Bias awareness training**

Trainings addressing bias should cover all areas of bias, e.g., gender, age, race, ethnicity, and sexual orientation. Allow for flexibility for local mandates and culture and take local laws into account, e.g., in Germany, Spain, Belgium, and France where harassment is criminalized. These trainings can show us how even the best intended individuals can block DEI progress due to their own biases.

A key aspect of any DEI program success will be training, and you will need to consider whether some formal or informal approval might be required from a works council or employee representative group. Typically speaking, a mandatory training regime or a program that risks being seen as changing the key characteristics of the workplace will need to be discussed. Keep in mind that if you plan to change hiring practices or introduce new elements of how employees are assessed or rewarded, this might be the catalyst for such discussions.

### **Myth 7: Everyone knows that DEI programs are really for the United States.**

Whether your company is US or Europe headquartered, a commonly held belief by many is that DEI programs are really for US operations and employees. This belief likely stems from many of the themes already highlighted in this article, including that racism is a particularly American problem, as



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well as that American employees, not European ones, expect their company leadership to be proactive to address issues of inequality.

The belief also may be connected to the issue of [corporate liability](#). In the wake of "Black Lives Matter" protests over racial inequality, companies including Oracle, Facebook, Qualcomm, Norton LifeLock, Gap, and Danaher were hit by racial board diversity-related lawsuits whereby it was alleged in each of the cases that the company's board of directors violated their fiduciary duties by their inaction on diversity issues, abuse of control, unjust enrichment, and also violation of Section 14(a) of the Securities and Exchange Act of 1934 in the United States. While the potential financial impact of such litigation should not be underestimated, there are other driving force, as we have elaborated on in this article, for striving to achieve diversity, equity, and inclusion in a company besides mitigating liability and financial risks.

It is important to combat the perception that DEI programs only matter for the United States and instead to create a governance and legal framework that actively incorporates and taps into local leadership and knowledge.

## **Accelerator for European DEI programs: Governance**

### **Create a governance framework**

Consideration should be given to how to involve European leadership not only from the perspective of enabling role models to sponsor the program locally, but also to make sure that your program has the necessary buy-in from the corporate approval standpoint.

The formality of program approval will largely depend on internal governance practices and the desire for formal corporate oversight. European companies will have a variety of options ranging from management committees to more formal board or supervisory committees to consider. It may be helpful to ensure that oversight of the wider program is offered to the highest level of supervision, where key performance indicators (KPIs) and progress can be reported, but actual program execution and management led by management-level working committees and/or groups.

### **Consider local legislation and labor practices**

Local legislation will be a key factor in telling you not only how far your approach can go in terms of promoting diversity and inclusion, but equally whether any local legislation needs to be considered before the program can even be introduced. Aside from considering workers' rights, labor laws across Europe may restrict what a DEI program may seek to implement in the form of targets or quotes, and the principle of non-discrimination may prevent you from introducing measures designed to favor diversity in the workplace.

## **A new road map**

Instead of addressing inequity and diversity within the European context, many C-suites in the United States and Europe believe they can tick the box by exporting their US DEI model to Europe. A change of mindset and a new roadmap is needed to ensure the success of these programs across Europe. We hope these accelerator tips for DEI programs in Europe will guide you on your path.

[Check out ACC?s Resource Library.](#)

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Kimberly Nuzum is a member of the board of ACC Europe and the chair of the Equity, Diversity & Inclusion (EDI) Working Group for ACC Europe. Nuzum collaborates closely with ACC Europe's EDI Working Group members to help our in-house legal community build inclusive teams and address inequities in our profession. Nuzum and the EDI Working Group act to grow our in-house network, resources, and tools to enable in-house counsel in Europe to thrive in their careers and to help our profession become welcoming and accessible to all.

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