



Equality and the Fight against Racism and Xenophobia

Cost of Non-Europe
Report

STUDY

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The Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia

Study

Abstract

Despite extensive international and EU action and cooperation to tackle discrimination, racism and xenophobia, insufficient progress has been achieved. Approximately two-thirds of the EU population is at risk of discrimination. One-third of all women in the EU have experienced physical or sexual acts of violence. The gender pay gap remains significant. People with disabilities are not provided with the tools to fully exercise their right to independent living. In other areas social progress is under threat of reversal. Certain actors fan the flames of racism and xenophobia, exploiting public anxiety in the wake of the refugee crisis and recent terrorist attacks. In addition, LGBTI people encounter new waves of discrimination and hate crimes.

International standards aimed at further empowering women and people with disabilities have not yet been fully incorporated. In EU legislation, individuals who are discriminated against on the basis of their religion or belief, sexual orientation, disability and age are only protected within employment. Sexual orientation and gender identity are also not explicitly covered by EU legislation defining hate crimes. Furthermore, there is a lack of proper implementation of EU legislation and a need for training and data collection that offers a full picture of the situation on the ground. A lack of awareness of rights and obligations among the general public, and access to justice for victims, compound these difficulties.

This study identifies these shortcomings and details their impact on the individuals concerned, in terms of denial of their rights and material and immaterial damage, including educational achievement, health status, risk of assault, earnings, housing conditions and pension entitlements. A large proportion of the quantifiable damage is due to the gender pay gap (GDP loss of €240 billion in 2030), violence against women (GDP loss €30 billion) and barriers to enjoyment of the right to independent living for people with disabilities (costs €15-41 billion). Impacts for specific grounds might also apply to others, and this is certainly the case for discrimination on multiple grounds. Finally, this study assesses the added value of a number of options for EU action and cooperation to contribute to closing these gaps and taking further steps to ensure the effective protection of the rights of individuals, notably better implementation and enforcement and the expansion of protections for all groups beyond the sphere of employment.

ABOUT THE PUBLISHER

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Table of Contents

Table of Contents	1
List of Tables	2
List of Figures	2
Background and methodology	3
Executive summary	6
State of play, gaps and barriers in EU action and cooperation in the area of equality and the fight against racism and xenophobia	9
International framework	10
United Nations	10
Council of Europe	11
EU action and cooperation	12
EU secondary legislation	12
Equality	13
Racism and xenophobia	14
Gaps and barriers	16
Impact of the current gaps and barriers in EU cooperation and action	21
Horizontal impacts	22
Horizontal impacts on individuals	22
Multiple discrimination	23
Horizontal impacts on Member States	24
Grounds-specific impacts	25
Sex	25
Race and ethnicity	27
Religion and belief	29
Sexual orientation	31
Age	33
Disability	34
Options for action and cooperation at EU level that could address the gaps and barriers	36
Recommendations	49
Annex I - Research Paper on the Costs of Non-Europe in the Area of Equality and the Fight against Racism and Xenophobia by Milieu Ltd	

List of Tables

Table 1	Selected gaps and barriers.....	7
Table 2	Scope of existing EU action on non-discrimination	13
Table 3	Scope of existing EU action through criminal law (Articles 82-85 TFEU) and other legal bases	15
Table 4	Disaggregating multiple discrimination.....	24
Table 5	Summary of impacts of the gender pay gap in the EU	26
Table 6	Summary of impacts of violence against women in the EU	27
Table 7	Summary of impacts by race and ethnicity	28
Table 8	Summary of impacts of discrimination on the grounds of religion and belief.....	31
Table 9	Summary of impacts of discrimination on the grounds of sexual orientation	32
Table 10	Summary of impacts of discrimination on the grounds of age	34
Table 11	Summary of impacts of discrimination on the grounds of disability ..	35
Table 12	Assessment of the options to tackle gaps and barriers in equality at EU level in terms of benefits and costs	37

List of Figures

Figure 1	Conceptual framework for the impacts of discrimination.....	22
Figure 2	Conceptual framework for the impacts of discrimination in race and ethnicity.....	28

Background and methodology

The notion of the 'Cost of Non-Europe' was introduced by Michel Albert and James Ball in a 1983 report commissioned by the European Parliament. It was also a central element of a 1988 study carried out for the European Commission by the Italian economist Paolo Cecchini on the cost of non-Europe in the single market.¹ This approach was revisited in a Cost of Non-Europe in the single market report of 2014.² In the latest Interinstitutional Agreement on Better Law-making it was agreed that analysis of the potential 'European added value' of any proposed Union action, as well as an assessment of the 'cost of non-Europe' in the absence of action at Union level, should be fully taken into account when setting the legislative agenda.³

Cost of Non-Europe (CoNE) reports are designed to examine the possibilities for gains and/or the realisation of a 'public good' through common action at EU level in specific policy areas and sectors. They attempt to identify areas that are expected to benefit most from deeper EU integration, and for which the EU's added value is potentially significant.

On 4 October 2016, coordinators of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested that the European Added Value Unit within the European Parliamentary Research Service (EPRS) produce a report on the Cost of Non-Europe in the Area of Freedom, Security and Justice. In response to that request, the European Added Value Unit is preparing a report, which will give an overview of the current state of play in the main policy areas covered by the Area of Freedom, Security and Justice (AFSJ) within the competence of the LIBE Committee. The report will map the current gaps and barriers and estimate their impacts in the establishment of this area. Those impacts will be measured in terms of both economic impacts and impacts on individuals in terms of protecting their fundamental rights and freedoms.⁴ Finally, in accordance with the Treaties it will provide options for action at EU level to address the identified gaps and barriers together with an estimation of their potential costs and benefits.

¹ See Commission on the European Communities, Europe 1992, the Overall Challenge, SEC (1988) 524.

² [The Cost of Non-Europe in the Single Market](#), Cecchini Revisited, An overview of the potential economic gains from further completion of the European Single Market, EPRS, European Parliament, September 2014.

³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12 May 2016, p. 1-14.

⁴ C. Moraes, [A Europe of Costs and Values in the Criminal Justice Area](#) in: EUCRIM 2016/2, p. 88: 'Nowadays, in the context of global economic and humanitarian crises, many voices are questioning the role and the very existence of the Union. It is therefore time to look back on Professor Cecchini's report and reflect on the cost of non-Europe in the area of freedom, security and justice in order to calculate its economic value – not always an easy task – and the cost to citizens in terms of their fundamental rights and freedoms'.

The following areas will be covered in the report:

1. Asylum, migration, border control;
2. Police and judicial cooperation in the fight against crime and terrorism;
and
3. Fundamental rights.

A number of relevant studies have already been published covering the added value of an EU mechanism to monitor and enforce democracy, the rule of law and fundamental rights in the Member States and within EU institutions,⁵ and the benefits of further EU action and cooperation to ensure free movement within the Schengen Area,⁶ as well as enhanced police and judicial cooperation in the fight against organised crime and corruption⁷ and procedural rights and detention conditions.⁸ A briefing summarising the interim results was produced in October 2017.⁹

This Cost of Non-Europe report specifically focuses on EU action and cooperation concerning equality and the fight against racism and xenophobia.

It seeks to answer the following questions:

1. What is the current state of play, and what are the gaps and barriers in European cooperation and action, in the area of equality and the fight against racism and xenophobia, in accordance with the EU Treaties and within the competence of the LIBE Committee of the European Parliament?
2. What is the impact of the current gaps and barriers in action and cooperation at EU level both in terms of economic impacts and impacts on economic rights and freedoms?
3. What are the potential costs and benefits of options for action at EU level that could address the gaps and barriers identified?

This study concentrates on EU actions and measures with a direct impact on equality or related to racism and xenophobia in the Member States. The situation of the Roma is not treated in depth, but the community is covered as part of

⁵ W. van Ballegooij, T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, October 2016.

⁶ W. van Ballegooij, [The Cost of Non-Schengen: Civil Liberties, Justice and Home Affairs aspects](#), EPRS, European Parliament, September 2016.

⁷ W. van Ballegooij, T. Zandstra, [The Cost of Non-Europe in the area of Organised Crime and Corruption](#), EPRS, European Parliament, March 2016.

⁸ W. van Ballegooij, [The Cost of Non-Europe in the area of Procedural Rights and Detention Conditions](#), EPRS, European Parliament, December 2017.

⁹ W. van Ballegooij, [Area of freedom, security and justice: untapped potential](#), EPRS, European Parliament, October 2017.

discrimination and hate crimes based on ethnicity.¹⁰ Discrimination based on nationality is covered to some extent in this study, although EU citizenship rights are outside its scope.¹¹ This study does not explicitly cover discrimination experienced by migrants, refugees and asylum seekers, as those will be addressed by other, forthcoming Cost of Non-Europe reports within this series.

In terms of methodology, this study mainly relies on desk research, which includes comparative studies of Member States' legal systems, and reports on their implementation of relevant EU law. EPRS also commissioned a research paper from Milieu Ltd., which reviewed the current legal framework in the area to identify the most prominent gaps and barriers for each protected grounds for discrimination, as well as horizontal gaps and barriers that cover all the protected grounds. The research paper furthermore assesses the economic and non-economic impacts of those gaps and barriers on individuals and society. Finally, it identifies and analyses possible options for addressing the more prominent gaps and barriers. This research paper is annexed to this Cost of Non-Europe report.

¹⁰ [European Parliament resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism](#) (2017/2038(INI)), P8_TA-PROV(2017)0413.

¹¹ [European Parliament resolution of 12 December 2017 on the EU Citizenship Report 2017: Strengthening Citizens' Rights in a Union of Democratic Change](#) (2017/2069(INI)), P8_TA-PROV(2017)0487.

Executive summary

Equality is one of the fundamental [values](#) on which the European Union is founded. It is duly reflected in the Treaties and the [Charter of Fundamental Rights of the European Union](#). International agreements, such as the [European Convention on Human Rights](#) also prohibit discrimination on various grounds, with limited exceptions in justified cases.

Nevertheless, a large percentage of the EU population is at risk of discrimination.¹² Just under a quarter (21 %) of respondents to a [2015 survey](#) reported having experienced discrimination during the last 12 months. A number of surveys conducted by the European Union Agency for Fundamental Rights (FRA) conclude that [racism](#) and xenophobia are widespread; one in three [women](#) has experienced physical and/or sexual violence since the age of 15, while approximately 75 % of women in a professional capacity have experienced sexual harassment in their lifetime; homophobia is also a major problem throughout the EU with almost half (47 %) of [LGTB](#) people indicating that they had been discriminated against or harassed.

The EU has acted in a number of areas related to equality. Its most important measures in this area are:

- [The Racial Equality Directive](#)
- [The Employment Equality Directive](#),
- [The Gender Equality Directive \(within Employment\)](#),
- [The Directive on gender equal access to goods and services](#)
- [The Directive for Equal Treatment of Men and Women in Self-Employed Activities](#)

With regard to the fight against racism and xenophobia, the main EU instrument is the [Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law](#). This framework decision harmonises criminal definitions and sanctions.

However, as highlighted by many studies and official EU documents, significant gaps and barriers to equal treatment and to adequate prevention, prosecution and compensation of hate crimes within the European Union persist. A non-exhaustive list includes the Commission implementation report on the application of the [Race and Employment Equality Directives](#), the European Parliament implementation assessments on the Employment and Gender Equality Directives within [employment](#) and as regards [Access to Goods and](#)

¹² Annex I, Milieu Ltd (2018), executive summary under findings.

[Services](#), reports by the EU [Fundamental Rights Agency](#), the [European Institute for Gender Equality](#), and the European Parliament, including [EPRS](#) and [NGO publications](#). In the table below the most pressing horizontal (A) and grounds-specific (B) gaps and barriers are presented:

Table 1 – Selected gaps and barriers

Grounds	Gap number	Gaps/barriers
Horizontal		
Multiple	A1	No protection afforded by EU legislation for: social security and healthcare, education or access to goods and services for the grounds of religion or belief, disability, age or sexual orientation
	A2	Barriers to access to justice for victims of discrimination
	A3	Barriers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive
Grounds-specific		
Sex	B1	Gender pay gap
	B2	Violence against women
Race and ethnicity	B3	Ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia
	B4	Online hatred insufficiently addressed by the Framework Decision on Racism and Xenophobia
	B5	Barriers to the effective national implementation of the Racial Equality Directive (overlap with A3)
Religion and belief	B6	Lack of reasonable accommodation requirement in employment
	B7	No protection outside employment; lack of reasonable accommodation in education (overlap with A1)
Sexual orientation	B8	Hatred based on sexual orientation not covered by hate crime/speech legislation in all Member States
	B9	No protection outside employment; discrimination in access to healthcare (overlap with A1)
Age	B10	No protection outside employment (overlap with A1)
Disability	B11	Barriers to the right to live independently
	B12	Barriers to inclusive education
	B13	No protection outside employment, including reasonable accommodation (overlap with A1)

Source: Milieu (2018).

The impact of the gaps and barriers in policy on equality and the fight against racism and xenophobia can be estimated in terms of both impacts on individuals, due to inadequate protection of their fundamental rights and freedoms, and economic impacts on Member States. This study details the impacts of these shortcomings on the individuals concerned, in terms of a denial of their rights and material and immaterial damage in areas including educational achievement, health status, earnings, housing conditions and pension entitlements. A large proportion of the damage which could be quantified is due to the gender pay gap (GDP loss of €240 billion in 2030), violence against women (GDP loss €30 billion) and barriers to enjoyment of the right to independent living for people with disabilities (**costs** €15-41 billion), which have already been

extensively researched. For other grounds (race and ethnicity, religion or belief, sexual orientation and age), whilst fewer data are available, some of the impacts that apply for one individual grounds might also apply to others, and would certainly apply in the case of discrimination on multiple grounds.

Finally, this study assesses the added value of a number of options for EU action and cooperation to contribute to closing these gaps and taking further steps to ensure the effective protection of the rights of individuals. The focus has been on measures within the competence of the European Parliament LIBE Committee, which is competent, *inter alia*, for: the adoption of criminal law measures in the fight against racism and xenophobia; the protection within the territory of the Union of citizens' rights, human rights and fundamental rights, including the protection of minorities, as laid down in the Treaties and in the Charter of Fundamental Rights of the European Union; and the measures needed to combat all forms of discrimination other than those based on sex or those occurring at the workplace and in the labour market.¹³

Options for action at EU level that could address the gaps and barriers identified include:

- EU accession to the European Convention on Human Rights and to the Istanbul Convention;
- A specific EU mechanism for monitoring democracy, the rule of law and fundamental rights by the Member States;
- Better implementation and enforcement of EU equality legislation;
- Adoption of legal instruments, notably the proposed Horizontal Antidiscrimination Directive, to expand protection against discrimination to cover religion or belief, disability, age and sexual orientation;
- Amend the Framework Decision on Racism and Xenophobia to extend the protection granted to victims of discrimination based on grounds currently not explicitly covered, such as sexual orientation or gender identity;
- Further support for gender equality in the sector of employment;
- Increase protection by expanding the application of positive action and reasonable accommodation;
- EU funding to enhance equality.

It is widely acknowledged that further action and cooperation at EU level would reduce discrimination in compliance with EU values and that this would result in better educational and health outcomes, a reduced risk of assault, improved labour participation, and ultimately increased productivity.

¹³ [EP Rules of Procedure, Annex V](#).

State of play, gaps and barriers in EU action and cooperation in the area of equality and the fight against racism and xenophobia

Key findings

- European Union (EU) action against discrimination, racism and xenophobia takes place within an international framework and draws upon a variety of contexts and instruments. In the context of the United Nations, the UN treaties that contain a prohibition on discrimination currently bind all EU Member States. As a party to the relevant UN Convention, the EU is obliged to contribute to the realisation of all fundamental rights for persons with disabilities. In the framework of the Council of Europe, the case law of the European Court of Human Rights (ECtHR) has been influential in shaping a European response to discrimination. EU accession to the European Convention on Human Rights (ECHR) is, however, stalled at present. The EU is in the process of acceding to the Council of Europe Convention on preventing and combating violence against women, but the Convention is yet to be ratified by all EU Member States.

- Equality is one of the fundamental values on which the European Union is founded. It is duly reflected in the Treaties and the Charter of Fundamental Rights of the European Union, in the Treaty on the Functioning of the European Union (TFEU) as well as in EU secondary legislation. EU secondary legislation on equality and racism and xenophobia has obliged some Member States to introduce protection regimes within domestic legislation, and others to extend existing domestic legislation to adopt such measures.

- **13 prominent gaps and barriers have been identified in relation to the various protected grounds.** A proportion of these gaps are grounds-specific. The research also identifies three gaps that are horizontal in nature. For the grounds of race/ethnicity and sex, EU action in the area of equality and the fight against racism and xenophobia covers various sectors. It is however limited to employment for the remaining grounds of religion or belief, sexual orientation, disability and age.

- This has led to a situation of a 'hierarchy of grounds' in which **protection is applied unevenly across the Union.** **Transposition** of directives and their implementation, alongside **data collection**, constitute a large part of the challenges to ensuring adequate protection against discrimination. In addition, an unduly wide (interpretation of) exception clauses, a lack of awareness of rights and obligations among the general public, a lack of training and enforcement, and a lack of access to justice, compound these difficulties.

EU action is aimed at preventing discrimination against individuals on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation and sex.¹⁴ Nevertheless, thousands of people are subject to discrimination on these grounds on a daily basis, whilst gaps and barriers in action and implementation at EU level persist, as well as failings in prevention, prosecution and compensation for victims of hate crimes within the European Union.¹⁵ The current state of play regarding international and EU action, as well as the gaps and barriers, is described in the following paragraphs.

International framework

EU action against discrimination, racism and xenophobia takes place within an international framework and draws upon a variety of contexts and instruments. A significant proportion of the relevant international law derives from the United Nations and its treaties, whilst EU action has also been shaped through the Council of Europe and its European Convention on Human Rights. Further and beyond the scope of this study, other international organisations have made significant contributions. These include the OECD and the International Labour Organisation (ILO), which has developed a number of conventions tackling anti-discrimination in the field of employment. Selected instruments stemming from the United Nations and Council of Europe frameworks are developed further below.

United Nations

UN treaties that contain a prohibition on discrimination currently bind all European Union Member States. These include the [International Covenant on Civil and Political Rights](#) (ICCPR), the [International Covenant on Economic Social and Cultural Rights](#) (ICESCR), and the [Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD). International protection regarding gender-based violence is outlined through the [Convention on the Elimination of Discrimination Against Women](#) (CEDAW) and the [Convention on the Rights of the Child](#) (CRC).

Concerning disability, the most recent human rights treaty at UN level is the 2006 [Convention on the Rights of Persons with Disabilities](#) (UNCRPD). The UNCRPD includes an extensive list of rights for persons with disabilities, primarily intended to secure equality in the exercise of rights, whilst simultaneously imposing various obligations on governments to carry out measures aimed at

¹⁴ As stated on the European Commission Directorate General for Justice [website](#).

¹⁵ W. van Ballegooij, [Area of freedom, security and justice: untapped potential](#), EPRS, European Parliament, October 2017.

positive action.¹⁶ As a party to the UNCRPD, the EU is obliged to pass new legislation that supports the realisation of all fundamental rights for persons with disabilities, since its accession in 2010.¹⁷

Council of Europe

The documents emerging from the Council of Europe, most notably the [European Convention on Human Rights](#) (ECHR), have been influential in shaping a European response to discrimination, unequal treatment, racism and xenophobia. The ECHR is of particular importance, since after exhausting domestic remedies, it offers individuals the possibility to apply to the European Court of Human Rights (ECtHR) regarding alleged violations of ECHR rights. All EU Member States are bound by the ECHR when implementing EU law and policies. In accordance with Article 6(2) of the Treaty on European Union (TEU), the EU is now also in the process of acceding to the ECHR.¹⁸ Accession could avoid possible conflicts in interpretation between the Strasbourg and Luxembourg Courts, which would upset the current status quo, according to which the ECtHR deems fundamental rights protection in the EU equivalent to that under the ECHR.¹⁹ However, the proposed draft agreement on accession was found to be incompatible with EU law by the Court of Justice, which raised concerns regarding respect for the autonomy of EU law.²⁰

A primary instrument in the area of sex and gender equality is the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), also known as the Istanbul Convention. It creates a comprehensive framework for preventing violence, protecting victims and prosecuting perpetrators.²¹ The Convention also establishes a specific monitoring mechanism (GREVIO) in order to ensure effective implementation by State Parties.²² As of January 2018, 17 EU Member States have signed and ratified the Istanbul Convention.²³ The EU signed the Istanbul Convention on 13 June 2017²⁴

¹⁶ UN [Convention on the Rights of Persons with Disabilities and Optional Protocol](#), (A/RES/61/106), 13 December 2006.

¹⁷ [UN Convention on the Rights of Persons with Disabilities](#), A/RES/61/106, 24 January 2007. See also [European Parliament Resolution of 7 July 2016](#) on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee, 2015/2258(INI).

¹⁸ Article 6(2) TEU.

¹⁹ ECtHR of 30 June 2005, Application No 45036/98, Bosphorus.

²⁰ CJEU, Opinion 2/13 of 18 December 2014. Opinion pursuant to Article 218(11) TFEU.

- draft international agreement - Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms - Compatibility of the draft agreement with the EU and TFEU Treaties.

²¹ For a more extensive overview see M. Prpic, R. Shreeves, [Violence against women, state of play](#), Members' Research Service, DG EPRS, European Parliament, November 2017.

²² See the [Group of Experts on Action against Violence against Women and Domestic Violence](#), Council of Europe.

²³ Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Italy, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

and is in the process of concluding the Convention.²⁵ In acceding to the Istanbul Convention, the EU reinforces its commitment to combatting violence against women within the EU. Once ratified, the Istanbul Convention will be binding on both the EU and its Member States, insofar as EU competences are concerned.

Whilst not exhaustive, the aforementioned instruments have been crucial in defining the international framework through which EU action and cooperation takes place, and the direction and formation of European values.

EU action and cooperation

The Union has acted in a number of areas related to equality and the fight against racism and xenophobia. Equality is one of the fundamental [values](#) on which the European Union is founded, and is duly reflected in the Treaties and the [Charter of Fundamental Rights of the European Union](#). The EU also aims to eliminate inequality between men and women and combat discrimination throughout its policies in accordance with Articles 8 and 10 TFEU.

EU secondary legislation

Based on its aims and values, the EU has subsequently developed secondary legislation on anti-discrimination, racism and xenophobia in order to oblige Member States to prohibit such acts, protect the victims, and prosecute the suspects. This has been effective, leading to some minimum standards, which are now common throughout Europe.²⁶

With regard to the scope of EU action on non-discrimination and racism, a distinction can be made between two general courses of action. Firstly, measures protect against discrimination, using the general non-discrimination competence (Article 19 TFEU), and promote equal treatment, using the competence on equality between men and women (Articles 153 and 157 TFEU). Secondly, measures are taken through specialised legal bases, as instances of criminal law (Articles 82-85 TFEU).

²⁴ Council of Europe Newsroom (2017), [EU signs Council of Europe convention to stop violence against women](#).

²⁵ [Council Decision \(EU\) 2017/866](#) of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to asylum and non-refoulement, OJ L 131, 20 May 2017; [Council Decision \(EU\) 2017/865](#) of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, OJ L 131, 20 May 2017.

²⁶ E. Howard, [Implementation of the Employment Equality Directive: The principle of non-discrimination on the basis of religion or belief](#), Ex-Post Impact Assessment Unit, EPRS, European Parliament, January 2016.

Equality

Key secondary EU legislation regarding non-discrimination includes the:

- [Racial Equality Directive](#)
- [Employment Equality Directive](#),
- [Gender Equality Directive \(within Employment\)](#),
- [Directive on gender equal access to goods and services](#),
- [Directive for Equal Treatment of Men and Women in Self-Employed Activities](#).

EU secondary legislation on equality, whilst broad in regard to employment, leaves gaps, as detailed in the table below:

Table 2 – Scope of existing EU action on non-discrimination

Sectors/ protected grounds	Employment	Social security and healthcare	Education	Access to goods and services	Social advantages
Sex	√	√		√	
Race, ethnicity	√	√	√	√	√
Nationality	√				
Age	√				
Religion or belief	√				
Sexual orientation	√				
Disability	√				

Source: Milieu (2018)

In 2008, the European Commission put forward a [proposal for a directive against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace](#) (the proposed horizontal equality directive). The proposal is crucial because it extends measures against discrimination beyond employment and occupation. The European Parliamentary Research Service produced its own [Complementary Impact Assessment](#), at the request of the LIBE Committee. In its [Resolution on the Situation of Fundamental Rights in the European Union in 2015](#), the European Parliament reiterated its call for the Council to adopt its position on the proposal as soon as possible, and encouraged the Commission to make concrete progress on the anti-discrimination agenda.

In addition, equality legislation has also been utilised to ensure that the principle of freedom of movement is upheld.²⁷ Key legislation in this area is the 2004/38/EC Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. A recent case referred to the Court of Justice of the European Union by the Romanian Constitutional Court, within which the concept of spouse is currently being adjudicated, is of particular interest. Such cases have the potential to extend the mutual recognition of equality protections across the Union.²⁸

Racism and xenophobia

The primary instrument to tackle racism and xenophobia through criminal law is Council Framework Decision (2008/913/JHA) on racism and xenophobia, which made offences against persons based on race, colour, religion, descent, or national or ethnic origin punishable in criminal law.²⁹ With regard to protection against hate crime, the European Union also established the Victims of Crime Directive (2012/29/EU) that creates minimum standards for the rights, support and protection of victims of crime.³⁰ In addition, the European Commission has also established an EU High Level Group on combating racism, xenophobia and other forms of intolerance, in order to exchange and disseminate best practices between national authorities to tackle hate crime and hate speech.³¹

The Audio-visual Media Services Directive, in force since May 2010, provides some further protection against online hate speech. The directive urges Member States to introduce suitable measures to ensure that audio-visual and media services do not communicate any incitement to hatred 'based on race, sex, religion or nationality'.³² In view of changing market realities and the growing

²⁷ [Directive 2004/38/EC](#) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

²⁸ Court of Justice of the European Union [Press Release No 02/18 Luxembourg, Advocate General's Opinion in Case C-673/16 Relu Adrian Coman and Others vs Inspectoratul General Pentru Imigrări and Others](#), 11 January 2018.

²⁹ See [Council Framework Decision 2008/913/JHA](#) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

³⁰ [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; [The Victims' Rights Directive 2012/29/EU, European Implementation Assessment](#), Ex-post Evaluation Unit, DG EPRS, European Parliament, December 2016.

³¹ For further information, see the DG Justice and Consumers [website](#), European Commission.

³² [Audiovisual Media Services Directive](#), Article 6; the Council, the European Economic and Social Committee and the Committee of the Regions on the [Mid-Term Review of the implementation of the Digital Single Market Strategy A Connected Digital Single Market for All](#), COM/2017/0228 final.

challenges of the internet, the European Commission proposed amendments to the Audio-visual Media Services Directive in May 2016, broadening its scope to new media outlets and broadcasting. The proposal is currently under negotiation at the Council.³³

The table below provides an overview of the scope of current EU action on racism and xenophobia through criminal law and other instruments.

Table 3 – Scope of existing EU action through criminal law (Articles 82-85 TFEU) and other legal bases

Sectors/ protected grounds	Racism, and xenophobia	Nationality	Religion	Belief	Sexual orient- ation	Disability	Sex	Age
Criminal law (Incite- ment to hate)	√		√					
Transport						√		
Media	√	√	√	√	√	√	√	√

Source: Milieu (2018)

The Commission issued an [Implementation Report](#) on the Framework Decision on Racism and Xenophobia in 2014, in which it concluded that a number of Member States had not transposed fully and/or correctly all the provisions of the framework decision. In its [Resolution on the Situation of Fundamental Rights in the European Union in 2015](#), the European Parliament also expressed concern that several Member States had not transposed the provisions of the framework decision correctly. It called on those Member States to implement the decision fully, as well as [Directive 2012/29/EU](#) on victims of crime.

Parliament noted that, when implementing the framework decision, some Member States have extended the protection granted to victims of discrimination based on other grounds, such as sexual orientation or gender identity. It encouraged the Commission to launch a dialogue with those Member States whose legislation does not cover homophobic hate motives, with a view to filling the remaining legislative gaps.³⁴

³³ [Procedure 2016/0151/COD](#), Commission Proposal for amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM (2016) 287.

³⁴ W. van Ballegooij, [Area of freedom, security and justice: untapped potential](#), EPRS, European Parliament, October 2017

Gaps and barriers

A number of gaps and barriers at EU level in the field of anti-discrimination, racism and xenophobia may be identified.

Horizontal gaps and barriers

A number of horizontal gaps, if addressed, would exceed simple closure of grounds-specific gaps and barriers to reduce the risk of discrimination across the board. As such, addressing these gaps and barriers would go beyond the 'hierarchy of grounds' which currently sees uneven application of protections across Europe. Three key horizontal gaps are:

- protection beyond employment for religion, disability, age and sexual orientation (A1);
- access to justice, including the existence and compliance of sanctions (A2);
- successful implementation of equality directives and the functioning of equality bodies (A3).

Sex

Two key gaps may be identified in relation to equality between women and men: the gender pay gap (B1) and violence against women (B2). In regard to employment, it is evident that women are more likely to have part-time work contracts and other forms of secondary employment (casual, fixed-term, temporary agency workers, self-employed, teleworkers), due to perceived obligations to care for family members, resulting in lower pension contributions. In this regard, there is a clear lack of measures to mitigate the gender pension gap. Moreover, continued inadequate inspections and sanctions in respect of unequal pay perpetuate gender inequality.³⁵

A further point is the lack of incentives or protection for men to take paternal leave or work flexible hours. Despite the existing EU legal framework providing protection against dismissal, there is a much higher likelihood that women will accept a career interruption in order to become the primary caregiver for children.³⁶ The extent to which this affects a woman's ability to obtain a job against competition from an equally qualified man is a considerable point in question. In this regard, the gender pay gap remains significant.

³⁵ [European Parliament Resolution of 24 May 2012 with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value](#), 2011/2285(INI).

³⁶ See annexed research paper by Milieu (2017) p. 36.

In regard to violence against women, the problem is widespread and knowledge regarding the scale of the problem is lacking.³⁷ Violence against women has a number of serious and devastating impacts and consequences, yet no legally binding instruments currently specifically address violence against women at EU level. There is also a [link](#) between the gender pay gap and violence against women. A number of political and legislative commitments have been made, with the EU tackling the problem through a variety of channels, such as the Victims' Rights Directive, or funding programmes such as Daphne III. Significant differences remain across Member States in the definition and criminalisation of different types of violence against women. As a result, prevention, protection and assistance vary across Member States.³⁸

Race and ethnicity

Three main gaps have been identified in relation to protection against discrimination based on race and ethnicity:

- Ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia (B3);
- Online hatred insufficiently addressed by the Framework Decision on Racism and Xenophobia (B4);
- Barriers to the effective national implementation of the Racial Equality Directive (B5, overlap with the horizontal gap A3).

EU legislation to prevent discrimination on the grounds of race or ethnicity builds upon two distinct areas:

- anti-discrimination measures (such as the Racial Equality Directive) and,
- criminal law (e.g. Framework Decision on Racism and Xenophobia).

This legal protection is considered to be broader than for other potential grounds of discrimination identified in the annexed analysis. However, nationality is explicitly excluded from application of the Racial Equality Directive.³⁹ Although as many as seven Member States have extended their protection to go beyond the letter of the directives, several serious issues arise from the exclusion of nationality as grounds for protection against discrimination, for example regarding the equal treatment of people seeking international protection. Data collected by the EU Fundamental Rights Agency (FRA) since 2016 suggests that discrimination based on ethnic or immigrant background is the most common form of discrimination in the EU.⁴⁰ Furthermore, complete or correct

³⁷ M. Prpic & R. Shreeves, [Violence against in women in the EU: State of play](#), EPRS, European Parliament, November 2017

³⁸ Milieu (2018), section 3.1.

³⁹ Racial Equality Directive, Article 3, § 2.

⁴⁰ European Union Agency for Fundamental Rights (2017), [Ensuring justice for hate crime victims: professional perspectives - Summary](#).

transposition and implementation is lacking, in particular with regard to the Framework Decision on Racism and Xenophobia, and this constitutes a significant barrier to protection.

In addition, there is a clear absence of reliable data collection, particularly in the area of hate speech and hate crimes, often leaving rendering them invisible, thereby creating challenges for prosecutors in assessment and sentencing. Law enforcement and criminal justice staff also lack the skills and awareness to tackle hate crime effectively.⁴¹ Finally, in a fast-moving online environment, the Framework Decision on Racism and Xenophobia is not equipped to fight online hate speech, which is an emerging threat. These key gaps continue to persist, with several reports highlighting the variation with which implementation is carried out across Member States. For example, infringement proceedings are currently pending against the Czech Republic, Hungary and Slovakia, for a breach of EU anti-discrimination law in relation to Roma children's access to education.⁴²

Religion and belief

Two key gaps may be identified in relation to protection against discrimination on the basis of religion and belief:

- Lack of reasonable accommodation requirement in employment (B6);
- No protection outside employment; lack of reasonable accommodation in education (B7, overlap with horizontal gap A1).

In contrast to race and ethnicity, EU legislation covering religion and belief is arguably narrower in scope. Scope for EU action remains curtailed in this area until it accedes to the ECHR Convention, at which point the EU would remain hampered by its limited competencies.⁴³ EU accession to the ECHR would clearly improve protection, most notably because freedom of religion is more developed within the framework of the ECHR.⁴⁴ Article 9 of the ECHR has cross-sectoral application and guarantees the right to freedom of thought, conscience and religion.⁴⁵ A lack of conceptual distinction between belief and religion is a key barrier in the fight against discrimination.

⁴¹See annexed research paper by Milieu (2017), See also European Union Agency for Fundamental Rights (2012) [The Racial Equality Directive: applications and challenges](#), and European Union Agency for Fundamental Rights (2012), [Making hate crime visible in the European Union: acknowledging victims' rights](#).

⁴² See European Commission, DG Justice (2014), Report on Discrimination of Roma Children in Education, cited in Milieu (2018), p. 41.

⁴³ Milieu (2017) p. 43.

⁴⁴ ECHR, Article 9.

⁴⁵ Ibid., Article 9.

In a similar vein, protection on the grounds of religion and belief is poorly developed beyond employment. For example, it is argued that the lack of reasonable accommodation of religious diversity in schools and in access to services negatively affects the integration of religious minorities in society.⁴⁶ The protection of individuals who hold minority beliefs and religions is severely impaired by the incorrect transposition and implementation of the Framework Decision on Racism and Xenophobia. Despite this, no infringement proceedings are currently in process.

Sexual orientation

Two key gaps may be identified in relation to protection against discrimination on the basis of sexual orientation:

- Hatred based on sexual orientation not covered by hate crime/speech legislation in all Member States (B8);
- Lack of protection outside employment; discrimination in access to healthcare (B9, overlap with A1).

Lesbian, gay and bisexual people are protected from discrimination in the field of employment, under the Employment Equality Directive. Beyond this, there is no legal protection in place, with the proposed horizontal equality directive blocked in the Council. The annexed research paper argues that the most salient gap in the current legislative framework lies in unequal access to goods and services, notably in health care. However, another key gap can be found within criminal law, because the Framework Decision on Racism and Xenophobia does not cover sexual orientation or gender identity. With homophobia prevalent throughout Europe, this compounds the risk of discrimination, whilst eight Member States still lack legal provisions against hate crime. Hate speech motivated by sexual orientation remains a growing problem, with the current version of the Audio-visual Media Services Directive failing to include sexual orientation as a denominator for protection.

Age

Discrimination on the grounds of age, whilst widespread, is not guaranteed beyond grounds laid down in the Employment Equality Directive (gap B10). One barrier concerns the vagueness of the legal provision for differential treatment within the directive, granting flexibility for Member States to adopt wide ranging measures for old and young workers alike. There is a balance to be struck between meeting labour market needs and adequately guaranteeing protection from discrimination on the grounds of age. The annexed paper points out the lack of research that can adequately assess the impact of the flexibility provided to Member States, placing it outside the scope of this study.

⁴⁶ For further information, see Milieu (2018) p. 98.

Disability

Three main gaps have been identified in relation to protection against discrimination based on disability:

- Barriers to the right to independent living (B11);
- Barriers to inclusive education (B12);
- Lack of protection outside employment, including reasonable accommodation (B13, overlap with horizontal gap A1).

As in the case of race, ethnicity, and sexual orientation, the current EU legal framework protects persons with disabilities from discrimination on the grounds of their disabilities only via employment, as set out by the Employment Equality Directive. No protections exist outside employment (other than transport, which is poorly applied in some cases e.g. air transport), and several other gaps remain.⁴⁷ Disabled children and adults lack access to education. Unequal classification of disability across Member States compounds differences in protection. Thresholds for protection or to qualify for certain social advantages or access to services such as healthcare, financial support or personal assistance vary within and between Member States. Disabled people also suffer discrimination when exercising their freedom of movement rights. Barriers to social inclusion and full participation in the economy among many marginalised groups, including those with disabilities, remain unchallenged. Particularly problematic is the failure to reasonably accommodate persons with disability in key areas of social protection, health care, (re)habilitation, education and provision of goods and services.

⁴⁷ 'In terms of barriers to the implementation of EU legislation, the right to non-discrimination in access to transport is not always correctly applied, notably the exception allowing denial of boarding for reasons of safety or because the transport is physically inaccessible.' See Milieu 2018 p. 97.

Impact of the current gaps and barriers in EU cooperation and action

Key findings

- The impact of the gaps and barriers in policy on equality and the fight against racism and xenophobia can be estimated in terms of both **impacts on individuals**, due to inadequate protection of their fundamental rights and freedoms, and **economic impacts on Member States**.
- This study details the impacts of these shortcomings on the individuals concerned, in terms of a denial of their rights and material and immaterial damages including educational achievement, health status, earnings, housing conditions and pension entitlements.
- A large proportion of the damage which could be quantified is due to the **gender pay gap** (GDP loss of €240 billion in 2030), **violence against women** (GDP loss €30 billion) and **barriers to enjoyment of the right to independent living for people with disabilities** (costs €15-41 billion), which have been researched extensively. It is worth mentioning that discrimination may also materialise on multiple grounds.
- For other grounds (race and ethnicity, religion or belief, sexual orientation and age), robust quantification of the impacts proved difficult because of the scarcity of systematic data. Nevertheless, discrimination based on these grounds exists and quantitatively and qualitatively impacts citizens' daily lives.
- Individual impacts take on a far more serious and insidious character than simple monetary loss, not least of which is the higher risk of physical assault.

In the following sections, the impacts resulting from the gaps and barriers to European cooperation and action in the area of equality and the fight against racism and xenophobia are presented. Discrimination may infringe the fundamental rights and freedoms of individuals and impose a large cost on them as well as on society.⁴⁸ Discriminatory behaviour may be direct and acute, taking the form of violence or hate crimes that can lead to physical injury and instil fear and insecurity in victims. It may also result in differential access to goods and services and the enjoyment of one's rights. Even when not perceived, discrimination may nonetheless have detrimental impacts. For example, women

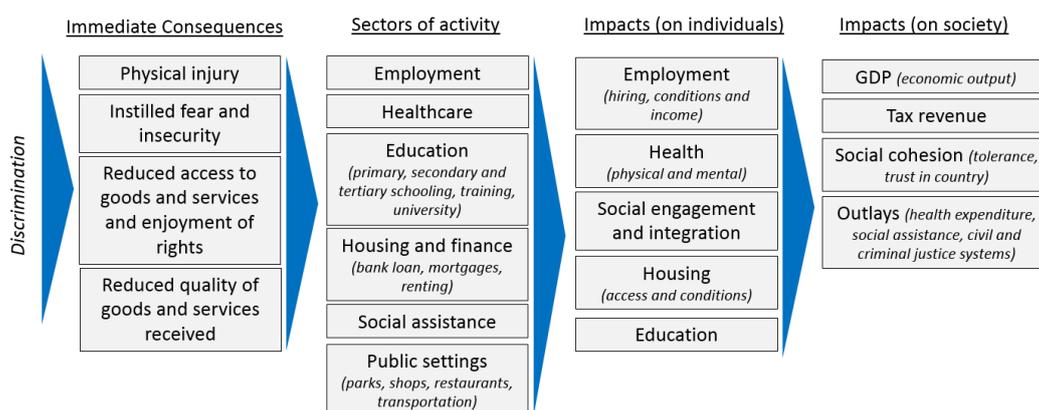
⁴⁸ Milieu (2018), Chapter 3.

may not be aware of overt sex discrimination, but may earn less than men who have similar qualifications and employment positions. Together, these adverse impacts on individuals may translate into costs for society in terms of lower social cohesion and economic output (GDP).⁴⁹

Horizontal impacts

As noted, discrimination may have a wide range of complex and interrelated impacts, including inferior employment conditions, poorer educational outcomes and lower social integration for individuals. These impacts may be similar across discriminatory grounds, and individuals may also experience cases of multiple or intersectional discrimination. The figure below presents a number of impact channels and their effects on tax revenue, gross domestic product and social cohesion.⁵⁰

Figure 1: Conceptual framework for the impacts of discrimination



Source: Milieu 2018

Four possible methodological impact channels for discrimination (employment, education, health status, and risk of assault) were monetised into **lost earnings for individuals and lost GDP for society based on the gaps identified**. For a detailed assessment of how all quantified impacts and costs were calculated, an extended discussion is available in the annexed research paper.⁵¹

Horizontal impacts on individuals

Horizontal impacts on individuals generally stem from the lack of protection against discrimination outside formal employment. There are clear barriers to access to justice for victims of discrimination, alongside barriers to the effective

⁴⁹ Milieu (2018), Chapter 1, section III.

⁵⁰ Milieu (2018), Chapter 3.

⁵¹ See Milieu (2018) 'Translating Impacts into monetised estimates', pp. 62-63.

national implementation of equality directives (Employment and Racial Equality Directives) that form the basis of the European protection regime.

At the individual level, this evidently results first and foremost in **lost earnings**, before overarching **impacts on physical and mental health** are felt. Such impacts are influenced through, inter alia, the quality of goods and services received, social exclusion, and labour market integration. For example, across the field of sexual orientation, age and disability, **lost earnings due to poor health status amount to €783-854 million** (See Gap A1).⁵² Lost earnings due to **un/underemployment are estimated to be even higher, at €1.8-7.8 billion** (See Gap A3). For victims of discrimination on the grounds of age and disability, the figure is between **€182 and 228 billion** (Gap A3).⁵³

However, **individual impacts take on a far more serious and insidious character than simply monetary loss**. Quantifiable impacts include a **higher risk of physical assault** (7-12 %, Gap A2), a 14-20 % higher risk of **economic hardship** (Gap A3), higher risks of **poor housing conditions, residential segregation, and poor health status**. Beyond employment, the most significant body of research relevant to discrimination has been carried out on the issue of mental health. Psychological damage from discrimination is therefore identified as a key impact channel, with wide-ranging negative consequences. For more details see the annexed research paper.⁵⁴

Multiple discrimination

A further phenomenon which surfaced throughout this research refers to the impacts on individuals suffering cross-cutting or 'multiple discrimination' on a number of different grounds, which can be broader than discrimination based upon a single factor. For example, a women with a disability, or LGBTI persons from racial or ethnic minorities, could be victims of multiple discrimination. The table below highlights reported incidences of discrimination, which in some areas make up over 30 % of reported cases.

⁵² For further information, see Chapter 3 Table 35: Overview of gaps/barriers, their impacts and relative policy options to address them, Milieu 2018, p. 142.

⁵³ Ibid. p. 142

⁵⁴ While most of these studies were undertaken in the United States, several European studies found evidence to corroborate such impacts on mental health (Ikram et al., 2014; Agudelo-Suarez, 2011; Paradies, 2006; McEwen 2000; Williams et al., 2003 cited in Milieu 2018).

Table 4 – Disaggregating multiple discrimination

Grounds on which the discrimination was reported:	Other grounds of discrimination reported by these individuals:
Sex:	Race or ethnicity (16 %), age (15 %), sexual orientation (11 %), religion or belief (7 %), disability (6 %)
Race or ethnicity	Religion or belief (20 %), sex (6 %), age (4 %), sexual orientation (3 %), disability (2 %)
Religion and belief	Race or ethnicity (27 %), sex (3 %), age (3 %), sexual orientation (2 %), disability (2 %)
Sexual orientation	Sex (35 %), race or ethnicity (30 %), age (30 %), religion or belief (25 %), disability (27 %)
Age	Sex (14 %), race or ethnicity (12 %), disability (10 %), sexual orientation (7 %), religion or belief (5 %)
Disability	Age (34 %), sex (28 %), race or ethnicity (27 %), sexual orientation (27 %), religion or belief (6 %)

Source: Milieu 2018

Horizontal impacts on Member States

The quantifiable economic impacts on Member States are primarily divided between **GDP loss** and a **loss in tax revenue**. Furthermore, other **costs are associated with healthcare**, for example. These range from a loss of **GDP of €25-545 million** and a **lost tax revenue of €9-197 million**, due to **barriers to accessing justice**, up to a staggering **loss of €224-305 billion GDP** and **lost tax revenue of €88-110 billion** in relation to ineffective national implementation of the Racial Equality and the Employment Equality Directives.⁵⁵ This was the largest cost identified through the research and is therefore an important horizontal economic impact across Member States. Ineffective implementation also has a monetary impact on the provision of social public goods such as civil justice, criminal justice, and healthcare. A key example here is **quantified healthcare costs, which are in the region of €36-57 million**.⁵⁶

⁵⁵ Lost earnings, GDP and tax revenue as a result of ineffective implementation of the Employment Equality Directive and the Racial Equality Directive were evaluated with higher and lower bounds for each figure, resulting in a range of estimates. Please see Chapter 4 Table 35: Overview of gaps/barriers, their impacts and relative policy options to address them, Milieu 2018, p. 142. Also see Table 51: Estimates for the loss of earnings, GDP and tax revenue (Gap/barrier A3), Annexed calculations, p. 197.

⁵⁶ Ibid. p. 165

Grounds-specific impacts

The remainder of this chapter will address the individual and economic impacts of each of the previously identified grounds-specific gaps.

Sex

The assessment of the impacts of sex discrimination focuses on two primary phenomena; the **gender pay gap** and **violence against women**.

Impacts on individuals

Regarding sex, the impacts include quantified damage in **lost earnings (€241-379 billion, Gap B1)**, a higher risk of poverty, economic dependence and an increased risk of intimate partner violence. Specific impact channels resulting from the gender pay gap include earnings, which may be less than men's in an equivalent post, and impacts on career advancement. For example, the aggregate annual earnings lost for women in the EU due to **lower earnings** compared with men was estimated to be between **€241-379 billion** (Gap B1).

Violence against women evidently has extremely **high personal costs of some €7 billion** (Gap B2), not counting the resulting **physical and mental impairment**, which is quantified at approximately **€134 billion** (See Gap B2). The most immediate individual impacts of violence against women include **risks of physical injury, and the costs of moving residence**. For example, recent research conducted in Belgium found that 73 % of those subjected to domestic violence reported an effect on their ability to work.⁵⁷ Violent incidents can affect an individual's emotional well-being and mental health, heightening the risk of depression and the possibility of incurring additional costs. Overall, the cost of gender-based violence against women in the EU was estimated at €225.8 billion in 2012, or €231 billion in 2016 terms.⁵⁸

Impacts on Member States

Such losses in earnings translate into less **tax revenue for national governments, estimated at between €116 and 183 billion annually**.⁵⁹ Correspondingly, the gender pay gap has a real impact on economic growth, resulting in a **lower level of GDP, estimated to reach €540 billion by 2030**. Violence against women has a real and evident detrimental impact on social support systems; **health services**

⁵⁷ Belgian Institute for the Equality of Women and Men and Western University, 2017, See p. 72 of annexed research paper.

⁵⁸ Sourced from data provided by EIGE, 2014.

⁵⁹ Milieu 2018, Chapter 3, p. 68.

(€14 billion), criminal justice systems (€32 billion), civil justice systems (€2 billion) and social welfare (€9 billion). Alongside a loss in productivity, violence against women is predicted to lead to a total GDP loss of €30 billion.⁶⁰

Table 5 – Summary of impacts of the gender pay gap in the EU

Category	Type of impact	Quantitative estimates*	Sources
Individual	Lost earnings	€241-379 billion	Eurostat
	Pension gap	Pensions for women are 40.2 % less than those of men (ages 65-74)	Lodovici et al. (2016a)
	Poverty risk	59 % of the population (ages 55 and up) at risk of poverty are women	Eurostat (2015)
	Economic dependence – intimate partner violence	€146-321 million	EIGE (2014) and Aizer (2010)
Society	GDP loss linked to education and activity gap between men and women	€540 billion in 2030	Pollitt et al. (2017)
	Mental health – direct costs ⁶¹	€223-246 million	Platt et al. (2015), Olesen et al. (2012) and Eurostat
	Mental health – indirect costs (productivity loss) ⁶²	€318-350 million	Platt et al. (2015), Olesen et al. (2012) and Eurostat

Source: Milieu (2018)

⁶⁰ Milieu 2018, p. 72.

⁶¹ In health economics, the term direct cost refers to all costs due to resource use that are completely attributable to the use of a healthcare intervention or illness.

⁶² In health economics, indirect costs are defined as the expenses incurred from the cessation or reduction of work productivity associated with a given disease. Indirect costs typically consist of work loss, worker replacement, and reduced productivity from illness and disease. Both direct and indirect costs are placed in the category of economic impact. However, it should be noted that medical costs are partly paid by individuals (with the share depending on the health insurance system in a country).

Table 6 – Summary of impacts of violence against women in the EU

Category	Type of impact	Quantitative estimates*
Individual	Personal costs	€7 billion
	Increased expenditure on specialised services	€2 billion
	Physical and emotional impairment	€134 billion
Society	GDP loss	€30 billion
	Increase in health services	€14 billion
	Increased use of the criminal justice system	€32 billion
	Increased use of the civil justice system	€2 billion
	Increased expenditure on social services and welfare programmes	€9 billion

Source: Milieu (2018)

Race and ethnicity

Impacts related to the implementation of the Framework Decision on Racism and Xenophobia can be felt both by individuals and Member States. The complex emergent problem of online hatred is also insufficiently addressed by the Framework Decision on Racism and Xenophobia. As discussed in the previous chapter, barriers also exist to the effective national implementation of the Racial Equality Directive.

Impacts on individuals

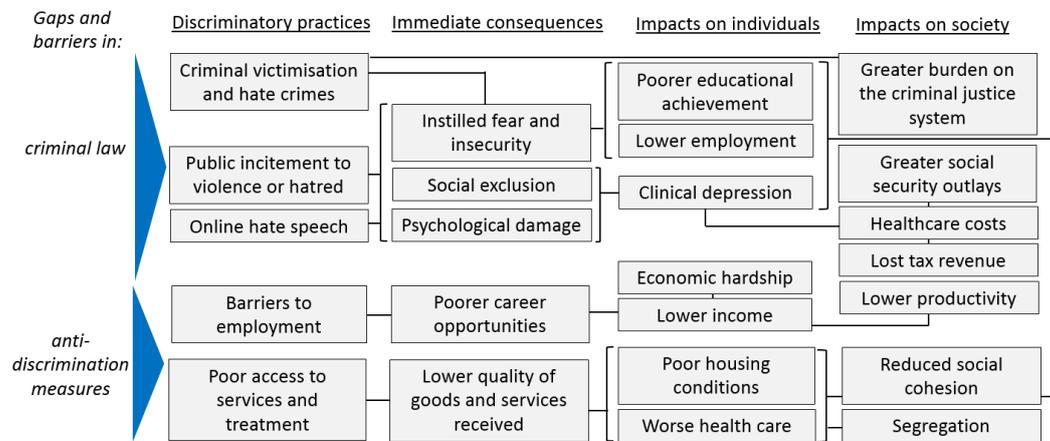
Discriminatory practices resulting from ineffective implementation can violate multiple fundamental rights, in particular, the right to equal treatment and non-discrimination (Racial Equality Directive and EU Charter, Article 21).⁶³ Impacts on individuals are wide ranging, including comparatively **reduced access to employment, goods and services, healthcare, education and social inclusion, to criminal victimisation including hate crimes, harassment and indirect discrimination**. See figure 2 below

When quantified, the individual impacts in the area of race and ethnicity most notably include **lost earnings of from €1.8 billion up to €8 billion**, whilst research also demonstrates a **higher risk (17.5 %) of economic hardship**, alongside an **increase in the risk of assault (by 9.7 %)**. **Risks of residing in poor quality housing (4 %), residential segregation (5 %) and a higher risk of unemployment (5 %)** compound the serious difficulties faced by people from ethnic or racial minorities (See Gaps B3, B4 and B5).⁶⁴

⁶³Racial Equality Directive and EU Charter, Article 21.

⁶⁴ Milieu 2018. p. 79.

Figure 2 - Conceptual framework for the impacts of discrimination in race and ethnicity



Source: Milieu 2018

Impacts on Member States

These poor health and employment opportunities can also translate into lower GDP output for Member States, with an **estimated annual societal loss in the order of €2.4-10.7 billion**.⁶⁵ Residential segregation, which may also be reflective of lower social cohesion, can also contribute to social disruption, such as radicalisation and criminal activities.⁶⁶ In addition to a general weakening of societal cohesion, and a worrying upward trend in racism and xenophobic attitudes and hate speech, such discrimination can weaken economic output, with an estimated corresponding annual **productivity loss of €21-34 million**. In addition, healthcare costs in the order of **€15-23 million** would stem from direct costs in mental health provision.⁶⁷

Table 7 - Summary of impacts by race and ethnicity

	Type of impact	Quantitative estimates	Sources for author calculations
Individual	Lost earnings	€1.8 to 8 billion (Up to €206 million due to worse health status from assault and €1.8-7.8 billion due to lower employment)	ESS (2010-2014), Eurostat and Gambin (2005)
	Housing	Higher risk (4 %) of poor housing conditions	ESS (2014)
	Residential segregation	5 % higher probability of living in an area with high concentration of racial and ethnic groups	ESS (2014)
Society	GDP loss	€2.4 to 10.7 billion (€2.4-10.5 billion due to lost wages and up to €277 million due to	ESS (2010-2014), Gambin (2005) and Eurostat

⁶⁵ All figures cited here are annual unless otherwise specified. See Milieu 2018, p.97

⁶⁶ Milieu 2018, p. 78

⁶⁷ Milieu 2018, p. 79

Type of impact	Quantitative estimates	Sources for author calculations
	higher risk of assault and poorer health status)	
Tax revenue loss	€854 million to 3.9 billion (€854 million-3.8 billion due to lost wages and up to €100 million due to higher risk of assault and poorer health status)	Author calculations based on ESS (2010-2014), Gambin (2005) and Eurostat
Mental health – indirect costs (productivity loss) ⁶⁸	€21 to 34 million	ESS (2010-2014), Ikram et al. (2014) and Olesen et al. (2012).
Mental health – direct costs ⁶⁹	€15 to 23 million	ESS (2010-2014), Ikram et al. (2014) and Olesen et al. (2012)

Source: Milieu (2018)

Religion and belief

Discrimination on the grounds of religion and belief is reported to be lower in frequency than that of race and ethnicity, however in practice there could arguably be an element of overlap, since it may be difficult to distinguish between the two for some groups, for example, in the case of Muslims from North Africa. The assessment of discrimination in respect of religion and belief focused on three gaps and barriers:

lack of reasonable accommodation in employment (Gap B6)

education (Gap B7) and,

lack of protection outside of employment (Gap A1).⁷⁰

Impacts on individuals

Although less quantitative evidence has been generated on the impacts of discrimination on the grounds of religion and belief, this discrimination clearly appears to be on the increase. For example, between 2010 and 2014, the share of Jewish respondents reporting experiences of discrimination more than doubled, from 12 % to 29 %.⁷¹ The Council of Europe also reports an increase in the prevalence of discrimination towards Jewish and Muslim people over time.⁷²

In a similar vein, victims are at a higher risk of lost earnings, residential segregation, and poor housing conditions, along with suffering from psychological and physiological effects. In the field of employment, research demonstrates that religious employees often struggle to reconcile their work life

⁶⁸ In health economics, indirect costs are defined as the expenses incurred from the cessation or reduction of work productivity associated with a given disease. Indirect costs typically consist of work loss, worker replacement, and reduced productivity from illness and disease.

⁶⁹ In health economics, the term direct cost refers to all costs due to resource use that are completely attributable to the use of a healthcare intervention or illness.

⁷⁰ See table 37 on p. 142 of the annexed research paper.

⁷¹ ESS data, cited in Milieu 2018, p. 82.

⁷² Council of Europe & ECRI, 2016, cited in Milieu 2018, p. 83.

with their religious commitments.⁷³ The possibility for religious minorities to access employment thus appears to depend greatly on the attitude of the employer or service provider.⁷⁴

Impacts on Member States

The table below quantifies and summarises the estimates and sources. As for specific impacts on Member States, as in other grounds, these consist of **GDP loss of €197 million from lost earnings and a loss of up to €71 million in tax revenue**. Data was collected from the European Social Survey (ESS) and Eurostat.

⁷³ Alidadi, 2012, p. 714 cited in Milieu 2018, p. 85.

⁷⁴ Equinet, 2015, cited in Milieu 2018 p. 85.

Table 8 – Summary of impacts of discrimination on the grounds of religion and belief

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Earnings lost due to assault and poor self-reported health	Up to €146 million	ESS (2010-2014) and Eurostat
	Residential segregation	7 % higher probability of living in an area with high concentration of racial and ethnic groups	ESS (2014)
	Housing	Higher risk (5 %) of having poor housing conditions	ESS (2014)
Society	GDP loss	Up to €197 million due to lower earnings	ESS (2010-2014) and Eurostat
	Tax revenue loss	Up to €71 million due to lower earnings	ESS (2010-2014) and Eurostat

Source: Milieu 2018

Sexual orientation

Legislative gaps which increase the risks of discrimination for LGBTI persons (defined as Lesbian, Gay, Bisexual, Transgender and Intersex) include the fact that hatred based on sexual orientation is not presently covered by hate crime/speech legislation in all Member States. In addition, and as for other grounds of discrimination, there is no protection outside employment. However, the research in this area is supported by stronger data in comparison to other grounds.

Impacts on individuals

Fundamental rights, in particular the right to equal treatment and the right to respect for private and family life (EU Charter, Articles 7 and 21), are infringed by those who discriminate on the basis of sexual orientation.⁷⁵ Discriminatory impacts include limited access to goods and services, **quantified at between €4-8.1 billion**, which results in prejudicial treatment in the delivery of services and criminal victimisation, including hate crimes. Research conducted in 2012 found that **nearly half (47 %) of LGBT people across the EU-28 had felt discriminated against or harassed** on the grounds of their sexual orientation during the previous 12 months.⁷⁶ The level of discrimination varied between Member States⁷⁷ and by type of sexual orientation, with discrimination twice as high among transgender people compared with LGB people.⁷⁸

⁷⁵ ECHR Articles 7 & 21

⁷⁶ See the Fundamental Rights Agency (2014b), European Union lesbian, gay, bisexual and transgender (LGBT) survey – main results; The survey did not specifically address Intersex people, but their situation was considered in a later Fundamental Rights Agency paper, [The fundamental rights situation of intersex people](#), 2015.

⁷⁷ Stark differences exist across Member States, from 31 % in the Netherlands to up to 61 % in Lithuania.

⁷⁸ FRA 2014b, cited in Milieu 2018, p. 88.

Furthermore, 6 % of LGBT people in the EU reported having been attacked or threatened with violence during the past year, whilst 22 % had reported an incident of hate-motivated violence to the police.⁷⁹ Despite the existence of legal protection in the sector of employment, LGBT people experience high levels of discrimination in employment, which can lead to poorer career opportunities and reduced income, with **lost earnings estimated at €19-53 million and lost pension income of €1.5-3.1 billion**. A number of studies also show that bullying and harassment on such grounds can **increase psychological damage and heighten the risk of mental health problems**.⁸⁰ According to a study by the European Commission, LGBTI individuals also face a range of **challenges in accessing healthcare**.⁸¹

Impacts on Member States

As in the case of other grounds, discrimination on the grounds of sexual orientation results in a **GDP loss of €25-71 million**. Additionally, **lost tax revenue is in the region of €9-26 million**. There are also clear wider societal impacts on social cohesion.⁸²

Table 9 – Summary of impacts of discrimination on the grounds of sexual orientation

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Lost earnings	€19 to 56 million (€EUR 19 to 53 million due to poorer health status and up to €3 million due to assault)	ESS (2010-2014) and Eurostat
	Lost pension income	€1.5 to 3.1 billion	Granath et al. (2008)
	Limited access to goods and services: housing	€4 to 8.1 billion	Granath et al. (2008)
Society	GDP lost	€25-75 million (€25-71 million due to poor health status and up to €4 million for assault)	Author calculations based on ESS (2010-2014) and Eurostat
	Tax revenue lost	€9 to 28 million (€9–26 million due to poor health status and up to €1.5 million for assault)	Author calculations based on ESS (2010-2014) and Eurostat

Source: Milieu (2018)

⁷⁹ FRA 2014b cited in Milieu 2018, p. 91/

⁸⁰ Milieu 2018, Ibid.

⁸¹ European Commission (2017), [Health4LGTBI: Reducing health inequalities experienced by LGTBI people](#).

⁸² Ibid, p. 92.

Age

The main gap relevant to discrimination on the grounds of age relates to the lack of protection outside of formal employment. Barriers to the effective national implementation of the Employment Equality Directive are also of particular relevance for age discrimination. According to data from the European Social Survey, those who report discrimination on the grounds of age are mostly aged 55 years and over and, at a lower level, people in the 14-24 year age bracket. According to Eurostat (2017), in 2016, people aged 55 years and above made up 32 % of the EU population.⁸³

Impacts on individuals

The lack of protection from age discrimination outside of employment can influence access to goods and services, including housing, healthcare (a particular problem for the elderly), and education. Age discrimination increases barriers to employment and limits access to training for older workers. Research demonstrates that premature retirement has an impact on psychological wellbeing.⁸⁴ Such circumstances are likely to bring **personal loss in earnings and pensions**, quantified by econometric analysis to be between **€318 million and 1.1 billion**. This can result in economic hardship for the individuals affected.

For young people, restricted access to scholarships for students over the age of 26 years can be considered an example of age discrimination in education. The value of **individual loss due to restricted access to scholarships is estimated to be in the range of €6.3 to 8.6 billion**, impacting career development and educational attainment.

Impacts on Member States

ESS data on the issue of age discrimination in employment has demonstrated that employment rates peak for people in the 45-54 year age group and decrease profoundly for those aged 55-64 years. It also suggests that people who are discriminated against on the grounds of age are 17 % less likely to be employed than those who do not report age discrimination, with corresponding impacts on GDP output and productivity. Based on this finding, **lost earnings were estimated to be in the order of €182 to 228 billion**. These lost earnings have an impact on the economy in terms of **lost tax revenue, which was estimated to be in the range of €88 to 110 billion**.⁸⁵

83 See the section on Age, Chapter 3 Milieu 2018.

84 Wood et al., 2008 cited in Milieu 2018, p. 95

85 See Milieu 2018, p. 97

Lower productivity and lost tax revenue due to discriminatory employment pathways leads to an estimated **GDP loss** in the range of **€244-307 billion**. The loss in individual earnings would also eventually affect the real economy through **tax revenue lost, (estimated to be €154 to 526 million)** and lower expenditure, and result in a total **GDP loss of an estimated €427 million to 1.5 billion**.⁸⁶

Table 10 – Summary of impacts of discrimination on the grounds of age

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Lost earnings	€182-229 billion (€318 million to 1.1 billion lost due to bad health status and €182-228 billion due to lower employment)	ESS (2010-2014), Eurostat and Gambin (2005)
	Access to scholarships	€6.3-8.6 billion	Granath et al. (2008) and Eurostat
Society	GDP lost	€244-307 billion (€427 million to 1.5 billion due to poorer health status and €244-305 billion due to lower employment)	ESS (2010-2014) and Eurostat
	Tax revenue lost	€88-110 billion (€154-526 million due to poorer health status and €88-110 billion due to lower employment)	ESS (2010-2014) and Eurostat

Source: Milieu (2018)

Disability

Correct implementation of the Employment Equality Directive, and rights to independent living and inclusive education, are both required to overcome current barriers to protection for people with disabilities in the EU. Most importantly, there is currently no protection outside employment, including reasonable accommodation.

Impacts on individuals

Firstly, people with disabilities often experience limited access to the labour market. Based on these findings, **lost earnings for people with disabilities** who are excluded from the labour market are estimated to be in the range of **€468-763 million**.⁸⁷ Challenges for both employers and workers are multiple and varied. Outside employment, there are risks, and evidence exists of discrimination within the housing and healthcare sectors. Based on the findings by Milieu, the **additional costs of access to goods and services faced by people with disabilities was extrapolated to EU level and estimated to be in the range of €15-41 billion every year**.

⁸⁶ Ibid., p. 97

⁸⁷ Milieu 2018, p. 99.

Disabled individuals also face higher costs of living, estimated between **€15 and 41 billion**. These types of discrimination can lead to insecurity, social exclusion and deterioration in health. Another result of such discrimination is demonstrated by econometric analysis based on data from the ESS, which found that **people with disabilities are between 12 and 21 %** (depending on the severity of disability) **more likely to experience economic hardship**.

Due to discrimination, individuals with disabilities might also experience **limited access to their fundamental right to education, as well as to life-long learning**. Lower educational achievement can result in lower earnings later in life. Lost earnings among people with disabilities due to **lower educational attainment were estimated to amount to €61-98 million** in the EU. In addition, limited access to education for people with disabilities may result in stress and social exclusion. Although such effects could not be quantified, they may impose a high burden on individual and societal well-being, alongside social cohesion.

Impacts on Member States

In a similar vein to other sections of this study, lost earnings due to both lower educational attainment and lower employment rates are considered to have an economic impact on society in terms of both lost tax revenue and GDP. Based on Eurostat data on average annual earnings in the EU by educational level, lost tax revenue in the EU was estimated in the range of €255-416 million, while annual **lost GDP was estimated at between €710 million and €1.2 billion**.⁸⁸

Table 11 – Summary of impacts of discrimination on the grounds of disability

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Lost earnings	€529-861 million (€468-763 million due to lower employment and €61-98 million due to lower attainment in tertiary education)	ESS (2010-2014) and Eurostat
	Higher costs of living (access to goods and services)	€15-41 billion	Eurostat and Brawn (2014)
Society	GDP lost	€710 million to €1.2 billion per year (€628-1 024 million due to lower employment and €81-132 million due to lower level of tertiary education)	ESS (2010-2014) and Eurostat
	Tax revenue lost	€255-416 million per year (€226-369 million due to lower employment and €29-47 million due to lower level of tertiary education)	ESS (2010-2014) and Eurostat

Source: Milieu (2018)

⁸⁸ Ibid., p. 100.

Options for action and cooperation at EU level that could address the gaps and barriers

Key findings

- Options for action at EU level that could address the gaps and barriers identified above include:

- EU Accession to the European Convention on Human Rights and to the Istanbul Convention;
- A specific EU mechanism for monitoring democracy, the rule of law and fundamental rights in the Member States;
- Better implementation and enforcement of EU equality legislation;
- Adopting legal instruments to expand protection against discrimination to cover religion or belief, disability, age, and sexual orientation;
- Amending the Framework Decision on Racism and Xenophobia, extending the protection granted to victims of discrimination based on grounds currently not explicitly covered, such as sexual orientation or gender identity;
- Further gender equality in the sector of employment by expanding protections such as the availability of parental leave and actions to limit the gender pay gap;
- Increasing protection by expanding the application of positive action and reasonable accommodation; specifically, the concept of 'disproportionate burden', where costs are argued to outweigh benefits, should not be utilised to deny protection of individuals;
- Use of EU funds to enhance equality.

- Further action and cooperation at EU level would lead to better compliance with EU values and rights, and reduced discrimination, resulting in better educational and health outcomes, a reduced risk of assault, improved labour participation and by extension, productivity.

EU action and cooperation can address discriminatory behaviour as well as facilitate access to justice for victims. Over time, the EU has clearly demonstrated its added value in the area of equality and the fight against racism and xenophobia. However, more can be achieved in terms of better implementation and additional legal measures to address the gaps and barriers. It must also be noted that, in order to ensure equality and effectively fight racism and xenophobia, the EU must adopt an array of legislative and non-legislative tools, each addressing the various facets of the complex phenomena of discrimination,

intolerance and racism. Options therefore, can be utilised in tandem and are intended to complement each other.

Table 12 – Assessment of the options to tackle gaps and barriers in equality at EU level in terms of benefits and costs

Option	Description	Gap(s)/barrier(s) that could be addressed	Assessment of costs and benefits ⁸⁹
1	Accession to the ECHR and to the Istanbul Convention	A1, B2	<p>Benefits: Potentially greater access to goods and services; increased legal commitment at EU level to combat violence against women.</p> <p>Costs: Costs are expected to be limited as Member States are already bound by the ECHR.</p> <p>Net benefits: Net benefits are positive and are a function of the coherence achieved between the ECtHR and CJEU.</p>
2	Improve implementation and enforcement (<i>strengthen equality bodies, training, EU mechanism for monitoring</i>)	A2, A3 and to some extent all other gaps and barriers	<p>Benefits: Reduced discrimination and access to justice, although much depends on the Member States. If EU action alone reduces discrimination by 5 % it could lead to a gain in GDP of up to €247-703 million.</p> <p>Costs: Double EU resources to promote awareness-raising, mutual learning and training (€47 million) and to introduce an EU monitoring mechanism (€4 million).</p> <p>Net benefits: €196-652 million.</p>
3	Adopt legal instruments to expand protection against discrimination to cover additional grounds	A1	<p>Benefits: Reduced discrimination resulting in better educational and health outcomes. Assuming that EU action results in a 5 % improvement in these impact channels, GDP may increase to €26.7-83.1 million.</p> <p>Costs: Adoption of legislation that has already been developed.</p> <p>Net benefits: Less than €54.6 million⁹⁰ depending on the time and resources involved to adopt the legislation.</p>
4	Amend the Framework Decision to include additional	A2, B8	<p>Benefits: Assuming that EU action deters physical assault by 50 % an increase in GDP of €48 million (€12-35 million) may be gained.</p> <p>Costs: Amendment of the adopted decision.</p>

⁸⁹ This column presents the potential benefits and costs of each option as well as the net benefits (benefits minus costs). The figures presented are annual estimates, unless otherwise specified. The benefits and costs represent only the share that can be attributed to the EU, in line with the concept of Cost of Non-Europe. For more details about the benefits and costs of each option, please refer to the rest of Chapter 4. The authors' calculations for the assessment of benefits are explained in Annex 3.

⁹⁰ This is the point estimate for the benefits.

Option	Description	Gap(s)/ barrier(s) that could be addressed	Assessment of costs and benefits ⁸⁹
	grounds		Net benefits: Less than €48 million depending on the time and resources involved to amend the decision.
5	Further gender equality in the sector of employment	B1	Benefits: Increase in labour market participation and productivity. Costs: Payments for leave (e.g. paternity leave). Net benefits: €0.1-3 billion for all forms of leave. An additional €7-16 billion ⁹¹ for flexible working arrangements.
6	Increase protection by expanding the application of positive action and reasonable accommodation	A1, B6, B7, B13	Benefits: Increased integration of racial, ethnic and religious minorities in the labour market. Costs: EU resources to promote awareness and training activities in the sector of employment. Net benefits: Gains from increased integration expected to exceed the EU costs of supporting this measure.
7	Use of EU funds to enhance equality	All gaps and barriers	Benefits: Greater awareness of discrimination and avenues to access justice. Costs: Opportunity costs of using the funds for anti-discrimination and equality measures. Net benefits: Unclear due to trade-offs with other objectives of the EU funds.

Source: Milieu (2018)

Options for action at EU level that could address the gaps and barriers identified in EU cooperation and action in the area of equality and the fight against racism and xenophobia include:

1. EU Accession to the European Convention on Human Rights and to the Istanbul Convention.

This action would address gaps A1 and B2.

EU accession to the ECHR, in line with the obligation to do so in accordance with Article 6 (2) TEU, would help to ensure a degree of coherence in the interpretation of fundamental rights at EU and CoE level. EU accession would imply that the EU could be called to appear before the ECtHR as a co-defendant. Another benefit of EU accession to the ECHR would be that an additional level of scrutiny would be added by the EU directly participating in the monitoring of the execution of ECtHR decisions.

⁹¹ These are annual average estimates, calculated by the authors based on the figures presented in the Impact Assessment for the Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, April 2017. The study presents net benefits of €5.6-130 billion for all forms of leave and additional €285-653 billion for flexible working arrangements over the period 2015-2055.

Furthermore, acceding to the Istanbul Convention will mean that it forms an integral part of EU law. Whilst ensuring a stronger coherence between EU law, the ECHR and the Istanbul Convention, this would give the EU legal competence for the EU in fields relating chiefly to sexual harassment, criminal law, victims' rights, cross-border cooperation, immigration and asylum. The Union would also have a legal commitment to adopt measures to prevent and combat violence against women.

The benefits of EU accession to these two Council of Europe conventions would be greater access to goods and services, and an increased legal commitment at EU level to combat violence against women. Access to goods and services (including support services) could lead to increased employment and social inclusion for these individuals, and higher social cohesion and GDP for society.

Costs are expected to be comparatively limited as Member States are already bound by the ECHR. At a national level, some efficiencies may even be gained, as cases from Member States could be brought to either the ECtHR or the CJEU, with a degree of convergence in case law. This means that the net benefits of this policy option are considered to be positive and are a function of the coherence achieved between the ECtHR and the CJEU.

2. Ensuring compliance with democracy, the rule of law and fundamental rights within the EU.

This action would address gaps A2, A3 and other gaps.

This could be achieved through an EU pact for democracy, the rule of law and fundamental rights (DRF), in the form of an interinstitutional agreement (IIA) based on Article 295 TFEU, as the European Parliament called for in 2016.⁹² The IIA should lay down arrangements for the development of an annual European report on the state of DRF in the Member States. This could be a basis for discussion between the EU institutions and national parliaments, resulting in country-specific recommendations aimed at monitoring and enforcing Member State compliance.

The added value of action at EU level is that responsibility for DRF monitoring and evaluation exercises could be clearly allocated and coordination would be ensured. Swifter and more effective cooperation among EU institutions and

⁹² European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)), P8_TA(2016)0409.

between those institutions and Member States could be achieved throughout DRF enforcement. The proportionality of EU intervention should be guaranteed through a methodology for a European report on the state of democracy, the rule of law and fundamental rights in the Member States, which is not unduly burdensome and costly in terms of data collection and reporting requests to Member States.

This annual European report could build on the Fundamental Rights Agency's development of a European Fundamental Rights Information System (EFRIS) , based on existing sources of information and evaluations of instruments.

Developing an annual European report and policy cycle on the state of DRF in the Member States could be carried out at relatively low cost (€4 million), particularly if the right synergies are found with international organisations; whilst at the same time having significant benefits, notably fostering mutual trust and recognition, attracting more investment, and providing higher welfare standards.⁹³

3. Better implementation and enforcement of EU equality legislation

This action would address gaps A2, A3 and other gaps.

Proper implementation and enforcement of the legal framework could ensure that individuals are effectively protected from discrimination. This policy option outlines four tools to improve implementation and enforcement of the EU framework, notably:

- Strengthening equality bodies.
- Facilitating access to justice.
- Training enforcement actors.
- Empowering national actors.

For equality bodies to be strengthened, the Commission could introduce minimum standards for national equality bodies to provide independent assistance to victims, monitor the application of the legislation, conduct research, publish reports and make recommendations. At present, the EU framework limits the work of equality bodies to the discrimination grounds of sex and racial and ethnic origin, and the grounds covered by equality bodies vary across Member States. The capacities of equality bodies also vary considerably across

⁹³ W. van Ballegooij, T. Evas, An EU mechanism on democracy, the rule of law and fundamental rights, EPRS, European Parliament, October 2016.

Member States, dependent on such dynamics as structure, resources, and competences in handling complaints (e.g. ability to take cases before the courts).

A greater role for equality bodies could help to reduce the risk of discrimination across all grounds and sectors, as well as improving citizen's access to justice. Equality bodies would then contribute more to monitoring and preventative actions, as well as ensuring an adequate response to discrimination.

Benefits of better implementation include reduced discrimination and access to justice, although much depends on the Member States. There could be substantial gains in GDP, for example, if EU action reduces discrimination by 5 % this could lead to a gain in GDP of up to €247-703 million. Therefore, given substantial improvement, the potential economic benefits may be in the order of €25 to 545 million. To fully achieve such benefits, it is crucial for the Member States and the EU to promote effective implementation of the current equality legal framework.

However, this policy option contains significant costs. Strengthening the mandate of the equality bodies would require further resources to carry out additional activities, which would primarily represent a cost for Member States. According to Equinet, in 2015, equality bodies' annual operating budgets varied considerably, from €87 000 to €23.3 million. If for example, the EU resources to promote awareness-raising, mutual learning and training were doubled, this would come at a cost of €47 million. With this cost however, net benefits related to improved implementation and enforcement of the legal framework is estimated to be €196-652 million.

4. Adopt legal instruments, notably the horizontal anti-discrimination directive, to expand protection against discrimination to cover religion or belief, disability, age and sexual orientation

This action would address gap A1.

The main gap in the EU legal framework concerns the absence of protection against discrimination beyond the employment sector for the grounds of religion and belief, disability, age and sexual orientation (Gap A1). If such protection were introduced, protection across various sectors such as social security, healthcare and education could be ensured.

In 2008, the Commission adopted a proposal for a directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (the proposed equal treatment directive). However, the proposal is currently blocked at Council level due to diverging

perspectives between Member States. The proposed directive would prohibit discrimination on the above-mentioned grounds in the following areas:

- Social protection, including social security, social assistance, social housing and healthcare.
- Access to education.
- Access to and supply of goods and services available to the public.

Adoption would be a key step in consolidating the EU equality framework, and could be particularly effective in fighting discrimination, if the EU could provide safeguards with respect to the right to reasonable accommodation.

The primary costs of this policy option are drawn from an impact assessment of the proposed equal treatment directive, yet would be minimal as the legislation is already in place.⁹⁴ The study identified three primary cost categories. Firstly, administrative and regulatory costs borne by government authorities, secondly general compliance costs (e.g. legal advice, auditing, staff training, etc.) borne by companies and public service providers, and thirdly, sector and grounds-specific costs borne by companies and service providers. Additionally, the EU would face relatively limited costs for the adoption of the proposed equal treatment directive.

Monetary and non-monetary benefits for both individuals and Member States would be multiple. Fundamental rights protection would be greatly enhanced and consolidated, whilst individuals would receive equal protection from discrimination and would be supported by equality bodies or the courts when their rights have been violated. Vulnerable groups such as the elderly, persons with disabilities, persons from religious minorities and LGBTI individuals could benefit from greater social inclusion. This increase in individual earning potential would be expected to impact on the economy, with an estimated GDP increase of €534 million to €1.7 billion under this policy option. Assuming that EU action results in a 5 % improvement in education achievement and health status of discriminated individuals, GDP may increase by a figure of €26.7-83.1 million.⁹⁵

The cost of non-Europe related to the lack of EU action to expand protection against discrimination to cover additional grounds is therefore expected to be less than €54.6 million,⁹⁶ depending on the time and resources involved to adopt the legislation, which could be politically significant.

⁹⁴ See Altan et al. cited in Milieu 2018, p. 121.

⁹⁵ See Annex 3 for information on how these estimates were calculated.

⁹⁶ This is the point estimate for the estimated benefits.

5. Amending the Framework Decision on Racism and Xenophobia, extending the protection granted to victims of discrimination based on grounds currently not explicitly covered, such as sexual orientation or gender identity

This action would address gaps A2 and B8.

The Framework Decision on Racism and Xenophobia and the Audio-visual Media Services Directive do not currently protect victims of hate speech and crimes based on sexual orientation and gender identity. A fifth policy option could envision an amendment to the Framework Decision to extend protection to cover the grounds of sexual orientation and gender identity.⁹⁷ This could overcome the current barriers to access to justice for victims of discrimination (See Gap A2) and hatred based on sexual orientation, which are not yet covered by hate crime/speech legislation across the EU (Gap B8).

Concerning how the decision may be amended, this could be accomplished with the addition of 'sexual orientation and gender identity motivation' as grounds falling under the offence of incitement to violence and hatred. In addition, this would mean that courts would have to take 'sexual orientation and gender identify motivation' into account when deciding on penalties for crimes other than incitement to violence and hatred.

The impacts of the amendment would be significant, as it would constitute the first legal protection of gender identity at EU level. If the amendment could be successfully implemented, it would lead to a higher rate of prosecution and potentially a greater deterrent of hate crimes and hate speech. Any impacts would be reinforced and complemented through greater harmonisation with the Victims' Rights Directive.

However, the impacts of this policy option would inevitably be highly dependent on Member State implementation. While some Member States currently offer protection through a voluntary extension of protection regimes, this policy change would see Member States performing a greater role in the fight against discrimination, through for example additional judicial training, extended mandates for equality bodies, or raising awareness and campaigning.

One key benefit of modifying the framework decision would be improved mental health status, which could lead to improved access to goods and services, higher productivity, higher social cohesion, and increased GDP. Assuming that

⁹⁷ Protection would extend to lesbians, bisexuals and gays. Transsexuals are already covered on the grounds of sex.

EU action deters physical assault by 50 %, an increase in GDP of €12-35 million may be gained.⁹⁸

The costs the EU would face in implementing this option would be limited, as they are largely dependent on the time and resources required to amend the decision. Member States that already offer protection against hate crime for LGBTI persons would have few or no additional costs. For other Member States, the costs of implementing this policy option would relate primarily to additional resources for equality bodies to raise awareness, prosecute hate crimes against LGBTI, and conduct further research and monitoring. The additional resources needed would depend on the current levels. In 2015, for example, the operating budgets for equality bodies ranged from €87 000 to €23.3 million.⁹⁹

The cost of non-Europe (CoNE) related to the amendment of the Framework Decision to include additional grounds is therefore estimated to be below the €48 million outlined as the economic benefit gained. The extent to which the CoNE is lower than €48 million would be dependent on the time and resources involved to amend the decision.

6. Further general equality in the sector of employment

This action would address gap B1.

As discussed in the previous chapters, the gender pay gap is aggravated by typical work and social arrangements, with women earning, on average, 16.3 % less than men. This is due to a number of factors, such as women bearing the burden of caretaking for dependents, a higher likelihood of working part-time due to caretaking responsibilities, workplace stereotypes and stigmatisation, and limited access to flexible working hours.

A sixth policy option could contribute towards limiting the gender pay gap (Gap B1) through attenuation of such structural inequalities in the workplace. Considerable gaps also remain, as previously identified, regarding the availability of parental leave and opportunities and protections for part-time workers.

To rectify these issues, the Commission adopted a [proposal](#) on work-life balance in 2017. Among its contents was the right to a minimum of 10 working days' paternity leave, entitlements to parental leave and the introduction of flexibility regarding types of leave available. The proposal also includes flexible

⁹⁸ Please refer to Annex 3 for details on these calculations of the economic benefits.

⁹⁹ These figures were obtained from a review of the European Network of Equality Bodies' [Equinet Member pages](#).

arrangements, such as the right to work remotely, and extends the right to a flexible arrangement to all parents with children up to a certain age. Lastly, the directive proposes up to five days of carers' leave for workers to care for seriously ill or dependent relatives, and compensation during parental or carer's leave. Such leave would be compensated at least at the level of sick pay.

Individuals benefit greatly from all of the elements proposed, each of which promotes employment and social inclusion. The European Commission states that parental leave offers the greatest benefit in terms of real income. In addition, this option promotes work-life balance and improves well-being because both parents have opportunities to spend time with family. Improved flexibility at work allows women to remain in the workplace, thereby reducing their pay gap and risk of reduced prosperity, alongside all the physical and mental health risks associated with it.

At the societal level, benefits would include increased labour force participation and productivity. Monetised estimates are in the region of €0.1-3 billion for all forms of leave. An additional €7-16 billion for flexible working arrangements.¹⁰⁰ Hiring and training new workers are expected costs for businesses, but these would be offset by long-term retention of workers alongside greater productivity. Compensation in the form of benefit payments is also expected to drive costs higher for Member States.

The cost of non-Europe (CoNE) for promoting gender equality in the employment sector corresponds to the missed net benefits accruing from the introduction of maternity, paternity, parental and carer's leave (€0.1-3 billion annually) and of flexible working arrangements (€7-16 billion annually).

Benefits: Increase in labour market participation and productivity.

Costs: Payments for leave (e.g. paternity leave).

Net benefits: €0.1-3 billion for all forms of leave. An additional €7-16 billion for flexible working arrangements.

7. Increase protection by expanding the application of positive action and reasonable accommodation

This action would address gaps A1, B6, B7 and B13.

Equal opportunity is an important empowering mechanism to tackle discrimination. Policy action seven therefore considers the ability for positive action and the provision of reasonable accommodation measures to ensure that

¹⁰⁰ Table 33 on p. 131 of the annexed research paper provides a full cost-benefit analysis.

disadvantaged groups enjoy rights and benefits at a level equal to that of non-disadvantaged groups, unlocking the societal benefits of a more inclusive society. This option refers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive (B9, B14, A1), primarily utilising measures for positive action. In situations of deep-rooted discrimination and exclusion, many international organisations such as the European Network Against Racism (ENAR), have argued that a level playing field may be unachievable without the implementation of positive action measures.

Currently, Member States can adopt positive action measures based on racial or ethnic origin in various areas of socioeconomic life, but only in the employment sector for the discrimination grounds of sex, religion and belief, disability, age and sexual orientation. The adoption of the proposed equal treatment directive would expand positive action based on all discrimination grounds to a range of sectors, thus ensuring that equality is promoted equally across different discrimination grounds.

For example, in the case of disability, EU anti-discrimination law only includes the possibility for employers to 'reasonably accommodate' the needs of persons with disabilities. The proposed equal treatment directive (blocked in the Council since 2008) expands this option to other sectors, such as the provisions of goods and services, including housing and education. The concept of reasonable accommodation has much broader potential application than its current use in EU anti-discrimination law.¹⁰¹ Extending this duty to reasonably accommodate the needs of marginalised groups in society would enhance cultural diversity and promote socioeconomic inclusion throughout Europe.

As we have seen, a number of Member States consider positive action an exception to equal treatment while others consider it an effective route to achieve equality. One of the most common misconceptions surrounding positive action is the notion that strict quotas are the only tool for positive action, whereby preferential access to certain goods or services is given to disadvantaged groups solely on the basis of a protected characteristic. In reality, the opposite is true.¹⁰² Possibilities include invoking a wide range of special temporary measures of varying intensity, many of which do not include preferential treatment for members of the target group. Awareness raising and exchange and dissemination of best practice are essential in this regard.¹⁰³

¹⁰¹ See Tymowski, 2016, cited in Milieu 2018, Chapter 4, p. 132.

¹⁰² See De Schutter, 2007, cited in Milieu 2018, Chapter 4, p. 133.

¹⁰³ Tymowski, 2016, cited in Milieu 2018, Chapter 4, p. 132.

Such mechanisms would provide benefits for individuals, one of which is greater social inclusion. Positive action and reasonable accommodation can also help to bring protected individuals to the same level as their peers. Reasonable accommodation may lead to a greater proportion of racial, ethnic and religious minorities in the labour force, leading to higher income for these individuals and better social cohesion. Positive action for these groups in the education sector may lead to better educational outcomes.

Reasonable accommodation and positive action in the area of education and employment have the potential to benefit society through an increase in labour force participation, productivity and economic output (GDP). In other sectors, the benefits could be reflected in stronger social cohesion and less residential segregation (in the case of housing, for example).

The costs of implementing such measures in sectors beyond employment are not quantified in this analysis, but based on experience in the United States of America, where practices such as accommodating religious beliefs under reasonable accommodation is in most cases required by law, and costs have been minimal by definition. Other costs could stem from changing attitudes and beliefs, e.g. through awareness raising and training activities, including EU resources to promote awareness and training activities in the employment sector.

In this case, the CoNE for expanding the application of positive action and reasonable accommodation is the lost potential for social integration, yet it is expected that gains from increased integration are expected to exceed the costs of supporting this measure.

8. Use of EU funds to enhance equality

An eighth and final policy option to address discrimination at the EU level regards funding opportunities. It is possible for several existing EU funding mechanisms to be effectively utilised in the support of legal instruments with the aim of fighting discrimination. The policy option focuses on two EU funding streams in the 2014-2020 period in particular, whose specific objectives include combatting discrimination: the Rights, Equality and Citizenship (REC) programme¹⁰⁴ and the European Social Fund (ESF).¹⁰⁵

¹⁰⁴ The REC programme 2014-2020 replaces three previous programmes: Daphne III on violence against women, young people and children; fundamental rights and citizenship, aiming to support the respect of fundamental rights and to fight against racism, xenophobia and anti-semitism and improve tolerance in the EU, among others; and PROGRESS anti-discrimination and gender equality strands.

¹⁰⁵ Of the five ESIF, the ESF seems the most relevant to address discrimination and inequality, as it targets interventions promoting social inclusion and equality.

According to the thematic concentration rule, 20 % of ESF resources in each Member State (equivalent to €16.6 billion across the EU) are required to be spent on 'social inclusion, and the fight against poverty and all forms of discrimination'. However, the overall amount dedicated to the fight against discrimination is comparatively small (€0.6 billion, or 0.7 % of overall ESF allocation). One could argue there is a need for a greater proportion to be spent in these areas.

The effectiveness of the ESF in fighting discrimination evidently depends on the priorities and management practices of the respective managing authorities in each Member State and on the involvement of the relevant stakeholders in the disbursement of EU funding. The ESF can be viewed as complementary to the legal options, and a means to support their implementation. The funds would help to finance anti-discrimination measures and assistance for vulnerable population groups who face discriminatory practices in their everyday lives. The ESF particularly supports interventions such as training and coaching, provision of adjustment and accommodation, socioeconomic integration of the marginalised, educational programmes, support for NGOs and for strengthening public bodies active in these areas.

Given their structures and mandates, ESF projects can help to address direct and indirect discrimination in the areas of education and employment in particular, while REC projects can play a role in supporting anti-discrimination activities in other areas (e.g. health, access to goods and services). This would have several benefits, such as raising awareness of discrimination and streamlining avenues for access to justice.

The main cost associated with this option is the opportunity cost of using the funds for measures on anti-discrimination and equality rather than for other purposes. Such funding could be additional, yet it is more likely that significant trade-offs would need to be made, in light of an EU budget in flux. This cost would be particularly relevant for the ESF, as fighting discrimination is a primary objective of the REC programme. Therefore, the CoNE for the use of EU social funds to further equality is unclear, due to the trade-offs between various, diverse objectives of the EU funds.

Recommendations

Significant benefits could be achieved by the EU and its Member States by addressing the gaps and barriers in the area of equality and the fight against racism and xenophobia, notably better implementation and enforcement and the expansion of protections for all groups outside employment. Beyond more effectively protecting individual rights, such action could reduce material and immaterial damage inflicted by discrimination and hate crimes including on educational achievement, health status, earnings, housing conditions and pension entitlements. These measures would also have a positive effect on the overall economy.

Annex 1

The Cost of Non-Europe in the area of Equality and the Fight against Racism and Xenophobia

**Research paper
by Milieu Ltd**

Abstract

This Research Paper analyses the impact on individuals and the economy of the current gaps and barriers in EU action in the area of Equality and the Fight against Racism. To analyse the impact, this Research Paper reviews the current legal framework in the area to identify the most prominent gaps and barriers for each protected ground of discrimination: sex, race and ethnicity, religion and belief, sexual orientation, age and disability, as well as horizontal gaps and barriers that cover all the protected grounds. The Research Paper then assesses economic and non-economic impacts on individuals and society of those gaps and barriers. Finally, it identifies and analyses possible options for addressing those more prominent gaps and barriers.

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Contents

List of Tables	5
List of Figures	7
List of Boxes	7
List of Abbreviations	8
Executive Summary	11
Chapter 1: Introduction	18
I - Objectives	18
II - Methodological approach	18
III - Background	19
Chapter 2: State of Play	23
I - EU legal framework	23
1. EU competences	23
1.1 Legal bases for action	23
1.2 Scope of EU action	26
2. Approach to the identification of the main gaps and barriers	28
3. EU legislative framework and its gaps/barriers	30
3.1. Sex	30
3.2. Race and ethnicity	38
3.3. Religion and belief	41
3.4. Sexual orientation	44
3.5. Age	46
3.6. Disability	46
3.7. Horizontal gaps and barriers	50
II - Key gaps and barriers overview	54
Chapter 3: Assessing the impacts	56
I - Overview	56
II - Approach to economic assessment	60
III - Findings	63
1. Sex	63
1.1. Overview	64
1.2. Findings	66
2. Race and ethnicity	71
2.1. Overview	72
2.2. Findings	75
3. Religion and belief	79
3.1. Overview	79
3.2. Findings	83
4. Sexual orientation	85
4.1. Overview	86
4.2. Findings	88
5. Age	91
5.1. Overview	91
5.2. Findings	93

6. Disability	96
6.1. Overview	96
6.2. Findings	97
7. Findings by gap/barrier	101
Chapter 4: Policy options	107
Option 1: Accession to the ECHR	111
Option 2: Improve implementation and enforcement of the legal framework	113
Option 3: Adopt legal instruments to expand protection against discrimination to cover additional grounds	119
Option 4: Amend the Framework Decision to include additional grounds	122
Option 5: Further gender equality in the employment sector	127
Option 6: Increase protection by expanding the application of positive action and reasonable accommodation	131
Option 7: Use of EU funds to further equality	134
Conclusions	139
References	145
Executive Summary	145
Chapter 1	145
Chapter 2	145
Chapter 3	153
Chapter 4	164
Annexes	168
1. EU competence to act in the areas of equality, racism and xenophobia	168
2. Analysis of economic and individual impacts	170
European Social Survey (ESS)	170
Results of the econometric modelling with the ESS	172
Health status	172
Access to healthcare	174
Education	175
Assault and violence	178
Economic hardship	181
Housing	183
Calculation of the costs of discrimination by ground	186
Sex (Gap/Barrier B1)	186
Race and ethnicity (Gap/Barrier B3-B5)	188
Religion and belief (Gap/Barrier B6 and B7)	190
Sexual orientation (Gap/Barrier B8 and B9)	190
Age (Gap B10)	192
Disability (Gap/Barrier B11-B13)	193
Calculation of the costs of discrimination for the horizontal gaps/barriers	194
3. Estimating the benefits of the policy options	196
Option 2: Improve implementation and enforcement of the legal framework	196
Option 3: Adopt legal instruments to expand protection against discrimination to cover additional grounds	197
Option 4: Amend the Framework Decision to include additional grounds	198

List of Tables

Table 1: Selected gaps and barriers for the study.....	12
Table 2: Options to tackle gaps and barriers in equality at EU level.....	14
Table 3: Scope of existing EU action on non-discrimination (Articles 10, 19, 153 and 157 TFEU)	27
Table 4: Scope of existing EU action through criminal law (Articles 82-85 TFEU) and other legal bases	28
Table 5: Selected gaps and barriers for the study.....	54
Table 6: Reported instances of multiple discrimination.....	59
Table 7: Women experiencing violence since the age of 15 years (%).....	66
Table 8: Summary of impacts of the gender pay gap in the EU.....	70
Table 9: Summary of impacts of violence against women in the EU	71
Table 10: Prevalence rate of discrimination outside the sector of employment.....	73
Table 11: Reported instances of criminal victimisation in the past 12 months	74
Table 12: Summary of impacts by race and ethnicity	78
Table 13: Summary of impacts of discrimination on the ground of religion and belief.....	85
Table 14: Summary of impacts of discrimination on the ground of sexual orientation.....	91
Table 15: Reported discrimination on the ground of age and other characteristics, by age group	92
Table 16: Summary of impacts of discrimination on the ground of age....	96
Table 17: Comparison in employment rates, by type of disorder	98
Table 18: Summary of impacts of discrimination on the ground of disability	100
Table 19: Overview of impacts from the horizontal gaps ¹	102
Table 20: Overview of impacts for ground-specific gaps and barriers ¹	105
Table 21: Assessment of the options to tackle gaps and barriers in equality at EU level in terms of benefits and costs.....	109
Table 22: Assessment of option 1: EU accession to the ECHR and to the Istanbul Convention	112
Table 23: Mandate types of equality bodies.....	115
Table 24: Judicial training activities that received REC grants in 2015.....	116
Table 25: Assessment of option 2: improve implementation and enforcement of the legal framework	117
Table 26: Scope of mandate of national equality bodies in relation to the grounds of religion, disability, age and sexual orientation, outside of employment.....	120

Table 27: Assessment of option 3: Adopt legal instruments to expand protection against discrimination to cover additional grounds	121
Table 28: Coverage of LGBT in hate speech and hate crime in the Member States	123
Table 29: Assessment of option 4: Amend the Framework Decision to include additional grounds	126
Table 30: Assessment of Option 5: furthering gender equality in the employment sector	129
Table 31: Cost-benefit analysis findings for policy options to further gender equality.....	130
Table 32: Assessment of option 6: increase protection by expanding the application of positive action and reasonable accommodation	133
Table 33: Overview of the REC Programme and the ESF	134
Table 34: Assessment of option 7: using EU social funds to further equality	137
Table 35: Overview of gaps/ barriers, their impacts and relative policy options to address them.....	141
Table 36: Correlations between different discrimination grounds as reported in the ESS	172
Table 37: Discrimination and self-reported health status	172
Table 38: Discrimination and self-reported health status: controlling for other factors	173
Table 39: Discrimination and reported poor access to healthcare	174
Table 40: Discrimination and access to healthcare: controlling for other factors.....	174
Table 41: Discrimination and education level: controlling for other factors	176
Table 42: Discrimination and years of education completed: controlling for other factors	177
Table 43: Discrimination and assault: controlling for other factors	178
Table 44: Marginal effects for assault.....	179
Table 45: Assault and self-reported health: controlling for other factors.	179
Table 46: Discrimination and economic hardship: controlling for other factors.....	181
Table 47: Economic hardship and self-reported health: controlling for other factors	182
Table 48: Discrimination and poor housing conditions: controlling for other factors	183
Table 49: Discrimination and unemployment: controlling for other factors	184
Table 51: Estimates for lost earnings, GDP and tax revenue (<i>Gap/barrier A2</i>)	196

Table 52: Estimates for the loss of earnings, GDP and tax revenue (Gap/barrier A3)	196
Table 53: Estimating the benefits of Option 2	197
Table 54: Estimating the benefits of Option 3	197

List of Figures

Figure 1: Conceptual framework for the impacts of discrimination	13
Figure 2: Prevalence of perceived discrimination by country	21
Figure 3: Conceptual framework for the impacts of discrimination	58
Figure 4: Gender pay gap in EU Member States, 2015 (unadjusted percentages)	64
Figure 5: Gender pay gap in Europe, by explained and unexplained components (%), 2010	65
Figure 6: Impact channels for gaps related to discrimination by gender ...	67
Figure 7: Impact channels of discrimination on the ground of race and ethnicity	76
Figure 8: Rising Islamophobia and anti-Semitism- share of Muslims and Jews who experienced discrimination, past 12 months	81
Figure 9: Reported instances of discrimination among Muslims, past 12 months	82
Figure 10: Reported instances of hate crimes or anti-Semitic harassment, past 12 months	83
Figure 11: Impact channels of discrimination on the ground of religion and belief	84
Figure 12: Perceived discrimination of LGBT people in different sectors, 2012	87
Figure 13: Impact channels of discrimination on the grounds of sexual orientation	88
Figure 14: Impact channels of discrimination on the ground of age	93
Figure 15: Impact channels of discrimination on the ground of disability	98

List of Boxes

Box 1: Defining the scope of gaps and barriers	29
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List of Abbreviations

Audiovisual Media Services Directive	Directive 2010/13/EC of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services,
CJEU	Court of Justice of the European Union
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EIGE	European Institute for Gender Equality
EJTN	European Judicial Training Network
ENAR	European Network Against Racism
Employment Equality Directive	Council Directive 2000/78/EC of 27 November 2000 establishing a framework for equal treatment in employment and occupation.
ENAR	European Network Against Racism
Equinet	European Network of Equality Bodies
ESF	European Social Fund
ESS	European Social Survey
EU Charter European Union	Charter of Fundamental Rights of the
EU MIDIS	European Union Minorities and Discrimination Survey
FRA	European Union Agency for Fundamental Rights
Framework Decision on Racism and Xenophobia	Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

Free Movement Directive	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
GBVAW	Gender-based violence against women
Gender Equality in Access to Goods and Services Directive	Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
Gender Equality Self-Employment Directive	Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC
HELP	Human Rights Education for Legal professionals
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
Parental Leave Directive	Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145/4, 19.06.1996 .
Pregnancy Directive	Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding
Proposed Equal Treatment Directive	Proposal for a Directive against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace
Racial Equality Directive	Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
REC	Rights, Equality and Citizenship
Recast Gender Equality Employment Directive	Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and

	equal treatment of men and women in matters of employment and occupation (recast)
Revised Parental Leave Directive	Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC
TEU	Treaty on European Union
TFEU European Union	Treaty on the Functioning of the
Treaty of Rome	Treaty establishing the European Economic Community
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
Workers' Rights Directive	Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

Executive Summary

Discrimination is a pressing matter in the European Union (EU). Racism and xenophobia are widespread and may be in part fuelled by the political response to the arrival of large numbers of asylum seekers and migrants, as well as the increased frequency of terrorist attacks. In addition, the rise of social media has created a new forum to share and disseminate racist and xenophobic information as well as to target individuals at risk for discrimination. An estimated one out of ten people in the European Union considered themselves belonging to a group at risk for discrimination (European Commission, 2015).

EU action in the area of equality is extensive and dates back to the Treaty of Rome, where the principle of equal pay between men and women was advanced. Since then, at least twelve instruments¹⁰⁶ have been introduced to directly tackle discrimination, racism and xenophobia. Most EU legislation focuses on a specific ground or sector, leading to piecemeal coverage.

This Research Paper entitled the *Cost of Non-Europe (CoNE) in the area of Equality and the Fight against Racism and Xenophobia* was prepared at the request of the European Parliament's European Added Value Unit, DG EPRS. Its objective is to identify gaps and barriers in EU action, analyse their impact on individuals and the economy, and assess the costs and benefits of a selection of policy options. The study focuses on discrimination on the grounds of sex, race and ethnicity, religion and belief, sexual orientation, age and disability.

Methodology

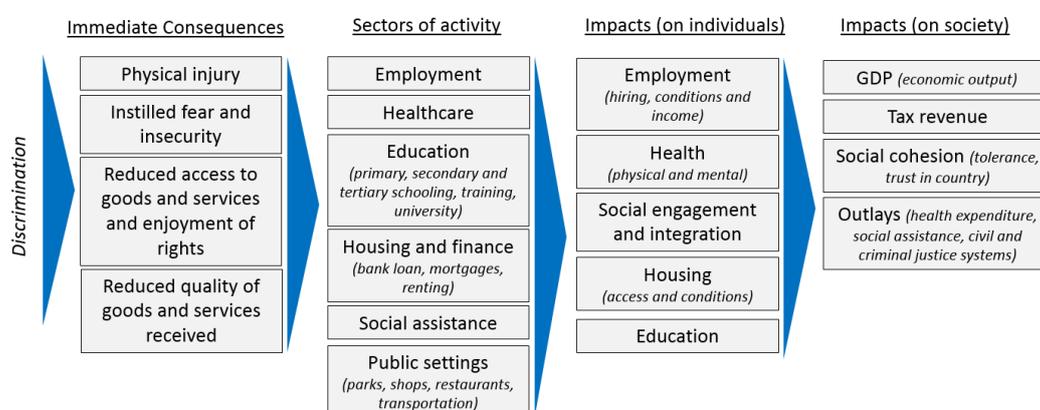
The most pressing gaps and barriers in EU action were identified taking into account EU competence in the area. In total, 13 gaps and barriers were selected for the study. Of these, three were horizontal gaps and barriers, which affected more than one ground. Table 3 presents an overview of the selection gaps and barriers for the study.

¹⁰⁶ Directive 79/7/EEC on equal treatment for men and women in matters of social security; Pregnancy Directive 92/85/EEC; Part-time Work Directive 97/81/EC; Race Equality Directive 2000/43/EC; Employment Equality Directive 2000/78/EC; Gender equality in access to goods and services Directive 2004/113/EC; Gender equality in employment Directive (Recast) 2006/54/EC; Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law 2008/913/JHA; Audiovisual Media Services Directive 2010/13/EU; Parental Leave Directive 2010/18/EU; Gender equality in self-employment Directive 2010/41/EU; Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

Table 3: Selected gaps and barriers for the study

Ground	Gap number	Gaps/barriers
<i>Horizontal:</i>		
Multiple	A1	No protection afforded by EU legislation for: social security and healthcare, education or access to goods and services for the grounds of religion or belief, disability, age or sexual orientation
	A2	Barriers to access to justice for victims of discrimination
	A3	Barriers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive
<i>Ground-specific:</i>		
Sex	B1	Gender pay gap
	B2	Violence against women
Race and ethnicity	B3	Ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia
	B4	Online hatred insufficiently addressed by the Framework Decision on Racism and Xenophobia
	B5	Barriers to the effective national implementation of the Racial Equality Directive (<i>overlap with A3</i>)
Religion and belief	B6	Lack of reasonable accommodation requirement in employment
	B7	No protection outside employment; lack of reasonable accommodation in education (<i>overlap with A1</i>)
Sexual orientation	B8	Hatred based on sexual orientation not covered by hate crime/speech legislation in all Member States
	B9	No protection outside employment; discrimination in access to healthcare (<i>overlap with A1</i>)
Age	B10	No protection outside employment (<i>overlap with A1</i>)
Disability	B11	Barriers to the right to independent living
	B12	Barriers to inclusive education
	B13	No protection outside employment, including reasonable accommodation (<i>overlap with A1</i>)

Discrimination may have a wide range of impacts on individuals, including inferior employment conditions, poorer educational outcomes and lower social integration, that infringe on their rights (Dovidio, Hewstone, Glick & Esses, 2010). These impacts may be similar whether experienced on the grounds of sex, race or ethnicity, religion or belief, age, disability, or sexual orientation. This is evident in the over-arching conceptual framework developed to map the impact channels stemming from the gaps and barriers (see Figure 3).

Figure 3: Conceptual framework for the impacts of discrimination


The majority of studies that have investigated the impacts of discrimination have focused on one ground or one category of impact. This study in contrast has a wide scope that covers different grounds as well as different categories of impact. Our approach to assessing these impacts includes an original and extensive econometric analysis of the European Social Survey in conjunction with qualitative and quantitative evidence from the research literature. Next to employment, the area with the most significant body of research relevant to this discussion is mental health. It is important to note that an individual may experience multiple discrimination, i.e. discrimination on more than one ground, as in the case of women with a disability or LGBTI persons from racial or ethnic minorities.

Findings

We found that at least 65% of the population ages 15 years and up is a member of a ground at risk for discrimination¹⁰⁷, which is substantially higher than the share who perceive being at risk of discrimination. Discrimination on the ground of sex is a significant driver as females account for about half of the population. The body of existing evidence on the impacts of discrimination was greatest for this ground. Less research has been generated on other grounds in particular race and ethnicity. More empirical research is needed on the impact of discrimination on individuals in the European context, particularly outside of employment and on the grounds of race, ethnicity and religion. Nonetheless, our econometric analysis of the European Social Survey identified a range of impacts felt by

¹⁰⁷ This estimate is based on our analysis of the European Social Survey. The percentage includes individuals who are female and/or belong to a religious, racial or ethnic minority, are above 65 years of age.

discriminated individuals in terms of access to services (e.g. healthcare), educational outcomes, employment status, health status, housing conditions and residential segregation. These impacts translated into losses to society in the form of lower GDP and tax revenue.

The majority of EU society (62% in the Eurobarometer survey) is in favour of introducing new measures to increase the protection of groups at risk of discrimination (European Commission, 2015). This study proposes seven policy options to further EU action to tackle discrimination and promote equality. Some of the options presented are based on existing initiatives, such as EU accession to the ECHR and to the Istanbul Convention (Option 1) and adopting a legal instrument to expand protection against discrimination to additional grounds (Option 3).

Table 4 presents these policy options, the gaps and barriers they may address and a summary of the economic assessment. The options cover all levels, from international to EU to Member State, and each could address at least one of the gaps/ barriers identified. Despite the costs of implementing such policy options, this qualitative assessment suggests that substantial benefits can be gained from EU actions. The resulting net benefits can be considered the Cost of Non-Europe, i.e. the cost to European society of lack of EU action in the area of equality.

Table 4: Options to tackle gaps and barriers in equality at EU level

Option	Description	Gap(s)/ barrier(s) that could be addressed	Assessment of costs and benefits ¹⁰⁸
1	Accession to the ECHR and to the Istanbul Convention	A1, B2	<p>Benefits: Potentially greater access to goods and services; increased legal commitment at EU level to combat violence against women.</p> <p>Costs: Costs are expected to be limited as Member States are already bound by the ECHR.</p> <p>Net benefits: Net benefits are</p>

¹⁰⁸ This column presents the potential benefits and costs of each option as well as the net benefits (benefits minus costs). The figures presented are annual estimates, unless otherwise specified. The benefits and costs represent only the share that can be attributed to the EU, in line with the concept of Cost of Non-Europe. For more details about the benefits and costs of each option, please refer to Chapter 4. The authors' calculations for the assessment of benefits are explained in Annex 3.

Option	Description	Gap(s)/ barrier(s) that could be addressed	Assessment of costs and benefits ¹⁰⁸
			positive and are a function of the coherence achieved between the ECtHR and CJEU.
2	Improve implementation and enforcement (<i>strengthen equality bodies, training, EU mechanism for monitoring</i>)	A2, A3 and to some extent all other gaps and barriers	<p>Benefits: Reduced discrimination and access to justice, although much depends on the Member States. If EU action alone reduces discrimination by 5% it could lead to a gain in GDP of up to EUR 247-703 million.</p> <p>Costs: Double EU resources to promote awareness-raising, mutual learning and training (EUR 47 million) and to introduce an EU monitoring mechanism (EUR 4 million).</p> <p>Net benefits: EUR 196-652 million.</p>
3	Adopt legal instruments to expand protection against discrimination to cover additional grounds	A1	<p>Benefits: Reduced discrimination resulting in better educational and health outcomes. Assuming that EU action results in a 5% improvement in these impact channels, GDP may increase EUR 26.7-83.1 million.</p> <p>Costs: Adoption of legislation that has already been developed.</p> <p>Net benefits: Less than EUR 54.6 million depending on the time and resources involved to adopt the legislation.</p>
4	Amend the Framework Decision to include additional grounds	A2, B8	<p>Benefits: Assuming that EU action deters physical assault by 50% an increase in GDP of EUR 12-35 million may be gained.</p> <p>Costs: Amendment of the Decision that has been adopted.</p> <p>Net benefits: Less than EUR 48 million depending on the time and resources involved to amend the Decision.</p>
5	Further gender equality in the sector of employment	B1	<p>Benefits: Increase in labour market participation and productivity.</p> <p>Costs: Payments for leave (e.g.</p>

Option	Description	Gap(s)/ barrier(s) that could be addressed	Assessment of costs and benefits ¹⁰⁸
			paternity leave). Net benefits: EUR 0.1-3 billion for all forms of leave. An additional EUR 7-16 billion ¹⁰⁹ for flexible working arrangements.
6	Increase protection by expanding the application of positive action and reasonable accommodation	A1, B6, B7, B13	Benefits: Increased integration into labour market for racial, ethnic and religious minorities. Costs: EU resources to promote awareness and training activities in the sector of employment. Net benefits: Gains from increased integration expected to exceed the EU costs of supporting this measure.
7	Use of EU funds to enhance equality	All gaps and barriers	Benefits: Greater awareness of discrimination and avenues to access justice. Costs: Opportunity costs of using the funds for anti-discrimination and equality measures. Net benefits: Unclear due to trade-offs with other objectives of the EU funds.

Conclusions

While EU action in the area of equality is significant, there remain significant gaps and barriers that result in losses for individuals and society. In particular, this study finds that the effective implementation of existing legislation can lead to large gains. In this respect, equality bodies, which have been established in all Member States, can play an important role in the fight against discrimination. Trainings and awareness raising efforts led by the EU may also create added value in terms of increasing access to goods and services and reducing physical and mental harm. Expanding legal protection to other grounds and sectors is also critical to help ensure equality of opportunities for all individuals.

¹⁰⁹ These are annual average estimates, calculated by the authors based on the figures presented in the Impact Assessment for the Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, April 2017. The study presents net benefits of EUR 5.6-130 billion for all forms of leave and additional EUR 285-653 billion for flexible working arrangements over the period 2015-2055.

“We are diverse in our ethnicity, our race, our appearance, and our religions. And we are embarked on a grand experiment of living and working together despite these sorts of differences. Each group must accept that the society is not just for them; but it is for them too, along with all of the others. And each person, each member of each group, should be able to go about his or her business, with the assurance that there will be no need to face hostility, violence, discrimination, or exclusion by others.”

-Waldron, J. (2012). *The Harm in Hate Speech*.

Chapter 1: Introduction

I - Objectives

The European Parliament's European Added Value Unit, DG EPRS, has requested the preparation of a Research Paper on the *Cost of Non-Europe (CoNE) in the area of Equality and the Fight against Racism and Xenophobia*. The objective of the research paper is to analyse the impact on individuals and the economy of gaps and barriers in European Union (EU) action, as well as identifying options to close those gaps and barriers at EU level. The study focuses on discrimination on the grounds of sex, race and ethnicity, religion and belief, sexual orientation, age and disability. Discrimination experienced by some groups, for example migrants, refugees and asylum seekers is not investigated in-depth in the study, as it is the focus for other studies in this series.

II - Methodological approach

The approach to identifying the CoNE in the area of equality and the fight against racism and xenophobia centred on three main research questions:

- (1) What is the current State of Play, and what are the gaps and barriers in EU cooperation and action in the area of Equality and the Fight against Racism and Xenophobia, in accordance with the EU Treaties and within the competence of the LIBE Committee of the European Parliament?
- (2) What is the impact of the current gaps and barriers in action and cooperation at EU level?
- (3) What are the options for action at EU level that could address the gaps and barriers identified, and what are their potential costs and benefits?

Mapping the State of Play and the identification of the main gaps and barriers was based on an analysis of the existing EU legal framework and its practical implementation (see **Chapter 2**). The research team reviewed both the legal instruments and the literature, including implementation reports, focusing on the most prominent gaps and barriers resulting from lack of EU action. This allowed for potential EU added value from further EU integration to be identified. The list of gaps and barriers is not exhaustive but, rather, focuses on key points. The review presents a list of gaps and barriers by protected grounds as recognised by the Treaty on the

Functioning of the European Union (TFEU), i.e. sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation¹¹⁰.

In **Chapter 3**, the research team identified the impact channels related to each form of discrimination, showing how factors such as social conditions, education, legislative gaps and administrative barriers have created gaps and barriers whose negative impacts impose a cost both on the individuals directly affected and on society as a whole. These costs can be divided into individual costs (such as poorer housing conditions) and broader economic costs (such as lower GDP). The costs were assessed per ground (i.e. sex, age, sexual orientation) and then linked to each of the identified gaps and barriers.

Building on the analysis of the main gaps and barriers in the area and their related impacts and costs, **Chapter 4** identifies seven options for EU action, including both legislative and non-legislative options. The economic and individual benefits associated with each option, including fundamental rights, are characterised alongside the expected costs related to its implementation. The degree to which the policy options can help to address the identified gaps and barriers was qualitatively assessed and provides an indication of the CoNE. Estimates for the share of EU individuals that could be affected by the policy option are also indicated.

III - Background

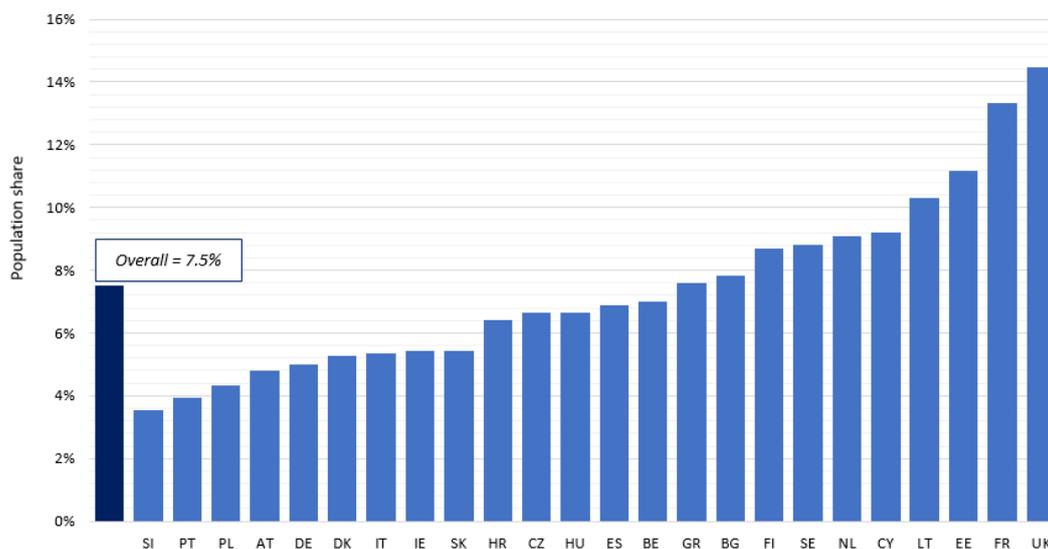
Equality is a founding value of the EU. Starting with the Treaty of Rome, the EU began to build its equality framework on the ground of sex by advancing the principle of equal pay between men and women. The Amsterdam Treaty expanded the EU equality framework to the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. Protection against discrimination has been established for all these grounds in the area of employment. For the grounds of sex and race/ethnicity, the protection expands to other areas such as access to goods and services and social security. In addition, to the legal instruments, the EU has adopted policy measures such as the Strategic Engagement for Gender Equality 2016-2019 and the European Disability Strategy 2010-2020, setting policy priorities in those areas. Inherent in these legal instruments and policy measures is the idea that the values of pluralism, tolerance, justice and non-discrimination will lead to a prosperous and thriving Europe.

¹¹⁰ The ground of nationality has a separate legal basis in the TFEU and, unlike other grounds for discrimination, concerns only nationals of the EU Member States. It is therefore excluded from this research paper.

Despite significant advances by the EU, achievement of equality is increasingly at risk. Racism and xenophobia are widespread, fuelled by the political response to the arrival of large numbers of asylum seekers and migrants, as well as the increased frequency of terrorist attacks (FRA, 2016). In addition, social media provide a new ground for incitement to racist and xenophobic attitudes that facilitates the dissemination of racist ideas (FRA, 2016a).

Discrimination is a pressing matter in the EU. About 12 percent of respondents a Eurobarometer survey considered themselves belonging to a group at risk for discrimination (European Commission, 2015). Moreover, 21 percent of the respondents report to have experienced discrimination during the previous 12 months. The most widespread reported forms of discrimination were on the grounds of sex ethnicity, sexual orientation, gender identity, religion or belief, disability and age (being over 55 years old). The majority of respondents (62 percent) were in favour of introducing new measures to increase the protection of groups at risk of discrimination (European Commission, 2015).

Data from the European Social Survey (ESS) 2014 shows that the prevalence of perceived discrimination on any ground varies across countries in the EU from 14 percent in the UK to 4 percent in Slovenia (see Figure 4). Such variation could be attributed to variation in the demographic composition of countries and may also be influenced by cultural factors. The grounds of discrimination seem also to vary greatly across countries. While in Estonia discrimination on the grounds of nationality or language is more widespread, and in Sweden discrimination on the grounds of sex is the most perceived ground of discrimination. Discrimination may be suffered on more than one ground, for example, women with a disability or LGBTI from a racial or ethnic minority. Multiple discrimination is an important issue given the increasing diversity of EU society.

Figure 4: Prevalence of perceived discrimination by country

Source: Authors' calculations based on ESS, 2014.

Discrimination may infringe on the fundamental rights and freedoms of individuals and impose a large cost on them as well as society. These impacts are largely a function of the type of discriminatory behaviour and how it affects the targeted individual in his or her daily life. The impacts may be immediate or may be generated over time.

Discriminatory behaviour may be direct and acute in the form of violence and hate crimes that can lead to physical injury and instil fear and insecurity for the victims. It may also be evident in differential access to goods and services and enjoyment of one's rights – for example, when persons with a disability do not have access to schools and the healthcare system due to a lack of adequate infrastructure – and poorer quality of goods received – for example, when LGBTI individuals do not receive adequate medical care. As a result, individuals may suffer a wide range of impacts including poorer educational outcomes and employment conditions, higher psychological stress and lower social integration. Even when not perceived, discrimination may nonetheless have detrimental impacts. For example, women may not be aware of sex discrimination, but may earn less than men who have similar qualifications and employment position (the gender pay gap) as has been shown by a significant body of research. Children are especially susceptible to the impacts of discrimination and may suffer from its impacts over the course of their lifetime. Together, these adverse impacts on individuals may translate into

costs for society in terms of lower social cohesion and economic output (GDP).

EU action and cooperation can address these impact channels in a number of ways, namely, in the prevention of discriminatory behaviours as well as by facilitating access to justice for victims. Over time the EU has clearly demonstrated its added value in the area of equality and the fight against racism and xenophobia. Yet, more can be achieved in terms of better implementation and additional legal measures to address the gaps and barriers. An example is offered by the national equality bodies, which play a key role in monitoring the implementation of non-discrimination legislation and supporting its implementation through raising awareness and assisting victims. They were established in all Member States following the Racial Equality Directive, the Gender Equality Directive on Goods and Services, and the Gender Equality in Employment Directive. Prior to the EU requirement, 20 Member States did not have such a body¹¹¹. Moving forward, there remains a host of options that further deepen EU integration and promise benefits for EU individuals and society.

¹¹¹ [Commission Staff Working Document accompanying the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, Summary of the Impact Assessment](#), COM(2008) 426 final.

Chapter 2: State of Play

Key findings

- The TFEU mandates the EU to adopt measure to combat discrimination on the grounds of sex, racial or ethnic origin, religion or belief, sexual orientation, disability and age. The EU legal bases to act include a general competence on non-discrimination (Article 19 TFEU) and specific competence such as on equal treatment between men and women in employment (Articles 153 and 157 TFEU)
- EU action in the area of equality and fight against racism and xenophobia spans through various sectors for the grounds of race/ethnicity and sex. It is however limited to employment for the remaining grounds of religion or belief, sexual orientation, disability and age.
- Overall, based on existing research and analysis, 13 prominent gaps and barriers have been identified in relation to the various protected grounds.

This section provides an overview of current EU action, together with the gaps and barriers identified in relation to the legal framework and its practical implementation. It begins by outlining the EU competences in the area, before analysing the existing action and related gaps/barriers by protected grounds of discrimination: *sex, racial or ethnic origin, religion or belief, sexual orientation, disability, age and nationality*. Where the gaps and barriers affect more than one of these grounds, they have been grouped into the category of ‘horizontal gaps and barriers’.

I - EU legal framework

1. EU competences

1.1 Legal bases for action

While the Treaty of Rome¹¹² included the principle of equal pay for equal work between men and women, there was no general competence for the EU in this area at that time. The EU thus relied on other legal bases to advance the equality agenda, chiefly the functioning of the common market¹¹³, or the health of workers in respect of maternity leave¹¹⁴ (Jacquot, 2015).

The Court of Justice of the European Union (CJEU) has contributed to furthering the equality agenda beyond economic objectives through its case law. In the 2000 *Deutsche Telekom* case, the CJEU ruled that the economic aim pursued by the Treaty is secondary to

¹¹² Treaty establishing the European Economic Community (EEC Treaty) ([Treaty of Rome](#)), 1957.

¹¹³ Treaty of Rome, Article 235.

¹¹⁴ Treaty of Rome, Article 118A.

its social aim and that equality – on the ground of sex in this case – is a fundamental human right.

The Treaty of Amsterdam introduced a **general competence** to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation¹¹⁵. This competence is now reflected in **Article 19** of the Treaty on the Functioning of the European Union (TFEU)¹¹⁶. Actions taken on foot of Article 19(1) require a special legislative procedure and unanimity in the Council. In future, this legal basis could be used to adopt an EU anti-discrimination directive. The Council Directive proposed in 2008 on implementing the principle of equal treatment was based on this provision (European Commission, 2008)¹¹⁷. The unanimity requirement can, however, present difficulties for EU action under this legal basis, as was the case for the 2008 Directive proposal.

Article 19(2) of the TFEU, on the other hand, enables the use of the ordinary legislative procedure for EU action combatting discrimination. This legal basis is limited to the establishment of incentive measures supporting Member States action, and excludes any harmonisation of laws.

In addition to the general competence, the EU has some **specific competences** to adopt measures on specific equality issues, including:

- Equal treatment of men and women in matters of equal pay, employment and occupation (**Article 157** TFEU).
- Equality between men and women for labour market opportunities and treatment at work (**Article 153(1)(i)** TFEU).
- Protection against discrimination on the ground of nationality (**Article 18** TFEU).

Other legal bases can and have been used to adopt EU legislation promoting equality in certain areas. For example, the EU may use legal bases of transport or judicial cooperation in criminal matters to adopt specific EU instruments that advance equality rights and combat racism in a given sector. Such legal bases may include:

- **Article 67** TFEU: Freedom, security and justice, with respect for fundamental rights.
- **Articles 82-85** TFEU: Judicial cooperation in criminal matters, and its coordination; adoption of minimum rules defining particularly

¹¹⁵ [Treaty of Amsterdam](#) amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 1997, Article 6(a).

¹¹⁶ [Treaty on the Functioning of the European Union](#) (consolidated version) (TFEU), OJ C 326, 26.10.2012.

¹¹⁷ The European Parliament delivered its first reading on 2 April 2008. It is currently blocked by the Council (see the outlook in Section 2.3 below).

serious criminal offences with a cross-border dimension; cooperation between national authorities.

- **Articles 90-100 TFEU:** Transport by rail, road and inland waterway: (a) common rules; (b) the conditions under which non-resident carriers may operate transport services within a Member State; (c) measures to improve transport safety; (d) any other appropriate provisions. Appropriate measures for sea and air transport.
- **Article 114 TFEU:** Measures for the approximation of laws, regulation or administrative action in Member States, safeguarding the establishment and functioning of the internal market.

Annex 1 presents an overview of the various legal bases for the EU to act in the areas of equality and combatting racism and xenophobia.

In 2010, the EU ratified the UN Convention on the Rights of Persons with Disabilities (CRPD). The CRPD set out obligations in policy areas under both EU and Member State competence. The EU is bound by the CRPD within the limits of its competence, as outlined above, and does not provide further legal bases for action.

The same applies to the EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has been a Treaty requirement since the entry into force of the Treaty of Lisbon¹¹⁸. Although the negotiation process for accession is still ongoing, Article 6, § 2 of the Treaty on European Union¹¹⁹ clearly states that ‘such accession shall not affect the Union’s competences as defined in the Treaties’. The Commission had proposed an accession agreement of the EU to the ECHR in 2013. In its Opinion 2/13 (CJEU, 2013), the CJEU declared the draft incompatible with the Treaties, stating that it would adversely affect the specific characteristics and autonomy of EU law.

The CJEU previously ruled (in *Nold* (CJEU, 1974)) that fundamental rights and the ECHR form an integral part of the general principles of law. However, this does not mean that the ECHR is binding on the EU but, rather, supplies guidelines which should be followed under EU law. While general principles guide the interpretation of EU law, they may also be used to invalidate legislative, delegated or implementing acts which contravene these principles. The CJEU has on several occasions reviewed EU law in light of the ECHR, acknowledging its special significance. However, it has never recognised the ECHR as legally binding (Craig and

¹¹⁸ [Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007](#), OJ C 306, 17.12.2007.

¹¹⁹ [Treaty on European Union](#) (consolidated version) (TEU), OJ C 326, 26.10.2012.

de Burca, 2015). In fact, in the *Kadi* case (CJEU, 2008), the CJEU made clear that the European legal order is separate from the international order (which includes the Council of Europe legal framework) and took a protective stance on the autonomy of EU law with respect to international instruments.

All EU Member States are bound by the ECHR, even when implementing EU law and policies. In *Bosphorus* (2005), the European Court of Human Rights (ECtHR) affirmed that State Parties are presumed to comply with the ECtHR when they implement legal obligations stemming from their membership of an international organisation (such as the EU) where substantive guarantees are offered 'in a manner which can be considered at least equivalent to that for which the Convention' stands. The EU Charter (Article 52) settles the issue of interpretation of rights guaranteed by both the Charter and the ECHR in that 'the meaning and scope of those rights shall be the same as those laid down by the said Convention'. EU accession to the ECHR could support compliance of EU secondary law with the ECHR, as the ECtHR could then require the EU to amend or repeal the legislation in question (Daukšienė and Grigonis, 2015).

1.2 Scope of EU action

The scope of EU equality law relies on its competence to act. As explained in Section 1.1 above, EU action in the area of equality and combatting racism and xenophobia has been taken on several legal bases. Two main categories of action can be distinguished:

- Actions to protect against discrimination, using the **general non-discrimination competence** (Article 19 TFEU), and promoting equal treatment, using the equality between men and women competence (Articles 153 and 157 TFEU).
- Actions taken through **specialised legal bases**, such as criminal law competence to adopt minimum rules defining criminal offences (Articles 82-85 TFEU) or sector specific legal bases, such as transport (Article 100 TFEU).

Actions under those legal bases range from harmonisation of laws to incentive measures or supporting actions. Overall, EU action can take the form of:

- (a) Legislative acts, such as regulations and directives.
- (b) Non-legislative acts, such as recommendations, resolutions, implementing or

delegating acts.

(c) Funding allocation (e.g. Rights, Equality and Citizenship Programme, Justice Programme, as well as the European Structural and Investment Funds).

(d) Enforcement procedures of the EU legal framework, including the EU Charter.

Lastly, in implementing policies, the EU must aim to eliminate inequality between men and women and combat discrimination, in accordance with Articles 8 and 10 TFEU. Both provisions establish that EU policy must take these considerations into account (Craig, 2013).

Similarly, the EU Charter prohibits discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation¹²⁰. The prohibition applies to the EU and Member States when implementing EU law. The CJEU confirmed in *Åklagaren v Hans Åkerberg Fransson* (C-617/10, 2013) that ‘the applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter’, but ‘[w]here, on the other hand, a legal situation does not come within the scope of European Union law, the Court does not have jurisdiction to rule on it’. In order to determine whether national action constitutes an act of implementation of EU law triggering the application of the Charter, the CJEU will consider whether that ‘legislation is intended to implement a provision of EU law; the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or capable of affecting it’ (C-206/13 *Cruciano Siragusa v Regione Sicilia*, 2013).

To date, EU legislative action in this area targets issues of discrimination on the grounds of sex, racial or ethnic origin, nationality, religion or belief, age, disability and sexual orientation, across a variety of sectors. The EU has not, however, regulated equality in a consistent or comprehensive manner. On the contrary, non-discrimination rights are scattered through several pieces of legislation, negotiated and adopted separately over many years. As a result, the extent of the protection differs between sectors, as shown in Table 5 below.

Table 5: Scope of existing EU action on non-discrimination (Articles 10, 19, 153 and 157 TFEU)

Sectors/ protected grounds	Employment	Social security and	Education	Access to goods and services	Social advantages
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¹²⁰ [Charter of Fundamental Rights of the European Union](#), OJ C 326, 26.10.2012, Article 21.

healthcare					
Sex	√	√		√	
Race, ethnicity	√	√	√	√	√
Nationality	√				
Age	√				
Religion or belief	√				
Sexual orientation	√				
Disability	√				

Table 6 below provides an overview of the scope of current EU action through criminal law and other instruments.

Table 6: Scope of existing EU action through criminal law (Articles 82-85 TFEU) and other legal bases

Sectors/protected grounds	Racism, and xenophobia	Nationality	Religion	Belief	Sexual orientation	Disability	Sex	Age
Criminal law (Incitement to hate)	√		√					
Transport						√		
Media	√	√	√	√	√	√	√	√

2. Approach to the identification of the main gaps and barriers

EU action in the areas of equality and combatting racism and xenophobia has evolved considerably in the last decade, with minimum rules established to combat discrimination on various grounds and across different sectors. However, EU equality law and the fight against racism and xenophobia has developed in a piecemeal manner, addressing pressing issues arising in key sectors rather than applying an integrative approach to equality. Given the transverse nature of equality, adopting sectoral instruments to address discrimination or racism in specific sectors necessarily results in incomplete protection. In addition, as the instruments were negotiated and adopted at different times, they differ in scope and approach, creating gaps in the protection afforded across sectors and/or the grounds of protection.

As well as gaps in the legal framework, barriers also exist in the implementation of the EU equality framework as a result of insufficient or incorrect application of the legislation. Box 1 below defines gaps and barriers in the context of this study.

Box 1: Defining the scope of gaps and barriers

Defining the scope of gaps and barriers

- **Gap:** A gap occurs in the absence of a legal provision. This is the case where the EU has not explicitly regulated a form of discrimination in an area of competence, despite evidence that it is an issue across the Member States.
- **Barrier:** A barrier occurs when a legal provision on a given non-discrimination right or protection is in place but is inconsistently or insufficiently protected in practice (e.g. lack of prosecution of hate crimes).

The research team reviewed both the legal instruments and the literature, including implementation reports, focusing on **the most prominent gaps and barriers** resulting from lack of EU action or cooperation. This allowed for the identification of potential EU added value from further integration.

Focusing on the most prominent issues enabled an assessment of the development and impact of policy options for equality and the fight against racism and xenophobia, generally. The most prominent gaps and barriers were identified, in light of the following considerations:

- **EU action possible:** the gap or barrier can be addressed through EU action.
- **Potential fundamental rights, social and economic impacts:** the gaps and barriers have important impacts on fundamental rights, economic sectors, economic actors, groups of individuals, businesses and SMEs.
- **Potential added value of EU action:** addressing the gap or barrier is likely to produce significant benefits, with the EU action either resulting in significant long-term changes.

The study also focuses on the gaps and barriers falling under the competences of the LIBE Committee, which cover the protection of fundamental rights, discrimination other than that based on sex or occurring at the workplace and in the labour market, data protection and privacy, free movement, asylum, migration, police and judicial cooperation in criminal matters including terrorism, and substantive and procedural criminal law.

The most prominent gaps and barriers were identified by the research team and senior experts, and were discussed at a workshop with the European Parliament in the context of this study.

The gaps and barriers are presented by protected grounds as recognised by the TFEU, i.e. sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation¹²¹.

3. EU legislative framework and its gaps/barriers

In recent decades, the EU has actively developed legislative and policy actions to promote equality and combat discrimination, racism and xenophobia. EU action can be traced back to 1975, with the **Equal Pay Directive** (75/117/EC, later recast by Directive 2006/54/EC), which established the principle of ‘for the same work or for work to which equal value is attributed’, irrespective of sex, and applying to all aspects and conditions of remuneration.

The biggest developments, however, came after the Treaty of Amsterdam strengthened EU competence, extending its action **beyond** equality between women and men to non-discrimination on several grounds, as well as the fight against racism and xenophobia.

3.1. Sex

Equality between women and men is a fundamental principle in EU law. The term ‘gender equality’ is often used to refer to equality between women and men. Gender equality is not confined to the prohibition of discrimination between women and men but also applies to discrimination arising from the gender reassignment of a person¹²² (e.g. transgender or intersex persons) and from gender identity. The CJEU has expanded EU protection on the ground of sex to transgender. It is not clear whether intersex could also be considered as protected in absence of EU legislation or case-law on the issue. As a result of the uncertainties in this respect, this study focuses on equality between women and men.

Despite the progress made over time (as reflected in an increased share of women in higher education and the labour market), **structural challenges** remain, with women continuing to be over-represented in the low-pay sector and

¹²¹ The ground of nationality has a separate legal basis in the TFEU and, unlike other grounds for discrimination, concerns only nationals of the EU Member States. It is therefore excluded from the scope of this research paper.

¹²² [Recast Gender Equality Employment Directive](#) 2006/54/EC, Recital 3.

under-represented in leadership positions. The Commission's Strategic Engagement for Gender Equality 2016-2019 (European Commission, 2015d) underscores the need for the EU to be active in this area in the coming years.

This section presents an overview of EU legislative and policy measures in the area of sex discrimination and highlights key gaps and barriers. The research identified two major gaps in EU policy-making in relation to equality between women and men: the **gender pay gap** and **violence against women**.

- *EU action on equality between women and men in employment*

Several EU Directives seek to promote equality between women and men in the field of **employment**. For example, the **Recast Gender Equality Employment Directive** introduced minimum requirements¹²³ to implement the principle of equal treatment, and prohibits direct and indirect discrimination¹²⁴ in access to:

- employment, including recruitment, promotion, and vocational training;
- access to self-employment;
- membership of workers' or employers' organisations;
- working conditions, including pay; and
- occupational social security schemes¹²⁵.

The principle of equal treatment applies to all workers, including self-employed workers, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment, persons seeking employment, retired workers, and workers with disabilities¹²⁶.

The definition of discrimination in the Directive includes harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct; instruction to discriminate against persons on grounds of sex; or any less favourable treatment of a woman related to pregnancy or maternity leave¹²⁷. However, employers may justify differential treatment in certain cases¹²⁸.

¹²³ Recast Gender Equality Employment Directive, Article 27.

¹²⁴ Recast Gender Equality Employment Directive, Article 2, § 1.

¹²⁵ Recast Gender Equality Employment Directive, Art. 1.

¹²⁶ Recast Gender Equality Employment Directive, Article 6.

¹²⁷ Recast Gender Equality Employment Directive, Article 2, § 2.

¹²⁸ Recast Gender Equality Employment Directive, Article 14, § 2.

Regarding **equal pay**, the Directive prohibits any discrimination based on a person's sex for all aspects and conditions of remuneration for the same work or for work of equal value, including job classification systems¹²⁹. It also mandates equal treatment between men and women in access to **occupational social security schemes**, particularly in the scope and conditions of contributions, calculation of benefits including supplementary benefits, and conditions governing the duration and retention of entitlement¹³⁰. At the conclusion of **maternal, paternal or adoption leave**, employees are entitled to return to their jobs or to equivalent posts with conditions no less favourable to them, or to similarly benefit from any improvement in working conditions to which they would have become entitled during the period of absence¹³¹.

In **practice**, the **lack of implementation and consistent enforcement** of the Recast Gender Equality Employment Directive results in unequal protection across the Member States, as well as legal uncertainties for victims and economic operators. One such issue is the burden of proof in complaints cases, which requires victims to establish facts of discrimination, while the employer must only show that no discrimination took place. Reversing the burden of proof rule remains problematic, however, as some Member States have a higher threshold than that stipulated in the Directive. As a result, victims are less likely to come forward and, without the means to ensure justice for complaints, discrimination is likely to continue. Nor are inspections and sanctions always adequate. Member States are not required to take positive action to promote equality in practice between men and women, nor to encourage participation in less well-represented professions, nor to increase the share of women in leadership positions (European Commission, 2013a).

In view of the EU's competence in the area and the prevalence of affected individuals, the **gender pay gap** was identified as the most important gap and barrier. The lack of measures to mitigate the gender pension gap was also noted. Women are more likely to have part-time work contracts and other forms of atypical employment (casual, fixed-term, temporary agency workers, self-employed, teleworkers, etc.) due to their greater obligations to care for family members, resulting in lower pension contributions.

- *EU action on equality between women and men in relation to pregnancy and parenthood*

¹²⁹ Recast Gender Equality Employment Directive, Article 4.

¹³⁰ Recast Gender Equality Employment Directive, Article 5.

¹³¹ Recast Gender Equality Employment Directive, Article 15 and 16.

An important contributing factor to the gender pay gap is the lack of incentives and protection for men to take paternal leave or opt for flexible work hours. Despite the existing legal framework and protection against dismissal, women are far more likely to accept a career interruption and serve as the primary caregiver for children.

The EU has acted by introducing the **Pregnancy Directive** and the **Revised Parental Leave Directive**. The Pregnancy Directive aims to ensure minimum standards in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding¹³². The Directive provides for a minimum of 14 weeks' maternity leave, of which two weeks must be taken before birth¹³³. Pregnancy and maternity must not be used as a reason to dismiss women, from the beginning of their pregnancy to the end of the period of leave from work¹³⁴.

The 2010 **Revised Parental Leave Directive**¹³⁵ sets out minimum requirements applying to all workers, men and women, who have an employment contract or employment relationship, whether part-time, fixed-term, or via a temporary agency¹³⁶. They are entitled to parental leave of at least four months on the grounds of birth or adoption of a child, which may be taken until a given age, as defined by Member States and/or social partners, up to eight years¹³⁷.

At the end of parental leave, workers have the right to return to the same job or an equivalent or similar job consistent with their employment contract or employment relationship. Additionally, workers must be protected against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave. Member States and/or the national social partners decide on all matters regarding social security, including income, in relation to parental leave¹³⁸.

The Directive implementing the revised Framework Agreement entered into force on 7 April 2010, with Member States required to transpose it into national

¹³² [Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding \(tenth individual Directive within the meaning of Article 16\(1\) of Directive 89/391/EEC\)](#), OJ L 348/1, 28.11.92, Article 1 and 2.

¹³³ Pregnancy Directive, Article 8.

¹³⁴ Pregnancy Directive, Article 10.

¹³⁵ [Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68/13, 18.03.2010.](#)

¹³⁶ Revised Framework Agreement on Parental Leave, Clauses 1(1)-(3) and 8(1).

¹³⁷ Revised Framework Agreement on Parental Leave, Clause 2.

¹³⁸ Revised Framework Agreement on Parental Leave, Clause 5.

law by 8 March 2012. Many countries already had parental leave mechanisms in place and did not formally transpose the Directive¹³⁹. Formal transposition took place in nine Member States¹⁴⁰, while others only carried out small modifications to their legislation¹⁴¹. Slovenia did not undertake any of these options, and the Commission therefore launched infringement proceedings in 2014 (European Commission, 2014a).

- *EU action on equality between women and men in social security*

Another important legislative instrument to achieve equal treatment for men and women is **Directive 79/7/EEC**¹⁴² on **social security**. The Directive covers ‘the working population (...) and (...) retired or invalided workers and self-employed persons’¹⁴³. It applies to statutory social security schemes which provide protection against sickness, invalidity, old age, accidents at work and occupational diseases, and unemployment. It further applies to social assistance, insofar as it is intended to supplement or replace the previously mentioned schemes. Survivors’ benefits and family benefit schemes are excluded from its application¹⁴⁴.

The Directive prohibits direct discrimination on the ground of sex, or indirect discrimination by reference in particular to marital or family status, with regard to access to schemes and their scope, the obligation to contribute and the calculation of contributions and benefits, the presence/absence of a spouse or children, as well as the conditions of duration and entitlement to benefits¹⁴⁵.

Direct discrimination is caused by less favourable treatment of one person over another in a comparable situation. Indirect discrimination concerns an apparently neutral provision, criterion or practice that would put persons of one sex at a particular disadvantage in comparison with others, unless there is an objective justification by a legitimate aim, and the means by which it is achieved are proportionate and necessary.

Member States retain the right to exclude from the scope of the Directive the determination of pensionable age, advantages in respect of pension schemes and the acquisition of benefit entitlements granted in relation to persons who have

¹³⁹ Germany, Czech Republic, Spain, Latvia, Lithuania, Austria, Portugal, Finland, Sweden.

¹⁴⁰ Bulgaria, Estonia, Ireland, Greece, Cyprus, Hungary, Slovenia, Slovakia.

¹⁴¹ Belgium, Croatia, Luxembourg, Malta, Romania, UK.

¹⁴² [Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security](#), OJ L 6/24, 10.01.1979

¹⁴³ Council Directive 79/7/EEC, Article 2.

¹⁴⁴ Council Directive 79/7/EEC, Article 3.

¹⁴⁵ Council Directive 79/7/EEC, Article 4, § 2.

brought up children, the old-age or invalidity benefit entitlements by virtue of the derived entitlements of a wife, and the right or option not to acquire rights or incur obligations under a statutory scheme¹⁴⁶.

The Directive entered into force on 22 December 1978 and was required to be transposed by 23 December 1984. The Commission has pointed to the small number of complaints based on Directive 79/7/EEC as evidence of effective transposition and implementation by Member States.

- *EU action on equality between women and men in access to goods and services*

The **Gender Equality in Access to Goods and Services Directive** aims to promote equal treatment between women and men in areas other than employment¹⁴⁷. It applies to discrimination based on sex in access to and supply of goods and services, and puts into effect the principle of equal treatment between men and women¹⁴⁸. It covers all persons who provide goods and services in both the public and private sectors, which are available to the public and which are offered outside the area of private and family life¹⁴⁹. It does not apply to the content of media and advertising, to education¹⁵⁰, to patterns of employment or occupation, and only covers self-employment insofar as these matters are not covered by other EU legislative acts¹⁵¹.

The Directive prohibits less favourable treatment of women due to pregnancy or maternity¹⁵², harassment and sexual harassment, or any instruction to directly or indirectly discriminate¹⁵³. Differential treatment is only permitted if it is justified by a legitimate aim and is achieved by appropriate and necessary means¹⁵⁴. The principle of equal treatment does not prevent Member States from taking or maintaining affirmative action to prevent or compensate for disadvantages linked to sex in the area of goods and services¹⁵⁵. Also, the Directive only establishes minimum requirements, with Member States retaining the right to introduce or maintain more favourable provisions for the protection of the principle of equal treatment¹⁵⁶.

¹⁴⁶ Council Directive 79/7/EEC, Article 7, § 2.

¹⁴⁷ [Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services](#), OJ L 373/37, 21.12.2004

¹⁴⁸ Gender Equality in Access to Goods and Services Directive, Article 1.

¹⁴⁹ Gender Equality in Access to Goods and Services Directive, Article 3, § 1.

¹⁵⁰ Gender Equality in Access to Goods and Services Directive, Article 3, § 3.

¹⁵¹ Gender Equality in Access to Goods and Services Directive, Article 3, § 3 and 4.

¹⁵² Gender Equality in Access to Goods and Services Directive, Article 4, § 1.

¹⁵³ Gender Equality in Access to Goods and Services Directive, Article 4, § 4.

¹⁵⁴ Gender Equality in Access to Goods and Services Directive, Article 4, § 5.

¹⁵⁵ Gender Equality in Access to Goods and Services Directive, Article 6.

¹⁵⁶ Gender Equality in Access to Goods and Services Directive, Article 7, § 1.

Insurance agreements concluded after 2007 must not use sex as a factor in calculating insurance premiums and benefits. However, in cases where sex was a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data, Member States have the option to permit proportionate differences in individuals' premiums and benefits. Costs associated with pregnancy and maternity must not result in differences in premiums and benefits¹⁵⁷.

The judgment of the CJEU in the *Test-Achats case* (CJEU, 2011) is crucial, where it declared invalid the derogation from the principle of equal treatment permitting Member States to distinguish between men and women in the context of insurance premiums and benefits. The Commission adopted guidelines on the application of the Directive to the insurance sector in order to facilitate the implementation of the decision¹⁵⁸.

The Directive entered into force on 21 December 2004, with a deadline for transposition into national law of 21 December 2007. Certain Member States transposed the Directive into national law but, in view of the narrow scope of application, intensive dialogue is ongoing with the Commission on correct implementation (Belgium, Germany, Denmark, Lithuania, Latvia and Poland (European Commission, 2015b)).

- *EU action on violence against women*

Another important gap identified in the literature relates to **violence against women**. The 2014 EU-wide survey carried out by the European Union Agency for Fundamental Rights (FRA) showed that one in three women have experienced physical and/or sexual violence since the age of 15. In terms of sexual harassment, one in five women experienced unwelcome touching, hugging and kissing since the age of 15, while approximately 75% of women in a professional capacity have experienced sexual harassment in their lifetime (FRA, 2014c). Violence against women is therefore an important issue, and one which is prevalent across the EU.

¹⁵⁷ Gender Equality in Access to Goods and Services Directive, Article 5.

¹⁵⁸ European Commission [Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 \(Test-Achats\)](#), OJ C 11/1, 13.01.2012.

There are no legally binding instruments specifically addressing women victims of violence at EU level. Instead, protection against this type of violence is scattered through several legal instruments. One such instrument is the **Victims' Rights Directive** 2012/29/EU, which establishes minimum standards on the rights, supports and protection of victims of crime. It aims to ensure that crime victims 'receive appropriate information, support and protection and are able to participate in criminal proceedings'¹⁵⁹. While it recognises the needs of gender-based violence victims, the Directive does not fully ensure adequate protection, prevention, prosecution and response. This is partly due to the disparate competences of the EU in this area, which extend mostly to civil and criminal law, victims' rights, cross-border cooperation, and immigration and asylum. In terms of criminal law, the EU can only harmonise legal definitions and sanctions for those forms of violence against women that qualify as serious crime and have sufficient cross-border elements. EU action has thus been limited to trafficking in human beings (Directive 2011/36/EU¹⁶⁰). Another form of violence falling within the scope of EU action is **sexual harassment**, but only insofar as it relates to employment. As mentioned above, the Gender Equality in Employment Directive prohibits sexual harassment and provides a definition but leaves the penalties to Member States' discretion.

The literature notes that significant differences exist across Member States in the definition and criminalisation of different types of violence against women. As a result, prevention, protection and assistance vary across the EU (Bonewit and De Santis, 2016). Some authors have argued that additional forms could be regulated by the EU (Walby, 2013). Several forms of violence qualify as particularly serious crimes, such as female genital mutilation, forced marriage or sexual violence. However, it is not clear whether these would all satisfy the cross-border requirement for EU action to be adopted, even in light of the free movement of individuals and the extent of such violence across the EU.

¹⁵⁹ [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.](#)

¹⁶⁰ [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims](#), OJ L 101, 15.4.2011.

The EU signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (**the Istanbul Convention**) on 13 June 2017¹⁶¹ and is in the process of concluding that Convention¹⁶². In acceding to the Istanbul Convention, the EU reinforces its commitment to combatting violence against women within the EU. Once concluded, the Istanbul Convention will be binding on both the EU and its Member States insofar as the EU competences are concerned. In fact, the Istanbul Convention will form an integral part of EU law within the limits of EU competence in the field (CJEU, 1974, Case 181/73).

3.2. Race and ethnicity

Legal protection against discrimination on the grounds of race and ethnicity is a broader form of protection than that for other grounds, as it covers sectors beyond solely employment. The EU legislative framework to fight discrimination on the grounds of race and ethnicity is primarily governed by two areas:

- Anti-discrimination measures (e.g. the Racial Equality Directive, the EU Charter and the Audiovisual Directive);
- Criminal law (e.g. the Framework Decision on Racism and Xenophobia).

Each area is described below, along with the identified gaps and barriers which form the basis for the CoNE assessment.

EU legislative action commenced in 2000 with the **Racial Equality Directive**¹⁶³, which established minimum requirements for the implementation of the equal treatment principle with regard to racial and ethnic origin¹⁶⁴. The Directive establishes requirements for protection against discrimination in access to employment and training, working conditions, social protection (including social security and healthcare), education, and publicly available goods and services that can confer social advantage, such as housing. It prohibits direct and indirect

¹⁶¹ Council of Europe Newsroom (2017), [EU signs Council of Europe convention to stop violence against women](#).

¹⁶² [Council Decision \(EU\) 2017/866](#) of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to asylum and non-refoulement, OJ L 131, 20.5.2017; [Council Decision \(EU\) 2017/865](#) of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, OJ L 131, 20.5.2017.

¹⁶³ [Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin](#), OJ L 180/22, 19.07.2000.

¹⁶⁴ Racial Equality Directive, Article 1. Member States had to transpose the main goals of the Racial Equality Directive into national law by 19 July 2003. All Member States have transposed the Racial Equality Directive (European Commission, 2014b).

means of discrimination, as well as harassment, incitement to discriminate, and victimisation. Victims of racial or ethnic discrimination have the right to report such treatment. Each Member State must put in place one or more independent bodies to promote the equal treatment of persons of different racial or ethnic origins¹⁶⁵. Part of the remit of these equality bodies also is to provide assistance to victims of discrimination.

While the Directive does not define ‘racial or ethnic origin’, it is generally accepted that characteristics such as language, colour and descent, are inherently attached to these concepts (FRA and ECtHR, 2011). Nationality, however, is explicitly excluded from the Directive’s scope of application¹⁶⁶.

The Racial Equality Directive allows for discretion in Member State implementation with regard to genuine and critical occupational requirements, and policy actions to encourage the principle of equal treatment¹⁶⁷. Several reports highlight significant variation in the implementation of the Directive in the Member States (Hermanin and de Kroon, 2013; FRA 2012). For example, there are large differences in the equality bodies’ financial and human resources, mandate, powers and competences across the EU (Hermanin and de Kroon, 2013).

Most of the ‘first generation’ infringement procedures against 25 Member States launched between 2005 and 2007 are now closed, as national transposition has been brought in line with the Directive¹⁶⁸. At present, infringement proceedings are pending against the Czech Republic, Hungary and Slovakia for breaching EU anti-discrimination law in relation to Roma children’s access to education (European Commission, 2017a).

Differences across Member States in the **implementation of the Racial Equality Directive** will be examined further later in this report, where it will be addressed jointly with the Employment Equality Directive, in view of the similar challenges faced by both instruments (See Section 2.7 on horizontal gaps and barriers).

The fight against racism and xenophobia in the EU is supported by criminal law, specifically the **Framework Decision on Racism and Xenophobia**¹⁶⁹. This legal instrument requires Member States to take effective, proportionate and

¹⁶⁵ Racial Equality Directive, Article 2, 3, 9 and 13.

¹⁶⁶ Racial Equality Directive, Article 3, § 2.

¹⁶⁷ Racial Equality Directive, Article 4 and 5.

¹⁶⁸ This information concerns both the Racial Equality Directive and the Employment Equality Directive. The Joint Report from 2014 does not specify the number of infringements launched in relation to each Directive.

¹⁶⁹ [Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law](#), OJ L 328/55, 06.12.2008

dissuasive penalties necessary to punish following criminal offences, including the following:

- Public incitement to racist or xenophobic violence or hatred.
- Commission of a racist or xenophobic act by public dissemination or distribution of tracts, pictures or other material.
- Public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes in a manner likely to incite racist or xenophobic hatred.
- Hate speech.

The Framework Decision instructs Member States to take racist and xenophobic motivations into account when determining the consequent penalties¹⁷⁰. The Framework Decision applies to offences committed physically or remotely (including through an information system) in the EU, by an EU citizen, or for the benefit of a legal person established in the EU¹⁷¹. Contrary to the Racial Equality Directive, the Framework Decision provides a more specific definition of the protected groups, which include 'group of persons or a member of a group defined by race, colour, religion, descent or national or ethnic origin'¹⁷².

Member States were required to transpose the Framework Decision on Racism and Xenophobia into national law by 28 November 2010. However, several Member States failed to fully and/or correctly transpose all provisions of the Framework Decision, chiefly related to the provisions on denying, condoning and grossly trivialising certain crimes, the racist and xenophobic motivation of crimes, and the liability of legal persons and jurisdiction (Psaila et al., 2015; European Commission, 2014c, pp. 9-10). The **lack of full and/or correct transposition and implementation of the Framework Decision** constitutes a significant barrier to the effectiveness of EU action in the fight against racism and xenophobia. In particular, if penalties are not effective, proportionate and dissuasive, the Framework Decision will fail to deter racially-motivated hate crimes and offences, itself a significant concern given the rise of right-wing extremism throughout Europe (European Parliament, 2013). The absence of reliable, comparable and systematic data on incidents of hate speech and hate crime presents a significant challenge to the assessment of prosecution and sentencing (European Commission, 2014c).

The Framework Decision on Racism and Xenophobia is not equipped to fight **online hate speech**. This is a key gap, considering the increasing number of

¹⁷⁰ Framework Decision on Racism and Xenophobia, Article 4.

¹⁷¹ Framework Decision on Racism and Xenophobia, Article 9.

¹⁷² This definition is provided in relation to public incitement to violence and hatred. See Framework Decision on Racism and Xenophobia, Article 1, § 1.

individuals with access to the internet and the online presence of many companies. A UNESCO report highlights the unique challenges raised by the permanence, itinerancy, anonymity and cross-jurisdiction character of online hate speech, all of which make it considerably more complex to monitor and address (Gagliardone et al., 2015, p. 13). Online hate may go viral quickly, and without being challenged, and may be very difficult to remove entirely (FRA, 2016, p. 2). The **Audiovisual Media Services Directive**, which entered into force in May 2010, provides some protection against online hate speech. The Directive requires Member States to introduce appropriate measures to ensure that audiovisual media services do not communicate any incitement to hatred 'based on race, sex, religion or nationality'¹⁷³. However, the current version of the Audiovisual Media Services Directive is **outdated** in light of the development of online broadcasting such as vlogs, YouTube and livestreaming. More flexibility is needed in relation to broadcasting via new media and to consumer protection in the world of internet and on-demand media. In view of changing market realities, the European Commission proposed amendments to the Audiovisual Media Services Directive in May 2016, widening its scope to new media outlets and broadcasting (European Commission, 2016b). The proposal is currently under discussion at the Council and the European Parliament¹⁷⁴. Soft law measures have been adopted, such as the Code of Conduct between the Commission and four major social media platforms¹⁷⁵ and these, while a positive step, remain insufficient to tackle the issue¹⁷⁶.

3.3. Religion and belief

Being limited to the employment sector, the scope of protection offered by EU legislation is generally narrower for discrimination on the grounds of religion and belief than for discrimination on the ground of race and ethnicity. This contrasts with the ECHR, which defends the right to freedom of thought, conscience and religion¹⁷⁷ (FRA and ECtHR, 2011, p. 111). All Member States are parties to the ECHR and are thus also bound by the ECHR. However, as outlined earlier, the EU is not so bound, unless it accedes to the Convention at which time

¹⁷³ Audiovisual Media Services Directive, Article 6.

¹⁷⁴ [Procedure 2016/0151/COD](#), Commission Proposal for an amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM (2016) 287.

¹⁷⁵ European Commission, [Code of Conduct on countering illegal hate speech online](#).

¹⁷⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the [Mid-Term Review of the implementation of the Digital Single Market Strategy A Connected Digital Single Market for All](#), COM/2017/0228 final.

¹⁷⁷ ECHR, Article 9.

it will be bound within the limits of its competences. The legislative framework to which Member States are bound to can be broken down into three groups:

- Anti-discrimination law (i.e. the Employment Equality Directive);
- Criminal law (the Framework Decision on Racism and Xenophobia);
- ECHR.

Each area is described below, together with the gaps and barriers identified, and which contribute to the basis of the CoNE assessment.

The main EU legal instrument is the **Employment Equality Directive**¹⁷⁸, which establishes a general framework for equal treatment irrespective of religion and belief, as well as other grounds¹⁷⁹. Its scope is limited to employment and occupation in both the public and private sectors. The Directive explicitly seeks to counter direct and indirect discrimination, instructions to discriminate, and victimisation. It also covers harassment with the purpose or effect of violating the dignity of a person and of creating a hostile, degrading, humiliating or offensive environment. The Directive applies to individuals working in both the public and private sectors, with respect to:

- Conditions of access to employment or self-employment activities, including selection criteria and recruitment conditions, and promotion.
- Vocational training.
- Employment and working conditions (including dismissal and pay).
- Membership of, and involvement in, an organisation of employers and workers, or any other organisation whose members carry out a particular profession.

The Employment Equality Directive allows for Member State discretion in introducing measures 'to prevent or compensate for disadvantages linked to' religion or belief¹⁸⁰. It permits a limited exception to the principle of equal treatment, with churches and other religious centres retaining the right to require individuals who work for them 'to act in good faith and with loyalty to the organisation's ethos'¹⁸¹.

Today, all Member States have transposed the Employment Equality Directive (European Commission, 2014b). All first-generation infringement proceedings for issues of non-conformity (launched largely between 2005 and 2007) are now closed. In 2016, there were no longer any open infringement procedures against

¹⁷⁸ [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.](#)

¹⁷⁹ Member States were required to transpose the main goals of the Employment Equality Directive into national law by 2 December 2003.

¹⁸⁰ Employment Equality Directive, Article 7.

¹⁸¹ Employment Equality Directive, Article 4, § 2.

any Member State on the discrimination grounds of religion and belief (Tymowski, 2016).

The review identified the key gap as the **lack of any obligation** on **employers** and service providers to make **reasonable accommodation** for employees based on religion or belief, within the framework of the Employment Equality Directive (European Network of Equality Bodies (Equinet), 2015). The number of court cases on this issue has increased in several Member States in recent years (Alidadi, 2012). This gap has a potentially important impact on access to employment of certain groups of persons due to their religious faith or belief, with religious employees often struggling to reconcile their work life with their religious commitments (Alidadi, 2012, p. 714).

A key gap is the **lack of protection** on the ground of religion and belief **beyond employment** (see Section 2.7 on horizontal gaps for further discussion). The Proposal for a Directive against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace ([Proposed Equal Treatment Directive](#)) aims to address this gap. This Directive would not, however, address the gap in reasonable accommodation, as it does not extend the coverage of that provision from the discrimination ground of disability to that of religion or belief.

Victims of religious discrimination in areas outside of employment could possibly fall within the scope of the **Racial Equality Directive** by associating with the discrimination ground race, considering that the latter is understood broadly under EU law (FRA and ECtHR, 2011). This extension could address reported problems in the accommodation of religious symbols and religious customs in schools, and in relation to accessing services Equinet (2015). The **EU Charter** also prohibits discrimination based on religion or belief¹⁸².

Lastly, the **lack of clarity between the concepts** of religion and belief is another key barrier impeding the fight against such forms of discrimination, with most equality bodies unable to distinguish between them (Equinet, 2015, pp. 10 and 33). Problems also arise in relation to the use of the **religious ethos exemption** included in the Employment Equality Directive to discriminate on other grounds (Equinet, 2015, p. 33).

¹⁸² EU Charter, Article 21, § 1.

EU criminal law offers protection against incitement to hatred in relation to religion and belief through the **Framework Decision on Racism and Xenophobia**¹⁸³. Similar to the ground of race and ethnicity, the **lack of full and/or correct transposition and implementation** of the Framework Decision may limit the effectiveness of EU action against criminal victimisation of individuals of minority religions and beliefs. The **Audiovisual Media Services Directive** also specifies that media service providers cannot incite hatred based on religion¹⁸⁴.

Freedom of religion is more developed within the framework of the **ECHR**¹⁸⁵. Article 9 of the ECHR guarantees the right to freedom of thought, conscience and religion, and applies across all sectors. It includes the right to practice and manifest religion or belief in public or private and the right for the state not to intervene with such freedom of thought, conscience and religion. This right is not absolute, however, as it can be subject to limitations prescribed by law and necessary in a democratic society, 'in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'. The ECtHR has not formally recognised the concept of reasonable accommodation based on religious or belief but it has established a **positive duty to act**, where circumstances call for differential treatment. However, the ECtHR has been reluctant to extend this duty to the area of employment, opting for the view that applicants are instead bound by the contractual obligations to which they have agreed (ECtHR and Council of Europe, 2015; ECtHR and Council of Europe, 2011).

3.4. Sexual orientation

The current EU legal framework protects lesbian, gay, and bisexual people from discrimination on the ground of sexual orientation only in the field of employment, as provided for by the **Employment Equality Directive** (see Section 2.3 above). Legal protection from discrimination outside of employment has so far failed, with the Proposed Equal Treatment Directive stalled at the Council of the European Union stage.

In terms of the discrimination ground of sexual orientation, the most significant gap identified is the exclusion of discrimination in **access to goods and services**, including access to **healthcare**, from the EU equal

¹⁸³ Framework Decision on Racism and Xenophobia, Preamble and Article 1.

¹⁸⁴ Audiovisual Media Services Directive, Article 6.

¹⁸⁵ ECHR, Article 9.

treatment legislation currently in place (see Section 3.7 for a discussion of the restriction of protection against discrimination on the basis of sexual orientation to the area of employment in the Employment Equality Directive).

Another key gap is the **lack of EU action** on sexual orientation through **criminal law**. Despite the prevalence of homophobia throughout the EU, the **Framework Decision on Racism and Xenophobia** does not cover sexual orientation or gender identity¹⁸⁶. Although most Member States have extended the protection provided by the Framework Decision to victims of discrimination based on sexual orientation or gender identity to cover homophobic hate motives, other Member States have not, resulting in unequal levels of protection across the EU. As of 2015, 20 Member States had established a criminal offence to incite hatred, violence or discrimination on the ground of sexual orientation (FRA, 2015c). Such protection is essential, as such crimes ‘not only harm the victim, but are also generally prejudicial to fundamental rights, namely to human dignity (...) and with respect to non-discrimination’ (FRA, 2014b, p, 20). The lack of recognition and protection of LGBT victims of hate crime in eight Member States is considered a pressing gap.

The lack of protection from **online hate speech** motivated by sexual orientation constitutes another gap. Indeed, the current version of the **Audiovisual Media Services Directive** does not include sexual orientation as a protected ground. Homophobia is a major problem throughout the EU¹⁸⁷, with almost half (47%) of the FRA survey respondents indicating that they had been harassed in a way that ‘annoyed, offended or upset them – at work, at home, on the street, on public transport, in a shop, in an office or on the internet’ (FRA, 2014b). The proposed amendments to the Audiovisual Media Services Directive (currently being discussed by the Council) would close this gap by including the ground of sexual orientation (European Commission, 2016b).

¹⁸⁶ [European Parliament Resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime](#), 2013/2543(RSP), Article. 5; [European Parliament Resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity](#), 2012/2183(INI), Recital J (ii).

¹⁸⁷ Ibid.

Lastly, a third gap in respect of sexual orientation concerns the restriction of **pension schemes** to surviving spouses, or work-related benefits to married employees, ignoring any such rights on the part of same-sex partners (Tymowski, 2016). The CJEU leaves it to the national courts to decide whether spouses and life partners are in a comparable situation, creating important differences in rights across Member States. However, the scope of the issue is unknown and this gap is not further investigated within the framework of this study.

3.5. Age

The Employment Equality Directive sets out a general framework to ensure equal treatment of individuals at the **workplace**, irrespective of their age¹⁸⁸.

As with religion/belief and sexual orientation, the discrimination ground of age is **not protected beyond employment** (see Section 2.8 on horizontal issues).

A less significant barrier concerns the **vagueness** of the legal provision on justification for **differential treatment on the ground of age** in the Employment Equality Directive (European Commission, 2014b). This option grants considerable flexibility to Member States to adopt a broad range of measures for young and old workers. Extensive jurisprudence from the CJEU and national courts exists on the matter (Tymowski, 2016). The CJEU draws a fine line between acknowledging the margin of manoeuvre of Member States to develop social and employment policies, and protecting the substance of the prohibition of discrimination based on age (European Commission Staff Working Document, 2014). However, there is insufficient research to adequately assess the impact of the flexibility provided to Member States, placing it outside the scope of this study.

3.6. Disability

The current EU legal framework protects persons with disabilities from discrimination on the ground of their disabilities only in the field of employment, as provided for by the **Employment Equality Directive**.

¹⁸⁸ [Council Directive 2000/78/EC of 27 November 2000 establishing a framework for equal treatment in employment and occupation](#), OJ L 303, 02.12.2000.

EU legal action in other fields is at a standstill, with a block at the Council of the European Union impeding the passing of a broader and more general Directive on equal treatment (see Section 2.3). Further explicit protection against discrimination based on disability is granted in Article 21 of the **EU Charter**.

In December 2010, the EU acceded to the **UN Convention on the Rights of Persons with Disabilities (CRPD)**¹⁸⁹. The EU is now bound to implement the Convention in line with its competences, as defined in Council Decision 2010/48/EC¹⁹⁰ and the Code of Conduct between the Council, the Member States, and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the Convention¹⁹¹. As a party to the CRPD, the EU is bound to pass new legislation, policies and programmes to guarantee and support the realisation of all fundamental rights for persons with disabilities.

On the basis of a proposal by the Commission, the **EU Framework for the CRPD** was endorsed by the Council in 2012 (European Commission, 2017b). It started to operate in 2013 and works together with the monitoring mechanisms at national level to oversee the EU's implementation of the CRPD.

The most important gap in relation to disability is the **limitation** of the prohibition of discrimination on the ground of disability **to employment**. Indeed, EU legislation does not establish any protection against discrimination on the ground of disability in areas other than employment and, to a certain extent, transport. Particularly problematic is the **failure to reasonably accommodate** persons with disabilities **in key areas** of social protection, health care, (re)habilitation, education, and provision of goods and services (e.g. housing, transport and insurance). The UN Committee on the Rights of Persons with Disabilities recommended that the EU adopt legislation to protect persons with disabilities against discrimination, including the provision of reasonable accommodation, in all areas of its

¹⁸⁹ [UN Convention on the Rights of Persons with Disabilities](#), A/RES/61/106, 24 January 2007.

¹⁹⁰ [Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities](#), OJ L 23/35, 27.01.2010.

¹⁹¹ Council of the European Union, [Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities \(2010/C 340/08\)](#), OJ C 340/11, 15.12.2010.

competence (UN CRPD Committee, 2015)¹⁹². A key gap is the current unequal and **disparate disability classification** among Member States, which have established protection against discrimination on the ground of disability in a number of sectors. Thresholds to be protected or to qualify for certain social advantages or access to services such as healthcare, financial support or personal assistance vary within and between Member States. This leads to diverging classification and unequal protection of persons with disabilities in the EU (Degener, 2004; Waddington and Lawson, 2009). The absence of EU legislation harmonising classification (outside of the employment arena) results in variable protection, enforceability and terminology. This is also important with respect to the freedom of movement of persons with disabilities and their families, or persons with family members who have disabilities, when moving to live or work in another Member State. The UN CRPD Committee recommended that the EU address the barriers faced by persons with disabilities and their families in exercising their **right to free movement**, including the portability of social security benefits (UN CRPD Committee, 2015)¹⁹³. This is a key issue at EU level. While the extent of the problem is unknown, given that people with disabilities account for estimated 10-15% of the EU population (UNDP, 2010), and considering the aging population, EU action in this regard could have an important impact, making this a pressing gap. As a horizontal gap, this will be discussed further in Section 2.7 below.

In addition to the adoption of the Proposed Equal Treatment Directive, the EU plans to address issues related to **access to certain goods and services** for persons with disabilities through the adoption of the so-called **EU Accessibility Act**, proposed by the European Commission in late 2015 (European Commission, 2015c). The EU Accessibility Act aims to remove and prevent barriers for the free movement of accessible products and services, by harmonising national measures on accessibility to address current legal discrepancies. It addresses accessibility issues by imposing obligations on Member States and economic operators, without establishing rights for persons with disabilities. The European Accessibility Act covers the products and services identified as having the highest risk of divergent accessibility requirements across the EU, such as

¹⁹² [European Parliament Resolution of 7 July 2016](#) on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee, 2015/2258(INI).

¹⁹³ [European Parliament Resolution of 7 July 2016](#) on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee, 2015/2258(INI).

computers, ATMs, ticketing and check-in machines, smartphones, banking services, e-books and ecommerce.

A gap highlighted by both the UN CRPD Committee and the literature relates to the number of children with disabilities living in institutions across the EU with **no access, or difficult access, to inclusive education**. The right to inclusive education means that all children, regardless of their physical and mental capacities, should learn together and receive education on equal basis¹⁹⁴, acknowledging that every child has unique abilities and learning needs, and that children with special educational needs must have access to, and be accommodated in, the general education system (Muñoz, 2007, p. 6). The CRPD Committee recommended that EU strategies address and mainstream the rights of children with disabilities, and that the EU take the necessary measures (including through the use of relevant EU funds) to develop support services for children with disabilities and their families and to promote access to inclusive education. The lack of inclusive education has serious consequences, as it makes the transition from education to employment difficult, and frequently limits access to the labour market (FRA, 2013). In order to overcome these issues, the EU would need to adopt the proposed Equal Treatment Directive and include the requirement of reasonable accommodation in education, as well as targeting EU funds towards programmes supporting inclusive education, de-institutionalisation and support for families. This is a pressing gap, in view of the high stakes for the children involved and the potential social impact of EU action.

Similarly, the Committee recommended that EU policies should mainstream the fight against violence against persons with disabilities in institutional settings. The UN CRPD guarantees persons with disabilities the **right to independent living** in the community. Persons with disabilities must be able to choose whether to live in a community or an institution, thereby requiring the existence of accessible care services to support persons with disabilities living in their communities. This is not the case in all Member States, with research pointing to barriers such as long-term care institutions, institutional regimes, lack of daily living support, inaccessible workplaces and services, stigmatisation and discrimination or restrictions on legal capacity (FRA, 2013). The lack of

¹⁹⁴ [Salamanca Statement on Principles, Policy and Practice in Special Needs Education](#) (1994), para. 3.

reasonable accommodation by employers, as well as discrimination on the grounds of disability, are additional factors that contribute to isolation, lack of independence, and exclusion from community life among persons with disabilities. Similarly to inclusive education, this gap would be covered by the adoption of the Proposed Equal Treatment Directive, together with ensuring that EU funding is used to support the right to independent living. This gap, too, is considered pressing, in view of the quality of life issues involved and the potential for significant impact from EU action.

In terms of barriers to the implementation of EU legislation, the right to non-discrimination in access to transport is not always correctly applied, notably the exception allowing denial of boarding for reasons of safety or because the transport is physically inaccessible. However, a number of cases reported showed that persons with reduced mobility (PRMs) have been denied boarding flights, using the vague exception of safety. As the costs of non-Europe on those gaps and barriers are analysed in detail in the European Parliament Study on the Possibility and Feasibility of a Codification of Passenger Rights (Altan, et al., 2014; Nogaj, 2015), this paper will not explore it further.

3.7. Horizontal gaps and barriers

A number of gaps and barriers identified apply to all of the grounds discussed above. While some were already briefly mentioned above, they are described further here.

- *Protection beyond employment for religion or belief, disability, age, sexual orientation*

In 2008, the Commission adopted the Proposed Equal Treatment Directive to expand protection against discrimination based on age, disability, sexual orientation and religion or belief, beyond the workplace (European Commission, 2008). The aim is to expand protection against discrimination to the additional areas covered by the Racial Equality Directive for the discrimination ground of race and ethnicity, i.e. social protection, education and access to goods and services. To date, the Proposed Equal Treatment Directive has remained blocked at the level of the Council of the European Union, where it has thus far failed to pass.

The Proposed Equal Treatment Directive would address the significant gap in the EU equal treatment legal framework, where the discrimination grounds of religion and

belief, disability, age and sexual orientation are **not protected in all relevant sectors**. Contrary to the Racial Equality Directive, the Employment Equality Directive only extends protection in the area of employment, thereby disregarding social security and healthcare, education, and access to goods and services. As a result, there is uneven protection for the different discrimination grounds across sectors. Problems also arise in relation to the different levels of protection in place across the Member States. While many Member States have adopted national legislation to cover discrimination in the areas not covered by the Employment Equality Directive, few comprehensively cover all discrimination grounds for all sectors (European Commission, 2008). In fact, much of Member States' legislation reflects the gap in the scope of protection of EU law, expressly protecting against discrimination beyond employment only in relation to racial and ethnic grounds (Chopin and Germaine, 2016).

This gap creates legal uncertainties for economic operators, as well as victims. It also means that barriers to social inclusion and full participation in the economy among the affected groups remain largely unchallenged. Such barriers concern, among others:

- Discrimination based on sexual orientation in access to healthcare, which results in undignified treatment and higher incidences of ill-health among LGBT persons (Section 3.4).
- Lack of an obligation for reasonable accommodation of religious diversity in schools and in relation to accessing services, which impacts negatively on the integration of religious minorities in society (Section 3.5).
- Lack of an obligation for reasonable accommodation of disability in education, access to goods and services, healthcare and social security.

- *Equality Directives*

A number of barriers to the achievement of effective implementation of a non-discrimination framework at EU level are common to all of the Equality Directives, and are therefore discussed together here as horizontal problems.

The limitation of the obligation to set up **equality bodies** for the discrimination grounds of sex, and racial/ethnic origin constitutes the first barrier. While most Member States have extended the mandate of the national equality body to some or all of the other discrimination grounds, the extent of the coverage varies across Member States (Equinet, 2015, p. 33). While many equality bodies are also competent beyond employment for religion or belief, disability, age and sexual orientation, the discrimination ground of religion or belief is not a priority for equality bodies. This may be due to lack of resources, low numbers of complaints and under-reporting, as well as the low levels of sanctions for discrimination based on religion or belief (Equinet, 2015, pp. 14 and 18). Overall, the

competences, resources, and structure of these bodies **vary considerably** across Member States, creating inequalities in the protection provided across the Member States (European Commission, 2014b, pp. 11-12; Equinet, 2016, pp. 34-35; Tymowski, 2016, pp. 53-56). Equality bodies play an important role in raising awareness, as they represent the first contact for complaints based on discrimination, sometimes take cases before courts, monitor the implementation of the legislation, and lead the fight against discrimination. Gaps in the functioning of the equality bodies have significant impacts which, together with the EU's strong competence in the area, makes the closure of such gaps a pressing issue.

Barriers to **access to justice** for victims of discrimination are also problematic. These include problems with the existence and compliance of sanctions and remedies applied to instances of discrimination at national level (European Commission, 2014b, p. 7). For instance, there are concerns about national courts applying a lower scale of sanctions. Despite existing legislation¹⁹⁵, inspections and sanctions in respect of unequal pay are inadequate¹⁹⁶. Other challenges in this category relate to the **lack of the necessary skills and awareness** among law enforcement and criminal justice staff to effectively fight hate crime. For instance, problems arise in the application of the shift in burden of proof in discrimination cases, as a result of insufficient knowledge of the concept among national courts. The reversal of the burden of proof is not always applied correctly by national courts, therefore (European Commission, 2014b, p. 9; Equinet, 2016; Farkas and O'Farrell, 2014). The **under-reporting of hate speech and hate crime** constitutes another barrier to access to justice for victims. Due to the specific nature of such crimes, victims and witnesses are reluctant to report them and, when they do, they are more likely to turn to victim-support services than to the police (European Commission, 2014c). Hate speech and hate crime often remain unprosecuted and invisible meaning that its victims remain unprotected, with their rights not fully respected (FRA, 2012).

These barriers hindering effective access to justice for victims of discrimination are considered pressing, given that discrimination is a daily reality throughout the EU. In addition, hate crimes, which FRA calls 'the most severe expression of discrimination and a core human rights abuse' (FRA, 2017), not only affect individual victims but European society as a whole. Hate crimes and related fundamental rights violations must be made more visible and the perpetrators must be held accountable (FRA, 2012). Unfortunately, this often does not happen,

¹⁹⁵ Recast Gender Equality Employment Directive, Article 18 (compensation or reparation) and 25 (penalties).

¹⁹⁶ [European Parliament Resolution of 24 May 2012 with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value](#), 2011/2285(INI).

leaving victims without redress (FRA, 2017). Specialised training on hate crime could help to improve reporting mechanisms, identify and record hate crimes, employ a victim-centred approach to hate crime investigations, and prosecute such crimes based on discriminatory motivations (FRA, 2015a, pp. 10-11). Equality bodies may have a role to play in improving access to justice for victims of discrimination and hate crime, for instance by collecting reliable data and supporting victims during judicial proceedings.

Differences in the application of optional **positive action** provisions at national level represents the final barrier to effective implementation of the Equality Directives discussed here. Member States have **discretion** in taking positive action to achieve equality between men and women, or between different racial or ethnic groups. In practice, this provision is applied very differently at national level (Tymowski, 2016, pp. 15-16). However, such measures may be crucial in addressing the gender pay gap, for example, and providing incentives for the less well-represented sex to enter certain professions in order to contravene clear horizontal gender segregation or to foster the involvement of women in political and economic decision-making processes¹⁹⁷. Experience from national equality bodies shows that the actual implementation of positive action measures at national level can be difficult and controversial, and sometimes leads to counter-complaints (Equinet, 2016, p. 32). This is an important barrier because the implementation of positive action is, in some cases, the only way to achieve full and effective equality between different groups in society where other initiatives and practices have failed. The implementation of positive action schemes for disadvantaged groups could therefore have a significant social and economic impact. Considering, however, that it is difficult to quantify such an impact, and that insufficient data exist to support a quantitative assessment of this barrier, this research paper will not discuss the issue further.

The research identifies the absence of a specific provision on **multiple discrimination** as a horizontal gap in the current EU equality framework (European Commission, 2014b, pp. 9-10). For instance, a Roma woman with disabilities may face discrimination when applying for jobs or when seeking medical treatment. While it is theoretically possible for victims of discrimination to combine several discrimination grounds for a single situation – and thus to rely on provisions of different Equality Directives – this poses practical problems, for instance in relation to different levels of protection for the different discrimination grounds at EU level. While the Proposed Equal Treatment

¹⁹⁷ [European Parliament Resolution of 8 October 2015 on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation](#), 2014/2160(INI), paragraph 45-46.

Directive seeks to remedy this situation, it remains blocked at the level of the Council. An impact assessment of the Proposed Equal Treatment Directive (Milieu, 2013) concluded that it was impossible to identify the data needed to calculate the potential costs and benefits of closing this gap (Altan, et al. 2013). As such, it will not be assessed further in this research paper.

II – Key gaps and barriers overview

Table 7 presents the most pressing gaps and barriers identified in the State of Play analysis. In total, there are three horizontal gaps (A1-A3) that affect multiple grounds and 13 ground-specific gaps and barriers (B1-B13). Of the 13 ground-specific gaps and barriers, three are covered by the horizontal gaps. Thus, if EU action were to address the relevant horizontal gap, the ground-specific gap would also be affected.

Table 7: Selected gaps and barriers for the study

Ground	Gap number	Gaps/barriers
<i>Horizontal:</i>		
Multiple	A1	No protection afforded by EU legislation for: social security and healthcare, education or access to goods and services for the grounds of religion or belief, disability, age or sexual orientation
	A2	Barriers to access to justice for victims of discrimination
	A3	Barriers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive
<i>Ground-specific:</i>		
Sex	B1	Gender pay gap
	B2	Violence against women
Race and ethnicity	B3	Ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia
	B4	Online hatred insufficiently addressed by the Framework Decision on Racism and Xenophobia
	B5	Barriers to the effective national implementation of the Racial Equality Directive (<i>overlap with A3</i>)
Religion and belief	B6	Lack of reasonable accommodation requirement in employment
	B7	No protection outside employment; lack of

		reasonable accommodation in education (<i>overlap with A1</i>)
Sexual orientation	B8	Hatred based on sexual orientation not covered by hate crime/speech legislation in all Member States
	B9	No protection outside employment; discrimination in access to healthcare (<i>overlap with A1</i>)
Age	B10	No protection outside employment (<i>overlap with A1</i>)
Disability	B11	Barriers to the right to independent living
	B12	Barriers to inclusive education
	B13	No protection outside employment, including reasonable accommodation (<i>overlap with A1</i>)

Chapter 3: Assessing the impacts

Key findings

- Discriminatory behaviours stemming from gaps and barriers in EU action can lead to infringements on fundamental rights, reduced access to goods and services and poorer quality of goods and services received.
- Discrimination can invoke similar impact channels irrespective of the type of behaviour and the relevant ground. Impacts on individuals may be evident in terms of earnings, educational attainment, access to healthcare, physical and mental health, and housing conditions.
- Impacts were assessed by ground. The findings were then compiled with respect to each of the 13 gaps and barriers identified in Chapter 2.

I – Overview

Gaps and barriers in EU action and cooperation in the area of equality and the fight against racism and xenophobia result in a failure to achieve EU action objectives, with individuals not protected from discrimination, and a higher prevalence of **discriminatory practices** adversely impacting both individuals and society. Data from 2016 suggest that discrimination based on ethnic or immigrant background is the most common in the EU (FRA, 2017). Moreover, it is persistent. The prevalence of discrimination was at a comparable level eight years earlier (FRA, 2017)¹⁹⁸. Discrimination was reported in the sector of employment as well as more broadly including health care and education.

Such experiences infringe on the fundamental rights of individuals guaranteed by the EU legal framework, the ECHR and national legislation. In particular, they violate the right to equal treatment and equal access to employment, goods and services, healthcare, social security and education, with economic impacts on the individuals affected.

The '**economics of discrimination**' is an established field of inquiry, with its origins in the pioneering mid-20th century work of Nobel Laureate economist, Gary Becker¹⁹⁹. Since then, there has been a steady increase in economic analysis

¹⁹⁸ The EU-MIDIS I survey found that the prevalence of discrimination based on 'ethnic origin or immigrant background' was 24% while the EU-MIDIS survey found that the prevalence was 30%.

¹⁹⁹ The *Economics of Discrimination* was published by Gary Becker in 1957. He won the Nobel Prize in 1992 for his application of economic methods to human behaviour.

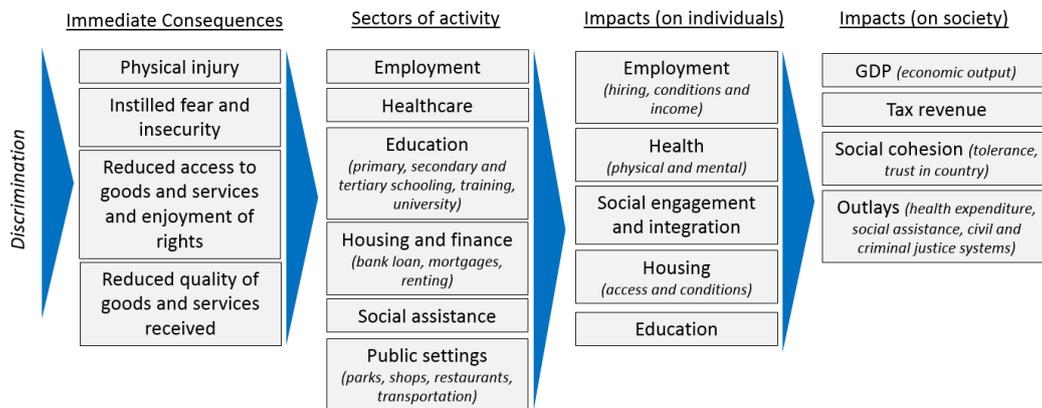
of the impacts of discrimination. These studies have focused primarily on the **employment sector**, paying attention to issues such as hiring practices, salaries and promotions²⁰⁰. To a lesser extent, economists have also studied the impact of discrimination in other sectors such as **education, housing, healthcare and consumer goods** (Bertrand & Duflo, 2017; Baldini & Federici, 2011; Boeri et al, 2015; Lane, 2016; Yinger, 1998). A large body of research from other disciplines (e.g. law, psychology, medicine, epidemiology and sociology) has also investigated this issue.

Based on a comprehensive, cross-disciplinary review of literature, a **conceptual framework** was developed for the impacts of discrimination (see **Error! Reference source not found.**). Discrimination was defined as ‘behaviour that creates, maintains and reinforces advantages for some groups and their members over other groups and their members’ (Dovidio et al., 2010). For example, discriminatory behaviour may be direct and acute, such as **violence and hate crimes** that lead to physical injury and instil fear and insecurity (EIGE, 2015). It may be evident in **differential access to goods and services and enjoyment of one’s rights**, e.g. when a child with a disability does not receive adequate support from social care professionals to access schools and the healthcare system (see Section 7 for more information). It may also be embodied by the **poorer quality of goods received**, e.g. when LGBTI individuals do not receive adequate medical care (see Section 4 for a more in-depth treatment of this issue). Even when not perceived by the individual, discrimination may have detrimental impacts relating to different sectors of activity including employment, healthcare, housing and public settings (e.g. public transit). Lastly, **access to justice** for discriminated individuals may affect the scale and scope of the impacts they experience, e.g. limited access to justice could imply that discriminatory practices are not redressed or formally recognised.

Discrimination may have a **wide range of impacts** on individuals, including inferior employment conditions, poorer educational outcomes and lower social integration, that infringe on their rights (Dovidio, Hewstone, Glick & Esses, 2010). These impacts translate into a higher risk of unemployment and lower earnings in employment (Brunello & De Paola, 2014). Discrimination in areas such as housing may also impact well-being (Ringelheim and Bernard, 2013). The costs of discrimination are felt not only by individuals but by society as a whole, with lower productivity and higher outlays for unemployment and social assistance benefits leading to lower GDP and tax revenue.

²⁰⁰ The agenda for an international workshop organised by IZA, CREST and the OECD in June 2017, ‘[Recent advances in the economics of discrimination](#)’, provides an overview of recent research in the field. Other examples of studies include: Kaas & Manger (2012) and Andriessen et al (2012).

Figure 5: Conceptual framework for the impacts of discrimination



Individuals exposed to discrimination may be discouraged from engaging with those from a different background, may distrust their fellow citizens, and may feel less close to their country of residence, leading to **lower social cohesion** (Ysseldijk et al, 2014). Issues of trust and social cohesion are closely linked with group identity affiliation, where individuals place greater trust in those with whom they share a similar background. Group identity affiliation may, in some circumstances, lead to discriminatory practices (Chuah et al, 2016). The lack of trust may lead to discriminatory practices in the **housing** sector, for example, with less favourable options for mortgage financing, or additional requirements in rental contracts. Individuals with lower social cohesion may also be less aware of housing and other social assistance.

Children are particularly susceptible to the impacts of discrimination, the effects of which may persist throughout their lifetimes. Children who experience bullying or **cyber-bullying**, for example, may be at an increased risk of depression and reduced functioning in adulthood (Sigurdson et al., 2015). The impacts of discrimination may also be compounded by **social disadvantage** (Fazil et al., 2002).

Next to employment, the area with the most significant body of research relevant to this discussion is mental health. Much of the medical research has found that discrimination can lead to **higher psychological distress** for affected individuals and lower scores on other indicators of psychological well-being, such as happiness, life satisfaction and self-esteem (Williams et al., 2003; Mays & Cochran, 2001; Pascoe & Richman, 2009). Other studies find that in some individuals, discrimination can increase the risk for developing serious mental health conditions such as chronic depression and generalised anxiety disorder, as well as substance abuse (Williams et al., 2003; Mays & Cochran, 2001). Discrimination, particularly when it is acute and severe, may also place individuals at a greater risk of attempted suicide (Clements-Nolle et al., 2006;

Gomez et al., 2011; LGBTI for Health, 2017). Medical studies suggest that stress from to chronic exposure to discrimination stimulates the body to release neural and neuroendocrine hormones (commonly called the ‘stress response’) that consequently affect brain function (McEwen 2000). These hormonal imbalances can also lead to **physiological deterioration** known as ‘allostatic load’, heightening the risk of developing chronic diseases such as hypertension (McEwen 2000; Williams et al., 2003). While most of these studies have been undertaken in the United States, several European studies found evidence to corroborate such impacts on mental health (Ikram et al., 2014; Agudelo-Suarez, 2011; Paradies, 2006). Impacts on health may also result from discrimination in **access to quality healthcare** (FRA, 2013). Nonetheless, **more empirical research is needed** on the impact of discrimination on individuals in the European context, particularly outside of employment and on the grounds of race, ethnicity and religion.

It is important to note that an individual may experience discrimination on more than one ground, e.g. women with a disability, or LGBTI persons from racial or ethnic minorities. The literature terms this ‘**multiple discrimination**’, the impact of which can be broader than discrimination on a single ground. For example, the intersection of discrimination on the grounds of gender and disability was found to lead to additional discrimination compared to cases of discrimination on the ground of gender or disability alone. Women with disabilities are more likely to be inactive or unemployed than both men with disabilities and women without disabilities (Lodovici et al., 2017). Table 8 presents indications of the prevalence of multiple discrimination in Europe. Among individuals who reported discrimination on the grounds of sex, for example, 16% also reported discrimination on the ground of race or ethnicity. Similarly, 27% of individuals who experienced discrimination on the ground of religion or belief also reported discrimination on the ground of race or ethnicity. Overall, 14% of individuals who experienced discrimination indicated that was based on more than one ground.

Table 8: Reported instances of multiple discrimination

Ground on which the discrimination was reported:	Other grounds of discrimination reported by these individuals:
Sex:	Race or ethnicity (16%), age (15%), sexual orientation (11%), religion or belief (7%), disability (6%)
Race or ethnicity	Religion or belief (20%), sex (6%), age (4%), sexual orientation (3%), disability (2%)
Religion and belief	Race or ethnicity (27%), sex (3%), age (3%), sexual orientation (2%), disability (2%)
Sexual orientation	Sex (35%), race or ethnicity (30%), age (30%), religion or belief

Ground on which the discrimination was reported:	Other grounds of discrimination reported by these individuals:
	(25%), disability (27%)
Age	Sex (14%), race or ethnicity (12), disability (10), sexual orientation (7%), religion or belief (5%)
Disability	Age (34%), sex (28%), race or ethnicity (27%), sexual orientation (27%), religion or belief (6%)

Source: Author analysis of the European Social Survey 2010-2014, which includes responses from 24 Member States. Respondents to the survey could indicate the grounds on which they had experienced discrimination in the past 12 months. See Annex 2 for more information.

Whether experienced on the grounds of sex, race or ethnicity, religion or belief, age, disability or sexual orientation, discrimination can have similar impacts. The conceptual framework thus guided the development of a tailored set of **impact channels** for each ground and the relevant gaps and barriers identified in the State of Play analysis (see Table 7). The impact channels were defined following an extensive review of published studies, reports from interest groups and academic literature, with special attention paid to **ground-specific issues**. In the case of sex, for example, discrimination resulting in lower pay not only leads to lower income, but also higher economic dependence on the spouse/partner, placing the individual at increased risk of intimate partner violence (see Section III.1 for more information). The horizontal gaps (A1-A3) were reflected in the impact channels for all relevant grounds.

II – Approach to economic assessment

This section describes the methodology used to assess the impacts on individuals and society. One of the unique features of the methodology is an original and extensive analysis of the European Social Survey. As a first step, the extent of discriminatory practices was examined by ground. Surveys such as the European Union Minorities and Discrimination Survey (EU-MIDIS), the Violence against Women Survey and the LGBT survey (managed by FRA) were key sources of information for this task. Evidence was then examined for the impact channels stemming from each of the discriminatory practices. Estimates for some of the costs were available from studies and reports, e.g. EIGE-commissioned studies on the macroeconomic impact of the gender pay gap (Pollitt et al., 2017) and gender-based violence (EIGE, 2014). Another key source was a study on discrimination outside the area of employment conducted by the European Commission (Granath, 2008). These estimates were referenced in an Impact Assessment of the Horizontal Directive on Equal Treatment

(Alten et al, 2014). Cost estimates from these studies were inflated to 2016 values using the Consumer Price Index²⁰¹.

In cases where information on costs was not available, quantitative estimates were constructed, based on several sources. One source was an original and extensive econometric analysis of the European Social Survey (ESS)²⁰², which was used to investigate the relationship between perceived discrimination and a range of outcomes, such as self-reported health and years of education completed. Here, the analysis used three waves of ESS data: 2010, 2012 and 2014, reflecting over 118,000 individuals aged 14 and up, from 24 EU countries. The data analysis was based on the responses to questions about perceived discrimination²⁰³ and other individual characteristics. The main specification of the econometric model was informed by the approach taken by a published research study focusing on this measure of perceived discrimination in the ESS (Alvarez-Galvez & Salvador-Carulla, 2013). It is important to note that perceived discrimination is distinct from actual discrimination, as less overt forms of discrimination, such as lower wages or poorer customer service, may be experienced but not remarked on²⁰⁴.

Translating impacts into monetised estimates

Discrimination can have a wide range of impacts on individuals and society. Four possible impacts of discrimination were monetised into lost earnings for individuals and lost GDP for society. These impacts were: employment, education, health status and physical assault. The econometric analysis of the ESS confirmed the relationship for select grounds. The methodology for each is briefly described below. (See Annex 2 for more information.)

***Employment:* This analysis found that perceived discrimination was associated with a higher risk of unemployment for select grounds. Unemployment implies no wages earned and thus lower income. To estimate the lost income, the higher risk of unemployment was**

²⁰¹ [Eurostat Harmonised Index of Consumer Prices \(HICP\), annual data.](#)

²⁰² The ESS is funded by the Horizon 2020 Research and Innovation Programme and has been carried out every two years since 2002.

²⁰³ The ESS includes the following question about discrimination: 'Would you describe yourself as being a member of a group that is discriminated against in this country?'. If the response was yes, the individual was asked to indicate the ground(s) on which such discrimination was based. The same individual also responded to other questions about education and other issues.

²⁰⁴ For example, consider that the prevalence of perceived discrimination on the sex ground is 1.1% among women, as estimated from the ESS. This is not consistent with the strong evidence of the existence of a gender pay gap, which is a reflection of actual discrimination.

applied to the number of individuals citing that ground of discrimination. The resulting figure was multiplied by the average net annual wage in the EU to obtain an estimate for lost earnings. In order to obtain an estimate of lost GDP, the net wage differential was substituted with the average gross wage differential in the EU.

Education: Perceived discrimination was associated with a higher risk of non-completion of tertiary education for select grounds. It is well-established that a higher level of education is associated with higher wages on average (Brunello & De Paola, 2014). To obtain an estimate for lost wages, the average net annual wage differential at the EU level between individuals completing tertiary education and those completing secondary education was multiplied by the following: (1) the higher probability of non-completion of tertiary education; and (2) the share of the sample that completed tertiary education.

Health status: The econometric analysis was also carried out for self-reported health status. The measure is a validated indicator of health status (Grand et al., 1990; Sundquist & Johansson, 1997). The research literature clearly documents a relationship between poorer health status and lower earnings. Estimates here drew on a figure previously used in similar European Institutions' studies. The percentage decrease in earnings due to poorer health was multiplied by the number of individuals projected to have poor health due to discrimination and average net annual wage in the EU.

Assault: Lastly, the relationship between perceived discrimination and physical assault was examined. A positive relationship was found for several grounds. Research has found that assault victims have poorer health as a result (Herek, 1999; Dzelme, 2008; Roberts et al., 2010), and this was confirmed by the econometric analysis. The increased risk of being a victim of assault was multiplied by the increased risk for poor health. This figure was then multiplied by the percentage decrease in wages and the net annual wage in the EU.

Where the findings from the econometric analysis were statistically significant, they were combined with other sources of data, such as Eurostat, to assess the individual and economic impacts of discrimination, following the methodological approach used by Granath (2008). For instance, the impact of lower employment or a lower educational attainment rate in a discriminated group was estimated for earnings, among other aspects. The lost earnings were then used to estimate the resulting decrease in GDP and tax revenue. Following this analysis, the costs associated with each gap or barrier were estimated by aggregating the findings for the relevant impact channels.

The methodology used in this study has several key assumptions and limitations:

- Cost estimates reflect the full elimination of the gaps and barriers, compared to the present situation. This assumes that individuals and society (including businesses) adjust fully and instantly. In practice, however, society will likely need a period of time to adjust in order for the benefits to be gained.
- The labour market adjusts readily to a more equal distribution of wages.
- The methodology drew, to the greatest extent possible, on evidence generated by rigorous, quasi-experimental methods to determine the impact of discrimination. These econometric estimates do not provide causal evidence for the impact of discrimination on individual outcomes.
- Limited quantitative evidence on the impacts of discrimination in the EU.
- Individuals may experience discrimination on multiple grounds, which may have unique impacts. This study assesses only the impacts of each individual ground of discrimination.
- Overlap in some impact channels for different gaps and barriers.
- The share of ESS respondents who perceived discrimination is low compared to the overall sample. This decreased the likelihood of observing statistically significant findings.

The findings from the assessment are presented in Section III. More information about the methodological approach, the survey analysis, and the calculation of the estimates can be found in Annex 2.

III - Findings

This section presents the key findings from the assessment of the gaps and barriers presented in Table 7 (see Chapter 2). The assessment included a review of discriminatory practices, their impact channels and the subsequent impacts on individuals and society. Some examples from case law are used to illustrate discriminatory practices and their impacts. These examples were drawn from the case law RSS feed of the European Equality Law Network²⁰⁵. Sections 1 to 6 present the results by ground of discrimination, while Section 7 presents an overall summary. The estimates presented in this chapter reflect the costs of discrimination faced by individuals and society. These costs may be reduced to some degree by EU action and cooperation, as discussed in Chapter 4.

1. Sex

²⁰⁵ [The website of the organisation European Equality Law Network.](#)

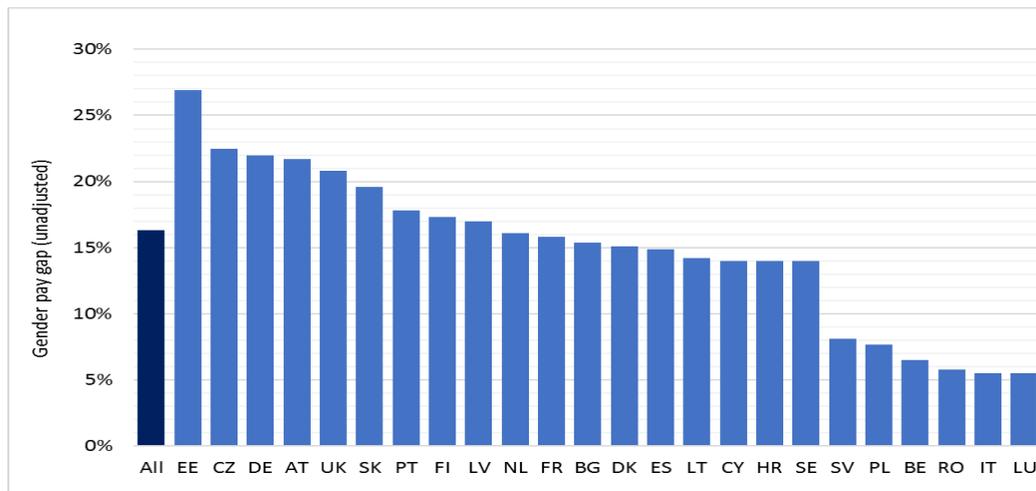
1.1. Overview

The assessment focused on two key gaps in EU policy: the gender pay gap [B1] and violence against women [B2]²⁰⁶. Each is described below.

The gender pay gap

In 2015, the gender pay gap was estimated to be 16.3% in the EU-28, i.e. women earned, on average, EUR 84 for every EUR 100 earned by men²⁰⁷. The gender pay gap varies widely across Member States, from 5.5% in Italy and Luxembourg to 26.9% in Estonia. A narrower gender pay gap does not necessarily reflect more gender equality. Rather, it may be a consequence of lower labour force participation among women (Olivetti & Petrongolo, 2008)²⁰⁸. For example, women in countries such as Belgium, Italy, Poland and Romania are less likely to engage in the labour market. Those that do, however, are generally high-skilled and well-paid, narrowing the overall gender pay gap (Mulligan & Rubinstein, 2008).

Figure 6: Gender pay gap in EU Member States, 2015 (unadjusted percentages)



Source: Eurostat, 2015. The unadjusted gender pay gap is defined as the difference in the hourly wage between men and women. Note: Ireland, Greece, Croatia and Malta are not included as 2015 figures for these countries were not available.

The gender pay gap has been aggravated by inconsistent implementation and enforcement of the Recast Gender Equality Employment Directive and the lack of adequate EU action to address all aspects of the issue. The gender pay gap stems

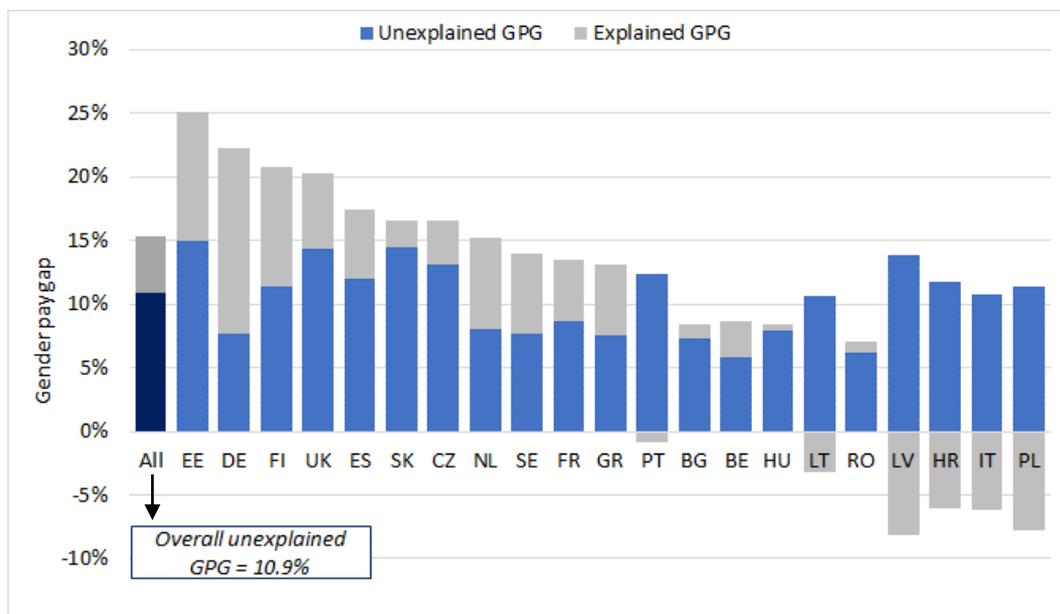
²⁰⁶ The full list of gaps and barriers assessed in the study can be found in Table 7.

²⁰⁷ [Eurostat definition of gender pay gap statistics](#).

²⁰⁸ Olivetti & Petrongolo (2008) show that the gender pay gap is negatively correlated with the gender employment gap.

partly from a range of deeply embedded social patterns, such as women taking on the majority of the **burden of caretaking** for dependents, including children, seriously ill or dependent relatives, and **career choices** with respect to field of education and number of hours worked. However, studies clearly demonstrate that a sizeable gap remains even after accounting for other factors. Thus, the gender pay gap can be broken down into the ‘explained gender pay gap’ (the share that can be explained by other factors) and the ‘unexplained gender pay gap’ (the share the remains). Some of the most compelling evidence has been generated by economic experiments. In one study, résumés that were identical save for the implied gender of the applicants’ names, were submitted for the same job position. Men were more likely to get call-backs and offers from the employer (Neumark, 1996). In another experiment, a ‘blind’ auditioning for orchestras increased the likelihood of women passing the preliminary selection by 50% (Goldin & Rouse, 2000)²⁰⁹. In a selection of 22 European countries, the unadjusted gender pay gap was equal to 15.3% in 2010, of which 4.4% was the explained gender pay gap and 10.9% was the unexplained gender pay gap (Boll et al., 2016). The explained gender pay gap varies from -7.8% in Poland to 14.5% in Germany. The negative values for the explained gender pay gap reflect that ‘female workers would earn more than male workers according to the explained gap alone’ (Boll et al., 2016, p. 73).

Figure 7: Gender pay gap in Europe, by explained and unexplained components (%), 2010



Source: Boll et al., 2016. Note: Explained gender pay gap reflects the share that can be accounted for by known factors. Unexplained or adjusted GPG reflects the gap that cannot be explained by known factors

²⁰⁹ In ‘blind’ auditions, a screen prevented the panel from seeing the identity and gender of the individual auditioning.

Violence against Women

Violence against women includes physical, sexual and psychological violence (FRA, 2014a). This violence may be perpetrated by a **partner (intimate partner violence or domestic violence)** or other **non-partners (non-partner violence)**. Incidents often go unreported, thus police and criminal justice statistics cannot provide an accurate assessment. However, a recent survey was conducted to assess the extent and nature of this problem (FRA, 2014a)²¹⁰. The findings were striking, with an estimated one in three women in the EU suffering from physical or sexual violence since the age of 15 years (FRA, 2014a). Furthermore, one in five women experienced being stalked, and more than half had been the victim of sexual harassment (FRA, 2014a). Table 9 presents an overview of the types of violence reported by women. Experiences vary by Member State. Reported experience with partner violence ranged from 30% in countries such as Denmark, Latvia and Finland, to 13% in Spain, Austria and Poland. A similar pattern was observed for non-partner violence (FRA, 2014a, p30).

Table 9: Women experiencing violence since the age of 15 years (%)

	Current partner	Previous partner	Non-partner	Any person
Physical violence:				
Pushed or shoved	5	19	13	23
Slapped	4	15	8	17
Grabbed or pulled by the hair	2	10	7	13
Beaten with a fist	1	9	5	10
Sexual violence:				
Made to take part in sexual activity against her will	1	5	2	6

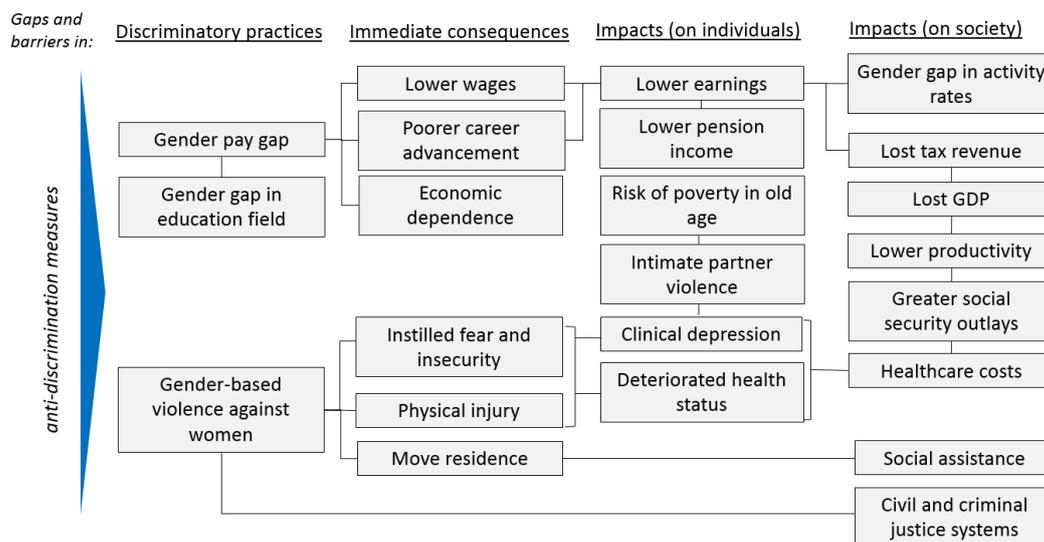
Source: FRA, 2014a.

1.2. Findings

Figure 8 presents the impact channels stemming from the gender pay gap [B1] and violence against women [B2]. These discriminatory practices have immediate consequences, with adverse impacts on individuals and society.

²¹⁰ The survey interviewed more than 42,000 women across the EU.

Figure 8: Impact channels for gaps related to discrimination by gender



As outlined earlier, the **gender pay gap** is influenced by a wide range of factors. One key factor is education field, with fewer women studying science, technology, engineering and mathematics (STEM). The education field chosen by women has an impact on earnings, as wages tend to be considerably higher in STEM-related sectors (Pollitt et al., 2017). The gender pay gap can also be partly attributed to the gender gap in activity rates ('employment gap'), as women provide more informal care than men (OECD, 2017) leading to different work-life balance decisions (Pollitt et al., 2017). At the same time, the gender pay gap may deter women from entering the labour market or returning after maternity leave. An immediate implication of the gender pay gap is lower income and spending capacity of households. The aggregate annual **earnings lost** for all women in the EU due to lower earnings compared to men was estimated in the range of EUR 241-379 billion²¹¹. This loss in earnings results in **less tax revenue** for governments, estimated to be between EUR 116 and 183 billion annually²¹². Eventually the gender pay gap takes a toll

²¹¹ The higher bound value was calculated by multiplying the difference in hourly earnings for men and women by the number of hours worked by women on average per year (based on Eurostat data). The lower bound was calculated by applying the percentage reflecting the unexplained GPG (10.9%) to the level of men's earnings. Both estimates were aggregated to the whole population of working women in the EU based on Eurostat data. Since Eurostat reports data on gross earnings, a factor of 0.75 was applied to include net wages – according to OECD (2017), an average tax burden on wages for employees amounts to approximately 25.5%.

²¹² These figures were derived from the estimate of earnings lost. Here, a factor of 36% was applied to gross earnings lost due to wage gap (this factor is based on the 2017 OECD report). Annex 2 describes the calculations for each of the impacts in detail.

on the real economy, resulting in **lower GDP**. Cuberes & Teignier (2014, 2016) highlight that there is consensus in the literature that gender inequality has a negative effect on economic growth.

A recent study commissioned by EIGE (Pollitt et al., 2017) investigates the **economic impact of reducing gender inequality**. It employs a general equilibrium model that takes account of the adjustment costs incurred by firms and labour market responses²¹³. Three pathways to reducing gender inequality are investigated: (1) reducing the gender gap in the choice of education field; (2) narrowing the gender gap in activity rate; and (3) reducing the gender pay gap. Social policies that could promote gender equality include the provision of better childcare and other care arrangements, changes in maternity and paternity leave, promotion of more flexible working arrangements, promotion of female entrepreneurship, gender-neutral recruitment, and improved healthcare for women.

The authors found that reducing the gender gap in the choice of education field (1) would increase the supply of high-skilled labour, while narrowing the gender gap in activity rate (2) would increase the participation of women in the labour market. Together, these two pathways could lead to a 1-2% increase in GDP per capita in 2030 and 3-6% GDP per capita in 2050 (equivalent to an increase in GDP of up to EUR 540 and EUR 2,840 billion, respectively). By contrast, the reduction of the gender pay gap (3) would lead to a smaller 0.2% increase in GDP over the 2030-2050 period²¹⁴. The expected increase in real household income and expenditure was offset by the higher production costs faced by firms, who would adjust by increasing prices to consumers.

In terms of individual impacts, the gender pay gap can result in lower social benefits for women when they fall ill or unemployed. Lower earnings can be a barrier to female entrepreneurship and reduce talent in the economy (Cuberes & Teignier, 2016). Lower earnings can also contribute to the creation of a **pension gap** and to **increased risk of poverty** for elderly women (Lodovici et al. 2016a). The risk of poverty may be not explicit, but it is often revealed when families

²¹³ General equilibrium models consider not only the direct impact of a policy change, but also the supply-side responses and the interactions with other markets in the economy. By contrast, a partial equilibrium approach focuses on the direct impact on the market of interest.

²¹⁴ The impact on GDP of reducing the gender gap is fully realised only in 2030-2050, as it takes time for the policies to have an effect. The increase in female participation rates is a gradual process as labour markets and wage rates adjust.

break down (Corlyon et al., 2014). In addition, the gender pay gap might contribute to women's **economic dependence** on higher earning partners, thus making it more challenging for women to leave abusive relationships (OSCE, 2009; Harrington Conner, 2014). An economic study provides convincing evidence that the gender pay gap is associated with women facing a higher risk of assault by an intimate partner through the pathway of greater economic dependence (Aizer, 2010)²¹⁵. The study was undertaken in the United States where intimate partner violence is more prevalent than in the EU – an estimated 9% of women report having been raped at once in their lifetime while 16% experienced any form of sexual violence (CDC, 2010). However, the study may have relevance for the EU as it had a rigorous design that sought to isolate the causal pathway between the difference in earnings and risk of assault. Assuming that some women in the EU face a higher risk of **intimate partner violence** due to the gap in their earnings as compared with their partners, we estimated a cost of EUR 146-321 million²¹⁶.

Lower wages and social benefits, economic dependence, and higher vulnerability to domestic violence may lead to **physical, mental, and emotional health problems** (UN, 2015). Women are also more likely to suffer from mental health problems, as they are the main providers of intensive unpaid care to dependents (OECD, 2017). One research study found evidence to suggest that the gender pay gap increases the risk of developing mental ill-health, such as chronic depression (Platt et al., 2016). The study highlights that the likely pathway is through the heightened psychological distress due to earning less than male peers with similar qualifications and experience. While the study was undertaken in the United States, the causal pathway could be evident in the EU. Furthermore, the study was well-designed to estimate the causal pathway net of any other factors. The impact on mental health was calculated by drawing on estimates for the number of women in the EU suffering from chronic depression, the potential increased risk of this condition due to the gender pay gap from Platt et al., 2016 and estimates of the treatment costs. The resulting figure was estimated to be about half a billion euros annually (EUR 223-246 million of direct costs²¹⁷ and EUR 318-350 million of indirect costs reflecting a loss in productivity²¹⁸).

²¹⁵ This proportion has been estimated based on the coefficients in Aizer (2010). As the study employed instrumental variables design and sensitivity analysis, the results were considered sufficiently robust to be considered for this study.

²¹⁶ The increased risk of violence found in Aizer (2010) was multiplied by the costs of intimate partner violence estimated in EIGE (2014).

²¹⁷ In health economics, the term direct cost refers to all costs due to resource use that are completely attributable to the use of a healthcare intervention or illness.

²¹⁸ In health economics, indirect costs are defined as the expenses incurred from the cessation or reduction of work productivity associated with a given disease. Indirect costs typically consist of work loss, worker replacement, and reduced productivity from illness and disease.

Table 10 summarises the estimated impacts of the gender pay gap on individuals and society.

Table 10: Summary of impacts of the gender pay gap in the EU

Category	Type of impact	Quantitative estimates*	Sources
Individual	Lost earnings	EUR 241-379 billion	Eurostat
	Pension gap	Pensions for women are 40.2% less than those of men (ages 65-74)	Lodovici et al. (2016a)
	Poverty risk	59% of the population (ages 55 and up) at risk of poverty are women	Eurostat (2015)
	Economic dependence – intimate partner violence	EUR 146-321 million	EIGE (2014) and Aizer (2010)
Society	GDP loss linked to education and activity gap between men and women	EUR 540 billion in 2030	Pollitt et al. (2017)
	Mental health – direct costs ²¹⁹	EUR 223-246 million	Platt et al. (2015), Olesen et al. (2012) and Eurostat
	Mental health – indirect costs (productivity loss) ²²⁰	EUR 318-350 million	Platt et al. (2015), Olesen et al. (2012) and Eurostat

Source: See Annex 2 for more information on the author calculations. * Cost estimates are annual figures and reflect 2016 price levels, unless otherwise specified.

Estimated costs related to **violence against women** in the EU were presented in a recent study (EIGE, 2014). These costs were based on a figure estimated for the UK and extrapolated to the EU Member States based on their population size. The most immediate individual impacts of **violence against women** are physical injuries and possible changes in a person’s residence. **Physical and emotional impairment** represents the greatest cost component, amounting to EUR 134 billion. This estimate was calculated based on the average loss of healthy life years from the injury multiplied by the value of a healthy life-year in monetary terms. Personal costs, due to the costs of **re-housing** and **civil legal expenses**, were estimated to be EUR 7 billion. Violent incidents may have long-term impacts on individuals in terms of emotional well-being and **mental health issues**, such as risk of depression, resulting in additional costs (EUR 2 billion) from the

²¹⁹ In health economics, the term direct cost refers to all costs due to resource use that are completely attributable to the use of a healthcare intervention or illness.

²²⁰ In health economics, indirect costs are defined as the expenses incurred from the cessation or reduction of work productivity associated with a given disease. Indirect costs typically consist of work loss, worker replacement, and reduced productivity from illness and disease. Both direct and indirect costs are placed in the category of economic impact. However, it should be noted that medical costs are partly paid by individuals (with the share depending on the health insurance system in a country).

provision of specialised services, such as **social care and advice** by civil organisations and NGOs. Children of these women, particularly minors, may suffer psychological damage and incur other costs.

The individual impacts described above are associated with societal costs, ranging from additional costs incurred by the civil and criminal justice systems to greater social assistance costs and lower productivity of women due to health problems and absence from work (EIGE, 2014). A recent survey in Belgium found that 73% of those who had experienced domestic violence reported an effect on their ability to work. Common symptoms reported were tiredness (31%), distraction (29%) and feeling unwell (21%) (Belgian Institute for the Equality of Women and Men and Western University, 2017). Lost earnings due to injury translated to an estimated reduction in **economic output** of EUR 30 billion. **Health service costs** related to the treatment of physical and mental problems stemming from gender-based violence were estimated at EUR 14 billion. **Social services costs** comprise primarily housing assistance services for people who need to move because of gender-based violence. When reported to the authorities, violence against women also implies costs for **criminal and civil justice proceedings** (EUR 32 and EUR 2 billion, respectively).

Overall, the cost of gender-based violence against women in the EU has been estimated at EUR 225.8 billion in 2012 (EIGE, 2014), or 231 billion in 2016 terms. The costs of gender-based violence against women are summarised in Table 11.

Table 11: Summary of impacts of violence against women in the EU

Category	Type of impact	Quantitative estimates*
Individual	Personal costs	EUR 7 billion
	Increased expenditure on specialised services	EUR 2 billion
	Physical and emotional impairment	EUR 134 billion
Society	GDP loss	EUR 30 billion
	Increase in health services	EUR 14 billion
	Increased use of the criminal justice system	EUR 32 billion
	Increased use of the civil justice system	EUR 2 billion
	Increased expenditure on social services and welfare programmes	EUR 9 billion

Source: Quantitative estimates are drawn from Table 6.1 and Table 5.1 in EIGE, 2015 and inflated to 2016 price levels. More details can be found in the EIGE (2015) study. *The cost estimates are annual figures.

2. Race and ethnicity

2.1. Overview

Discrimination on this ground has several unique features. Firstly, it covers discrimination for a diverse group, including those present in Europe for centuries, such as Roma, and groups that arrived more recently, such as sub-Saharan Africans. Secondly, it may be difficult in practice to distinguish discrimination on the ground of race and ethnicity from discrimination on the ground of religion and belief. For example, the sub-Saharan African, North African, Turkish and Ex-Yugoslav individuals that report discrimination on the ground of race and ethnicity are likely to be of Islamic belief, which is one of the religions most exposed to discrimination in the EU27. A distinction however is needed, as the legal protections are not equivalent (see Chapter 2 for more information).

The prevalence of discrimination on the ground of race and ethnicity varies to a large degree by the share of racial/ethnic minorities and recent shifts in their numbers and composition. In an analysis of survey data from 24 Member States, about 20% of racial or ethnic minorities experienced such discrimination during the past 12 months²²². The **prevalence of discrimination against race or ethnicity** reported varies from 0.06% in Poland to 5.8% in Bulgaria. The high prevalence in Bulgaria may be attributed to the large share of Roma in the population. Other organisations, such as the European Commission against Racism and Intolerance (ECRI) of the Council of Europe and civil society groups such as the European Network Against Racism (ENAR) document the prevalence of racial and ethnic discrimination (ECRI 2016; ENAR, 2016). In addition, some NGOs like Amnesty International gather field testimonies of affected individuals (Amnesty International, 2008).

These sources indicate that discrimination is commonplace despite the legal protections offered by the current EU legal framework (which includes the Racial Equality Directive and the Framework Decision on Racism and Xenophobia). This suggests the need for stronger protection at EU level, including full implementation of the framework (see Section 2). With respect to employment, almost 40% of Roma and sub-Saharan

²²¹ Table 8 presents the prevalence of multiple discrimination on these two grounds using the ESS. More than 20% of individuals who perceived discrimination on one of the grounds also reported discrimination on the other.

²²² These figures were estimated using the 2010, 2012 and 2014 waves of the ESS for 24 countries in the EU. For more information on the estimation approach, please see Annex 2.

Africans reported discrimination when looking for work (FRA, 2009a). NGOs such as Amnesty International acknowledge that Roma remain socially marginalised in society, including within the sector of employment (Amnesty International, 2008). The situation of sub-Saharan Africans has worsened in the context of an increasingly xenophobic populist discourse (ECRI, 2016).

Table 12 below shows that discrimination is also present in other sectors outside of employment, such as **schools, housing and healthcare**. Similar to the findings from the employment sector, Roma and sub-Saharan Africans suffer a high level of discrimination across different sectors, while discrimination among other groups is also notable. Levels of discrimination are generally similar, although the Roma report more discrimination in the healthcare and social services sectors than in the education and housing sectors. North Africans report a higher level of discrimination in the housing sector, compared to other sectors. The situation for Roma has slightly improved over time in the sectors of education, health and housing, but discrimination is still evident (FRA, 2016). The proportion of Roma **early school-leavers** is still disproportionately high compared to the general population. With regard to access to healthcare, just 74% reported being covered by national basic health insurance and/or additional insurance. In addition, surveys indicate that racial and ethnic minorities face a higher risk of law enforcement intervention (e.g. police stops), a phenomenon known as **racial or ethnic profiling** (FRA, 2009a).

More recent data from the EU-MIDIS II survey find that discrimination persists. For example, 7% of respondents experienced discrimination based on ethnic or immigrant background in the housing sector while the prevalence in the education sector was 6% (FRA, 2017).

Table 12: Prevalence rate of discrimination outside the sector of employment

	Housing	Healthcare	Social service	Education
Roma	11%	17%	14%	10%
Sub-Saharan African	7%	7%	8%	8%
North African	11%	8%	6%	6%
Turkish	7%	5%	5%	6%
Central and Eastern European	3%	5%	4%	4%
Russian	2%	3%	2%	3%
Ex-Yugoslav	2%	2%	2%	2%

Source: FRA, 2009a. Respondents reported discrimination experienced in the past 12 months.

Examples: Roma and discrimination in housing

The Municipality of Rome ordered the forced eviction of a woman with disabilities of Roma origin and her daughter. The ECtHR sent an interim measure to Italy, according to Article 39 of the Rules of Court, ordering a stay of execution on the forced eviction of the two women²²³.

One case in Hungary dealt with the question of whether a mayor’s open letter to local residents asking them to refrain from selling their real estates to non-local Roma people amounted to harassment under the relevant Hungarian legislation. The Equal Treatment Authority took the view that it violated the dignity of Roma people to have the mayor call on the population to refrain from selling their real estates to them. In context, the Mezőkeresztes mayor’s open letter is undoubtedly capable of creating a hostile, humiliating or offensive environment vis-à-vis the Roma people. The mayor was thus guilty of harassment²²⁴.

Both the Framework Decision on Racism and Xenophobia and the Victims Rights Directive provide legal protection against hate crimes. Yet statistics indicate that racial and ethnic minorities continue to suffer from **criminal victimisation**, many of which have a racist or xenophobic motive (see Table 13). Reported rates of victimisation were highest among the Roma (32%) and sub-Saharan Africans (33%). Racist attacks against migrants, who are often members of racial and ethnic minorities, are collected by police or state authorities and civil society organisations in some Member States such as Germany (ENAR, 2016)²²⁵. Reporting of incidents to the authorities, however, was low due to lack of trust in the police, lack of confidence in the impact of reporting, fear of discrimination, fear of repeat victimisation, fear of retaliation (e.g. deportation), lack of victim support services and lack of awareness of victims’ rights. Other sources indicate that the number of criminal victimisations has increased with time. In the Netherlands, for example, the number of racist incidents increased 26% in one year, from 2,189 to 2,764 between 2013 and 2014 (Verwey-Jonker Institute, 2015).

Table 13: Reported instances of criminal victimisation in the past 12 months

Ethnicity	Any type of victimisation	Type of victimisation:			In-person crime (assault or threat) with a perceived ‘racist’ motive
		Burglary	Assault or threat	Serious harassment	

²²³ Favilli, C., [Forced eviction, housing policy of people of Roma origin](#), European Network of legal experts in gender equality and non-discrimination.

²²⁴ Kádár, A, Mayor found to have committed harassment when calling on local residents not to sell real estate to Roma people, [European Network of legal experts in gender equality and non-discrimination](#).

²²⁵ For example, in Germany there were 3,533 cases reported in 2016.

Ethnicity	Type of victimisation:				
	Any type of victimisation	Burglary	Assault or threat	Serious harassment	In-person crime (assault or threat) with a perceived 'racist' motive
Roma	32%	10%	10%	18%	18%
Sub-Saharan African	33%	3%	9%	18%	18%
North African	26%	4%	9%	10%	9%
Turkish	21%	4%	3%	10%	8%
Central and Eastern Europe	24%	4%	4%	8%	7%
Russian	17%	4%	4%	6%	5%
Ex-Yugoslav	14%	2%	3%	5%	3%

Source: FRA, 2012.

Recent reports from the European Commission against Racism and Intolerance (ECRI) highlight a worrisome trend, which is the increase in **online hate speech** (ECRI, 2015 and ECRI, 2016)²²⁶. Online hate speech is a form of criminal victimisation that has the potential to reach a large audience. Few statistics are available, although one source estimated that there were more than 14,000 websites, forums, blogs and social media sites that included xenophobic messages (Inglezakis, 2015). Several projects are underway to detect and monitor online hate speech on the ground of race and ethnicity, among others, through direct reporting from individuals. For example, the Mandola project funded by DG JUST's Rights Education and Citizenship Programme collects reports of hate speech through a website and is developing a heat map that provides geographical indications of concentrations of hate speech (Mandola, 2017). Other sources highlight an increase of xenophobia in public and political discourse, not only leading to increased discrimination for recently arrived migrants but also for other racial and ethnic minorities (ECRI, 2016). Cases have been reported on the publication of clearly racist material, the praise of Nazism and the denial of the Holocaust (PRISM, 2016). During the European Parliament elections in 2014, ENAR received 17 valid reports of hate speech against minorities, most of them from the UK (ENAR, 2016a).

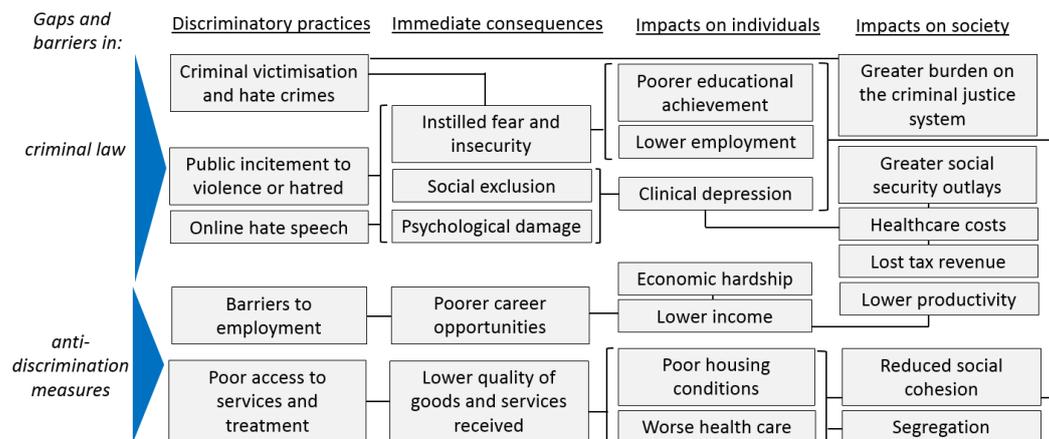
2.2. Findings

²²⁶ The ECRI is the human rights body of the Council of Europe.

This study's assessment of discrimination on the ground of race and ethnicity focused on three gaps and barriers: ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia [B3]; online hatred insufficiently addressed by the Framework Decision [B4]; and barriers to the effective national implementation of the Racial Equality Directive [B5]. There are overlaps between these three ground-specific gaps and barriers and two of the horizontal gaps [A2 and A3]²²⁷.

Discriminatory practices stemming from these gaps and barriers infringe on multiple fundamental rights, in particular, the right to equal treatment and non-discrimination (Racial Equality Directive and EU Charter, Article 21). They encompass a range of behaviours from preventing access to employment, goods and services, healthcare, education and social advantages at a level enjoyed by others, to criminal victimisation including hate crimes, harassment and indirect discrimination. Figure 9 presents an overview of the impact channels.

Figure 9: Impact channels of discrimination on the ground of race and ethnicity



The relevant gaps and barriers include issues related to the implementation of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive (B3-B5). The horizontal gaps (A1-A3) are also applicable to this ground. The population affected by these gaps and barriers was estimated to be approximately 27 million in the EU (5.3% of the population).

The Framework Decision relates to criminal law, while the Racial Equality Directive relates to anti-discrimination measures. Some impact channels are unique to a single group, while others are interlinked.

²²⁷ For more information on the selected gaps and barriers for the study, please refer to Table 7 in Chapter 2.

Evidence on the impacts of racial or ethnic discrimination has been chiefly undertaken in the United States, with a focus on African Americans and, more recently, Hispanics. The context in Europe is markedly different, where the largest racial minority groups are Roma, followed by sub-Saharan Africans. This assessment thus drew mainly on evidence generated in Europe, and the econometric analysis of the ESS.

A number of studies undertaken in European countries suggest that racial discrimination leads to greater challenges in finding employment (Sole & Parella, 2010; O'Higgins, 2010; Silberman et al., 2007; Kaas & Manger, 2012; Andriessen et al., 2012). The econometric analysis found that discrimination on this ground was associated with a **higher likelihood of being unemployed** (5%). The analysis also found that these individuals also suffered **greater economic hardship** (17.5%), perhaps due to earning less income.

Discrimination may also be evident in other sectors, such as education and housing. One study conducted by the Migration Policy Institute documented the types of discrimination and their **social and educational impacts** on immigrant children (Brown, 2015). The evidence in the study was predominantly generated in the United States. **Fewer years of schooling** has been found to have a cumulative impact on labour market opportunities and income over the duration of working life (Brunello & De Paola, 2014).

Poorer access to goods and services may lead to social exclusion. The econometric analysis found that individuals experiencing racial or ethnic discrimination are also at a higher risk of **poor housing conditions** (4%) and **residential segregation** (5%)²²⁸. Residential segregation may contribute to disruptive social phenomena, such as radicalisation and criminal activities.

The upward trend in public incitement to violence and hatred through online and offline means is of concern, as it has a detrimental impact on individuals, particularly on the mental well-being of target groups (Media Smarts, n.d.). Studies investigating the impacts of hate crime focus on psychological impacts and are mainly limited to LGBT populations (Dzelme, 2008). The symptoms of hate crime have been likened to post-traumatic stress disorder (Herek et al., 1999; Roberts et al., 2010). Hate crimes are also likely to have a similar impact on racial and ethnic minorities. Other studies suggest that the impacts for hate crime victims are more severe than other forms of crimes (McDevitt et al., 2001). The econometric analysis found that discrimination may be associated with a higher

²²⁸ Discrimination on the ground of race or ethnicity was associated with 5% higher probability of living in an area with a high concentration of minority racial and ethnic groups.

risk of **physical assault** (10%). The health of victims may be affected by such violence, resulting in lower productivity and wages earned.

Experiencing racial and ethnic discrimination on a daily basis may lead to higher psychological stress (Berger, 2014). Several European studies provide evidence for this impact channel (Ikram et al., 2014; Agudelo-Suarez, 2011; Wallace et al., 2016). One study found a relationship between discrimination and the risk of clinical depression, which was comparable to findings from another study that focused on sex discrimination (Ikram et al., 2014; Platt et al., 2016). Based on this research finding and statistics on healthcare spending levels in the Member States (Olesen et al., 2012), the impact on **healthcare costs** was calculated at EUR 26.3 to EUR 42.2 million.

Poorer health and employment opportunities for racial and ethnic minorities may translate to lower GDP, with an estimated loss to society in the order of EUR 1.8 to 8 billion. As noted earlier, discrimination was found to be associated with residential segregation, which may also be reflective of lower social cohesion.

The findings from this assessment are summarized in Table 14.

Table 14: Summary of impacts by race and ethnicity

	Type of impact	Quantitative estimates	Sources for author calculations
Individual	Lost earnings	EUR 1.8 to 8 billion (Up to EUR 206 million due to worse health status from assault and EUR 1.8-7.8 billion due to lower employment)	ESS (2010-2014), Eurostat and Gambin (2005)
	Housing	Higher risk (4%) of poor housing conditions	ESS (2014)
	Residential segregation	5% higher probability of living in an area with high concentration of racial and ethnic groups	ESS (2014)
Society	GDP loss	EUR 2.4 to 10.7 billion (EUR 2.4-10.5 billion due to lost wages and up to EUR 277 million due to higher risk of assault and poorer health status)	ESS (2010-2014), Gambin (2005) and Eurostat
	Tax revenue loss	EUR 854 million to 3.9 billion (EUR 854 million-3.8 billion due to lost wages and up to EUR 100 million due to higher risk of assault and poorer health status)	Author calculations based on ESS (2010-2014), Gambin (2005) and Eurostat

Type of impact	Quantitative estimates	Sources for author calculations
Mental health - indirect costs (productivity loss) ²²⁹	EUR 21 to 34 million	ESS (2010-2014), Ikram et al. (2014) and Olesen et al. (2012).
Mental health - direct costs ²³⁰	EUR 15 to 23 million	ESS (2010-2014), Ikram et al. (2014) and Olesen et al. (2012)

Source: See Annex 2 for more information about the author calculations. Cost estimates are annual figures and reflect price levels in 2016.

3. Religion and belief

3.1. Overview

Reported discrimination on the ground of religion and belief is lower than that for race and ethnicity, although in practice it may be difficult to distinguish between the two for some minority groups, e.g. Muslims from North Africa. Analysis of the ESS found that 1.8% of the population reported discrimination on the ground of religion and belief in 2014²³¹. Of those reporting such discrimination, the most commonly held religions or beliefs were Islam (44%) followed by Roman Catholicism (21%) and Protestant Christianity (16). Anti-Semitism is also prevalent and, while potentially on the rise in some countries, is decreasing in others (ENAR, 2017).

Illustrative cases: religion and belief

In 2016 in Germany, a court stated that the basic right to freedom of religion entitled a teacher, who was reprimanded by the public authority, to wear a headscarf. The court considered that the wearing of headscarves is now common in German society and its permission is thus necessary within a pluralist society²³².

²²⁹ In health economics, indirect costs are defined as the expenses incurred from the cessation or reduction of work productivity associated with a given disease. Indirect costs typically consist of work loss, worker replacement, and reduced productivity from illness and disease.

²³⁰ In health economics, the term direct cost refers to all costs due to resource use that are completely attributable to the use of a healthcare intervention or illness.

²³¹ This figure is a weighted estimate using ESS 2014 data.

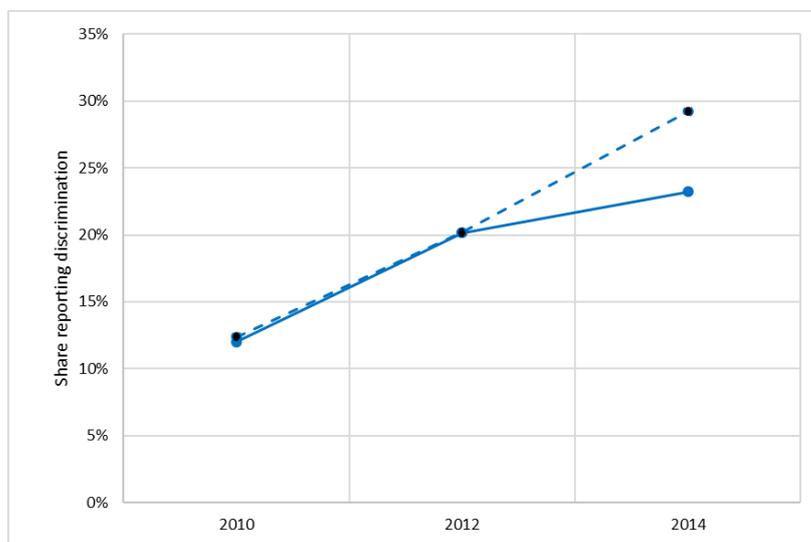
²³² Mahlmann, M, [Permissibility of headscarf worn by kindergarten teacher](#), European Network of legal experts in gender equality and non-discrimination.

In 2015, the Equality Body of Cyprus decided that, according to the ECHR, a person can choose a different medical treatment, even where it carries greater risk, due to their right to lead their lives as they choose. A Jehovah's Witness thus had the right to be treated in a private hospital by the state if the public hospitals could not provide him with such a treatment. The report concluded that the complainant was denied access to state health services on the ground of his religious convictions²³³.

Sources indicate that discrimination against religious minorities has increased in recent years. According to ESS data, anti-Semitism and Islamophobia are on the rise (see Figure 10). Between 2010 and 2014, the share of Jewish respondents reporting experiences with discrimination more than doubled, from 12% to 29%. Similarly, the share of Muslim respondents that felt of a religious group discriminated against increased from 12% in 2010 to 20% in 2012 and 23% in 2014. The Council of Europe also reports an increase in the prevalence of discrimination towards Jewish and Muslim people over time (ECRI, 2016). In the Netherlands, the number of incidents involving Muslims reported to the Public Prosecutor's office increased from 35 in 2013 to 142 in 2014 (Verwey-Jonker Institute, 2015). NGOs such as the European Forum of Muslim Women and SETA have expressed concerns regarding the rise in Islamophobia and indicated that the impacts disproportionately affect women (EFOMW, 2017).

²³³ Demetriou, C, [Equality Body report on the rights of Jehovah's Witnesses to equal access to healthcare](#), European Network of legal experts in gender equality and non-discrimination.

Figure 10: Rising Islamophobia and anti-Semitism– share of Muslims and Jews who experienced discrimination, past 12 months



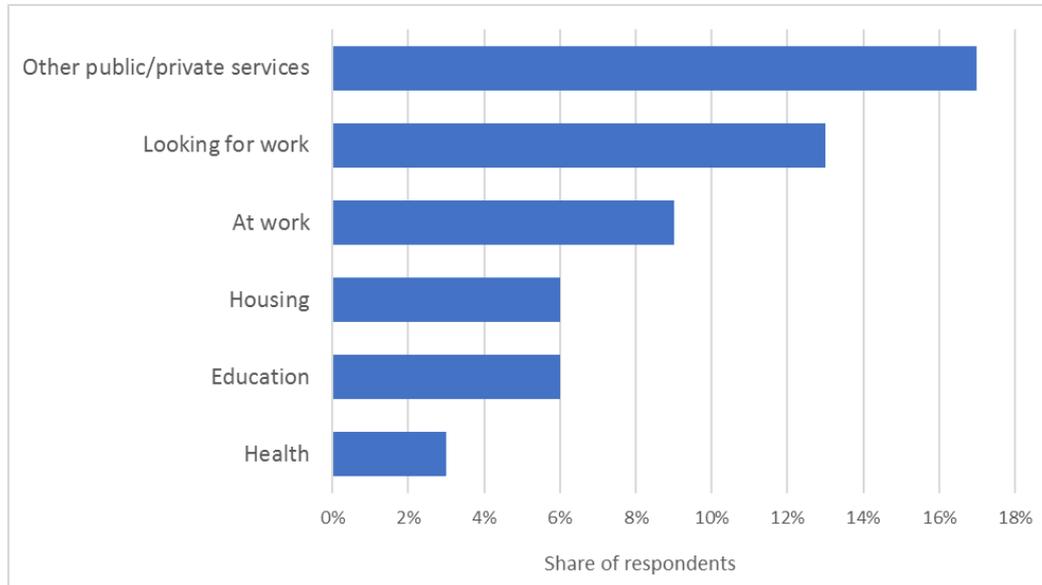
Source: ESS (2010-2014).

The Second European Union Minorities and Discrimination Survey (EU-MIDIS II) provides information on the experiences with discrimination among Muslims in 15 Member States in 2016²³⁴ (FRA, 2017). About four in 10 Muslims (39%) reported experiences of discrimination, while one in five indicated that religion was the primary motivation. The level of discrimination varies by ethnic group and Member State. Sub-Saharan Africans in Germany report the highest levels of discrimination overall (48%). Both men and women reported similar levels of discrimination, and hate crime was also common among this group. About 27% of Muslims indicated that they experienced harassment, while 2% reported physical violence. Figure 11 presents reported levels of discrimination in different sectors.

The high prevalence of discrimination against Muslims in Europe and its adverse impacts on the fundamental rights of individuals and society have been acknowledged by several Human Rights bodies, such as the ECRI, the UN Human Rights Committee (HCR), UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Elimination of Discrimination against Women (Amnesty International, 2012).

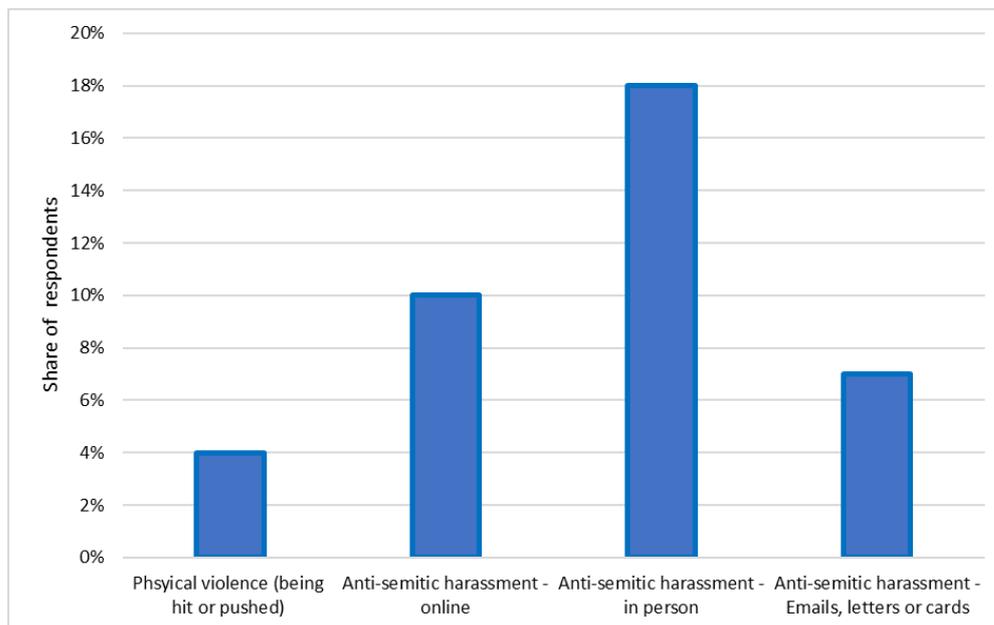
²³⁴ For the second wave in 2016, only findings for Muslims were available at the time of preparation of this report. The 15 Member States are: Belgium, Germany, Denmark, Greece, Spain, France, Italy, Cyprus, Malta, the Netherlands, Austria, Finland, Slovenia, Sweden, and the UK.

Figure 11: Reported instances of discrimination among Muslims, past 12 months



Source: FRA, 2017 (EU MIDIS II Survey)

The FRA survey also collected information on the experiences of Jewish people with discrimination, hate crime and anti-Semitism (FRA, 2014). The survey was fielded in 2012 in eight EU Member States - Belgium, Germany, France, Italy, Latvia, Hungary, Sweden and the UK. About 10% of respondents reported discrimination when looking for work or at work, slightly lower than the share reported by Muslims. Discrimination was also reported with respect to education (8%), housing (4%) and healthcare (3%). Jewish people reported being subjected to a high level of harassment, particularly in-person harassment. One in 10 respondents were exposed to online hate crime (FRA, 2014). Other examples of discrimination faced by Jewish people were restrictions on the wearing of religious and cultural symbols and dress, or restrictions on the establishment of places of worship. The lack of places of worship and cemeteries was also a concern (ENAR, 2017).

Figure 12: Reported instances of hate crimes or anti-Semitic harassment, past 12 months

Source: FRA, 2014.

3.2. Findings

This assessment of discrimination in respect of religion and belief focused on three gaps and barriers: lack of reasonable accommodation in employment (B6) and education (B7), and the lack of protection outside of employment (A1)²³⁵.

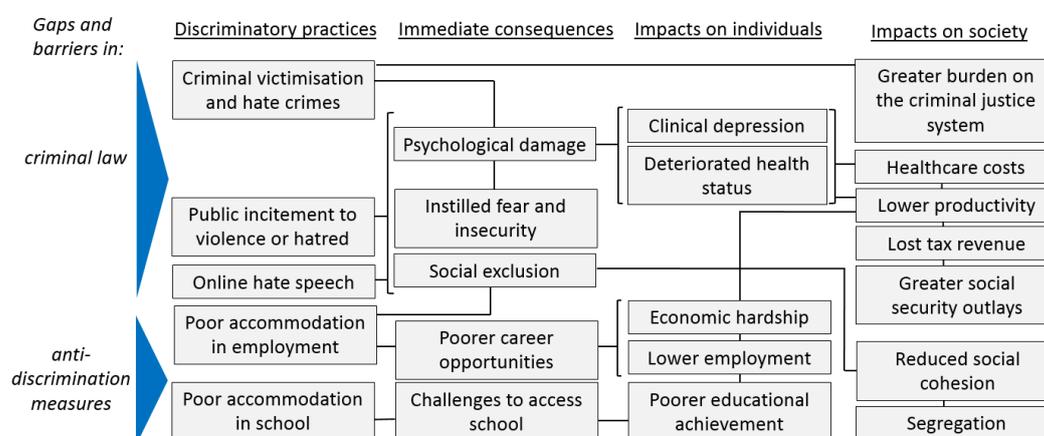
Discrimination on the grounds of religion and belief infringes on the right to equal treatment and equal access as well as freedom of thought, conscience and religion (EU Charter, Articles 10 and 21). As noted earlier, the EU legislative framework protects the right to non-discrimination on the ground of religion/belief, but only in employment. Additionally, the ECHR guarantees the right to freedom of thought, conscience and religion in all areas. The impact channels of discrimination on the ground of religion and belief are otherwise broadly similar to those for discrimination on the ground of race and ethnicity. This is due in part to the high overlap between these two grounds, as described earlier. For example, Muslims may identify discrimination on the grounds of religion and belief or race and ethnicity (FRA, 2017). Another issue is that less evidence has been generated on the impacts of discrimination on the ground of religion and belief. The impacts are likely to be similar, given the pathways through which discrimination operates, but more research is needed, particularly

²³⁵ For more information on the selected gaps and barriers for the study, please refer to Table 7 in Chapter 2.

in the European context.

Figure 13 presents the **impact channels** resulting from discriminatory practices on the ground of religion and belief. The relevant gap for this ground is the lack of reasonable accommodation across sectors, and the horizontal gaps (A1-A3) are also applicable. The population affected by these gaps and barriers was estimated to be approximately 7.4 million in the EU (1.5% of the population).

Figure 13: Impact channels of discrimination on the ground of religion and belief



Discriminatory practices on the ground of religion and belief, such as poor accommodation in employment and schools, can lead to inferior access to goods and services compared to others, leading to issues of social inclusion, as well as worsened educational and employment outcomes (Dovidio et al., 2010). Research has found that religious employees often **struggle to reconcile their work life with their religious commitments** (Alidadi, 2012, p. 714). For instance, a religious employee may not apply to or accept a job offer from an employer that does not modify working time in view of his/her religious needs. The potential for religious minorities to access employment thus appears to depend greatly on the attitude of the employer or service provider (Equinet, 2015). An economic study drawing on data from call-backs to Muslim and Christian immigrants provides additional insight. The study concluded that Muslims were not disadvantaged compared to Christians when they were not religious. However, as the level of religiosity expressed increased among the two groups, Muslims became increasingly disadvantaged (Valfort, 2017). Due to discrimination in the labour force, religious minorities may be less likely to participate in the labour force at the level of their peers, leading to lower GDP for society.

Discriminatory practices may also affect the quality of goods and services accessed. The econometric analysis showed, for example, that discrimination on

this ground was associated with a higher risk of experiencing **poor housing conditions** (5%). As a result, religious minorities may be discouraged from living in close proximity to, and interacting with, individuals from a different background. Indeed, the analysis found such discrimination to be predictive of higher **residential segregation** (7%).

The everyday stress of being confronted with poorer access to goods and services can affect psychological well-being (Williams et al., 2003; Mays & Cochran, 2001; Pascoe & Richman, 2009). Research from the United States provides strong indications that discrimination increases **psychological stress** for Muslims (Padela & Heisler, 2010; Rippey & Newman, 2006). It is likely that such impacts are also experienced in Europe.

Robust evidence on the impacts of criminal victimisation, including hate crimes, on the ground of religion and belief could not be identified. However, impacts are likely to include **poor health** due to physical harm, and severe psychological damage, similar to the effects documented for violence against women (EIGE, 2015). The econometric analysis found that discrimination on this ground was associated with **higher risk of assault** (7%), and assault itself was predictive of poorer health status (2%). The loss of earnings was estimated at up to EUR 146 million through this impact channel. In terms of GDP, the loss was estimated at EUR 167 million. Another important, though as yet unquantifiable, impact on society was **social cohesion** (Ysseldijk et al., 2014).

The findings from the assessment are summarised in Table 15.

Table 15: Summary of impacts of discrimination on the ground of religion and belief

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Earnings lost due to assault and poor self-reported health	Up to EUR 146 million	ESS (2010-2014) and Eurostat
	Residential segregation	7% higher probability of living in an area with high concentration of racial and ethnic groups	ESS (2014)
	Housing	Higher risk (5%) of having poor housing conditions	ESS (2014)
Society	GDP loss	Up to EUR 197 million due to lower earnings	ESS (2010-2014) and Eurostat
	Tax revenue loss	Up to EUR 71 million due to lower earnings	ESS (2010-2014) and Eurostat

Source: See Annex 2 for more information on author calculations. * Cost estimates are annual figures and reflect price levels in 2016.

4. Sexual orientation

4.1. Overview

According to organisations such as UNESCO and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Europe²³⁶, sexual orientation can be defined as ‘each person’s capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender’²³⁷. Discrimination based on sexual orientation is therefore different to discrimination on the grounds of gender identity, which is defined as ‘a person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned to them at birth.’ In addition, there is the concept of intersex, which includes ‘people who are born with sex characteristics that do not fit typical binary notions of male or female bodies.’ Discrimination on the grounds of sexual orientation and gender identity are equivalent to discrimination against LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex). The focus on discrimination based on sexual orientation from both the EU and other international organisations has been criticised or excluding other members of the LGBTI group.

Given the localised stigma attached to identifying as LGBTI, it is difficult to gauge the number of LGBTI in Europe through surveys and other means. One source estimates that 5.9% of the population identifies as part of this group (Dalia Research, 2016). Analysis of the ESS data suggests that 0.5% of individuals had experiences with discrimination on this ground during the past year. No significant changes in the overall prevalence of discrimination by sexual orientation were observed between 2010 and 2014.

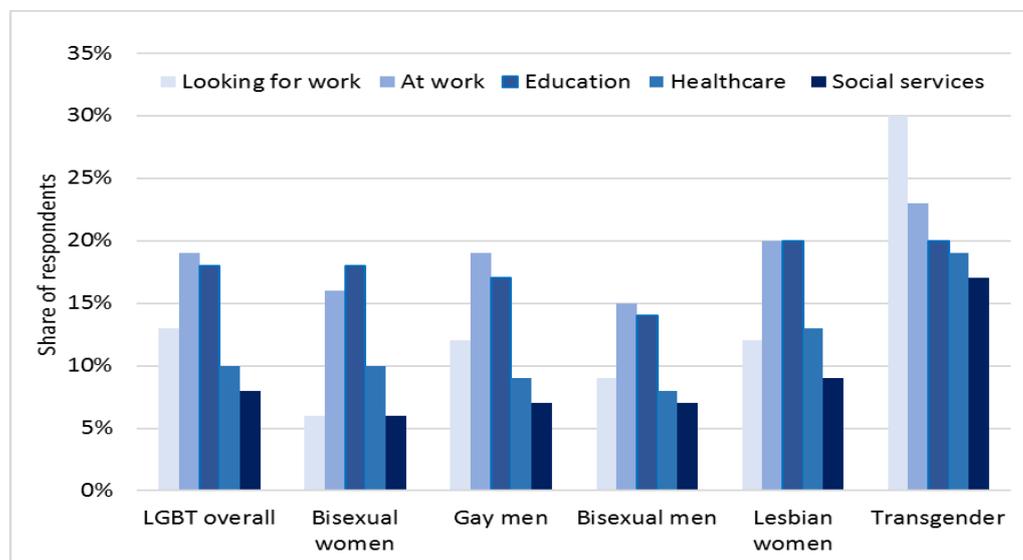
FRA launched a survey in 2012 to gather information on the experiences of LGBT persons with discrimination (FRA, 2014b). Results found that 47% of LGBT persons across the EU felt discriminated against or harassed on the ground of their sexual orientation during the previous 12 months. Significant differences were evident across the Member States, ranging from 31% in the Netherlands to 61% in Lithuania. In addition, the level of discrimination depended on the type of sexual orientation. For example, discrimination was twice as high among transgender people compared with LGB persons (FRA, 2014b).

²³⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Glossary.

²³⁷ The [Yogyakarta Principles on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics](#).

LGBT reported a high level of discrimination across certain sectors of activity, notably in employment, education and healthcare (see Figure 14). About one in five respondents felt discriminated against in looking for a job or in the workplace. Transgender individuals were more likely to experience discrimination, on average. In addition, 6% reported having been attacked or threatened with violence during the past year (FRA, 2014b). The overall figure masks significant variation across the Member States. In Latvia, Lithuania and Romania, the share of LGBT who were victims of violence or threats of violence was over 36% (FRA, 2014b).

Figure 14: Perceived discrimination of LGBT people in different sectors, 2012



Source: FRA 2014b. EU-LGBT Survey.

Illustrative cases: sexual orientation and access to health services

In April 2014, a woman married to another woman began assisted human reproduction (AHR) treatment at a semi-public clinic in Spain. However, the treatment was suspended on the grounds that they did not satisfy the requirement of having had 'sexual relations with vaginal intercourse' for a minimum of 12 months. The couple filed a complaint and the Court found against the clinic for discrimination on the ground of sexual orientation²³⁸.

In another case, a gay man was not permitted to donate blood in the Netherlands. A ban on blood donation by gay or bisexual men was explained by the potential risk for blood recipients to receive HIV-infected blood, especially as there is no blood test currently available that can

²³⁸ Cachon, L., 2015, [Right to non-discrimination based on sexual orientation in public assisted human reproduction in Spain](#), European Network of legal experts in gender equality and non-discrimination.

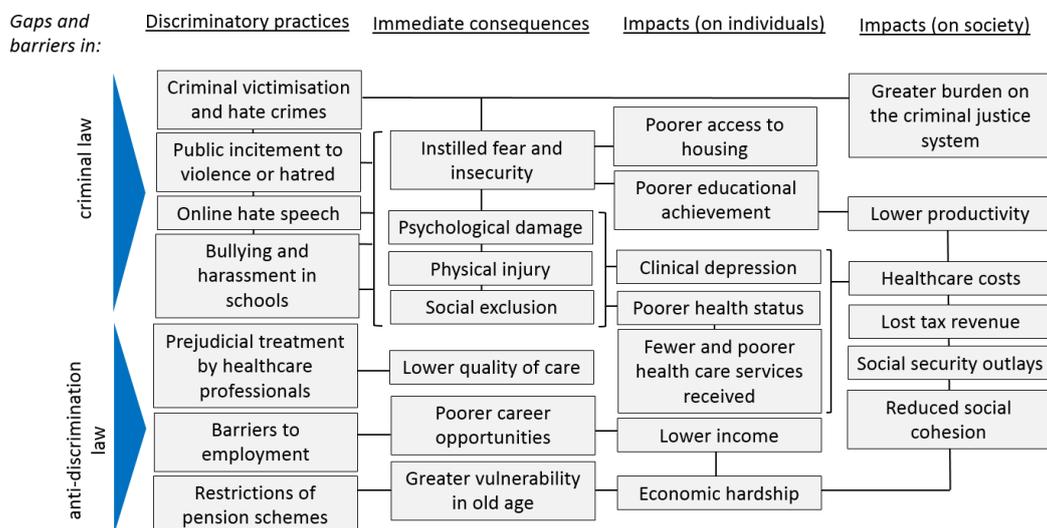
accurately detect HIV. The Netherlands Institute of Human Rights argued that such a denial was equivalent to limiting access to goods and services, an infringement of human rights not outweighed by the risk to public health²³⁹.

4.2. Findings

The assessment for sexual orientation focused on two gaps and barriers: hatred based on sexual orientation not covered by hate crime/speech legislation in all Member States (B8); and no protection against discrimination in access to healthcare (B9). The horizontal gaps also apply here (A1-A3).

Discrimination on the ground of sexual orientation infringes on several fundamental rights, in particular the right to equal treatment and the right to respect for private and family life (EU Charter, Articles 7 and 21). Discriminatory practices stemming from the gaps and barriers include bullying and harassment that can limit access to goods and services, result in prejudicial treatment in the delivery of services, and criminal victimisation including hate crimes (which is not covered by the EU Framework Decision, see Section 2). Figure 15 presents an overview of the impact channels.

Figure 15: Impact channels of discrimination on the grounds of sexual orientation



Despite the existence of legal protection in the sector of employment, LGBT persons experience high levels of discrimination looking for work,

²³⁹ Holtmaat, R., 2015, [NIHR: ban on donation of blood by gay and bisexual men is discriminatory](#), European Network of legal experts in gender equality and non-discrimination.

and at work (see Figure 14). Such experiences can lead to **poorer career opportunities** and **lower income** (Sears & Mallory, 2011). With respect to education, a number of studies show that bullying and harassment can increase **psychological distress** and increase the risk of **mental health problems** (Russell et al., 2011; Birkett et al., 2009; Frietas et al., 2016). The econometric analysis found that discrimination on the ground of sexual orientation was associated with a higher probability of poor health (8%). Poor health can reduce productivity and lead to lower income and GDP, with an estimated GDP loss in the order of EUR 25 to 71 million.

Several sources suggest that discrimination was predictive of early school leaving for LGBT youth (Marok et al., 2009; IGLYO, 2013). However, this review did not uncover robust evidence for this relationship. Analysis of the ESS data revealed no relationship with the number of years in formal education, nor in the probability of completing post-secondary education. Given the mixed evidence, no quantitative estimates for the costs to individuals and society were calculated. More research is needed in this area, given the high prevalence of discrimination experienced by LGBT in the education sector (FRA, 2014b).

LGBTI individuals face a range of challenges in accessing **healthcare** (EU Commission, 2017). Discrimination in the healthcare system may be reflected in the assumption that the healthcare needs of LGBTI persons are the same as those of heterosexual people. It may also include degrading treatment by healthcare professionals, such as negative comments on a person's lifestyle, using additional unnecessary hygienic protection, and refusal to provide help or access to medical services. Medical staff may fail to ask questions or gather essential data to determine health risks and to activate appropriate treatment. For example, they may fail to detect the increased risk for certain diseases, such as breast cancer for lesbian women who do not have children, or Hepatitis B for gay men (Granath et al., 2008). This may lead to a higher incidence of ill-health among LGBT persons. The openness of LGBT persons with healthcare staff may also impact the quality of service received (FRA, 2014b). The econometric analysis did not reveal a relationship between perceived discrimination on the ground of sexual orientation and visiting a doctor in the past year. In 2017, the European Commission piloted a training module (the 'Health4LGBTI' project) in order to increase the knowledge and skills of

healthcare professionals providing care to LGBTI individuals (EU Commission, 2017a).

The impacts of discrimination are also evident in other sectors. For example, the social security systems of most Member States do not extend benefits or compensations to same-sex couples. If such benefits were extended to same-sex couples, the aggregate benefit in terms of **pension income** would be in the range of EUR 1.5 to 3.1 billion (Granath, 2008)²⁴⁰. Other studies show that LGBT persons have to pay **higher house prices** in order to avoid discriminatory attitudes and treatment by neighbours and the community. Granath et al. (2008) estimated the associated price surplus to be in the range of EUR 4 to 8.1 billion (Granath et al., 2008)²⁴¹.

Lastly, the high risk of assault faced by LGBT persons can have a detrimental impact on their health and well-being. Studies on the impact of hate crimes on LGBT populations have focused on mental health and have compared the symptoms to post-traumatic stress disorder (Dzelme, 2008; Herek et al., 1999; Roberts et al., 2010). Analysis of the ESS data found that individuals who reported discrimination on the ground of sexual orientation were 12% more likely to have experienced assault. The consequent impacts on health and productivity could lead to an estimated loss of earnings of up to EUR 3 million.

The mental health status of LGBT people can also be negatively affected by their exposure to hate crimes, as 'victims of hate crime report anger, nervousness, feeling unsafe, poor concentration and loss of self-confidence' (Benier, 2017). For instance, in the UK, 21 percent of LGBT people have experienced hate crime due to their sexual orientation and/or gender identity (Bachmann and Gooch, 2017). This figure is in line with EU figures as, on average, 22 percent of LGBT people in the EU reported an incident of hate motivated violence to the police (FRA, 2014b). Mental health consequences of hate crimes towards LGBT people were found to be more deleterious than non-hate-motivated crimes (Hein and Scharer, 2013). In the current digital area, where Internet and social media have become the main means of communication, online hate speech has

²⁴⁰ The higher bound estimate reflects the assumption that 2% of LGBT persons are affected by the lack of survivor benefits (Granath et al., 2008), while the lower bound estimate was calculated from the assumption that 1% of LGBT persons are affected.

²⁴¹ The higher bound estimate reflects the assumption of a 10% increase in pricing (Granath et al., 2008), while the lower bound estimate was calculated by assuming a 5% increase in pricing.

emerged. Hate speech has impacts both at individual and society level. It threatens human dignity of the vulnerable groups that are addressed and at the same time it undermines the inclusiveness and social cohesion of our society, which can be considered as a public good (Waldron, 2012).

The findings from this assessment are summarized in Table 16 (See Annex 2 for more information on the calculations).

Table 16: Summary of impacts of discrimination on the ground of sexual orientation

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Lost earnings	EUR 19 to 56 million (EUR 19 to 53 million due to poorer health status and up to EUR 3 million due to assault)	ESS (2010-2014) and Eurostat
	Lost pension income	EUR 1.5 to 3.1 billion	Granath et al. (2008)
	Limited access to goods and services: housing	EUR 4 to 8.1 billion	Granath et al. (2008)
Society	GDP lost	EUR 25- 75 million (EUR 25 - 71 million due to poor health status and up to EUR 4 million for assault)	Author calculations based on ESS (2010-2014) and Eurostat
	Tax revenue lost	EUR 9 to EUR 28 million (EUR 9 - 26 million due to poor health status and up to EUR 1.5 million for assault)	Author calculations based on ESS (2010-2014) and Eurostat

Source: See Annex 2 for more information about the author calculations. Cost estimates are annual figures and reflect price levels in 2016.

5. Age

5.1. Overview

Discrimination on the grounds of age can be defined as the ‘difference in treatment and opportunities for citizens solely on grounds of their chronological age’ (Meenan, 2009, p. 110). Protection from age discrimination differs from the other grounds of discrimination as there are legal provisions justifying differential treatment on the grounds of age in certain circumstances (see Chapter 2, Section 2.5). According to data from the ESS, those who report discrimination on the ground of age are mostly people aged 55 years and over and, to a minor extent, people in the 14-24-year-old age group (see Table 17). In 2016, people aged 55 years and above represented 32% of the EU population (Eurostat, 2017d).

Population ageing is a demographic trend in the EU and many developed countries, with an associated increase in public expenditure on pensions, social security and healthcare (Diaconu, 2015). At the same time, the health status of the elderly has improved over time and they can rightly be considered an added resource for the economy (The Economist, 2017). Discrimination on the ground of age is concerning from an economic point of view, as the share of the elderly in the population is on the rise, and age discrimination may limit their potential contribution to society.

Table 17: Reported discrimination on the ground of age and other characteristics, by age group

Age group	Share in the sample	Reported discrimination	In paid work or military service	Good reported health status
14-24 years	14.5%	0.8%	29.3%	84.6%
25-34 years	15%	0.3%	73.3%	81.5%
35-44 years	16%	0.2%	80.3%	74.8%
45-54 years	18.2%	0.5%	82.6%	64%
55-64 years	15.4%	1%	53.3%	53.3%
65+ years	20.9%	1.3%	6.1%	41.3%

Source: Author calculations based on ESS (2010-2014).

Prejudice and discrimination on the ground of age persist in the labour market, especially for older workers (Duell, 2015). According to the Eurobarometer on Discrimination (2015), 56% of Europeans believe that a job applicant's age, if over 55, would be a disadvantage. Age is perceived as a disadvantage more than any other grounds of discrimination for job applicants aged 55 or over (AGE Platform Europe, 2016). Older people are less frequently selected for **job interviews** and they have less chance of securing a position (Dubois, 2016). Cases of age discrimination in employment were, for instance, reported in the Netherlands and Belgium. In the Netherlands, almost 40% of job hunters aged between 55 and 64 reported that they had lost out on a job due to their age (Dutch News, 2014). In a large field study conducted by the Ghent University in Belgium, older people with identical profiles to younger job seekers received on average 39% fewer invitations to interview (AGE Platform Europe, 2016). Age discrimination in employment is usually a result of **stereotypes and prejudices** about productivity, learning ability and the flexibility of older workers. However, there is no solid evidence supporting the idea that older workers are either less productive or less receptive to learning new skills (Wood et al., 2008). On the contrary, older workers might be best employed in multi-generational teams, as they have

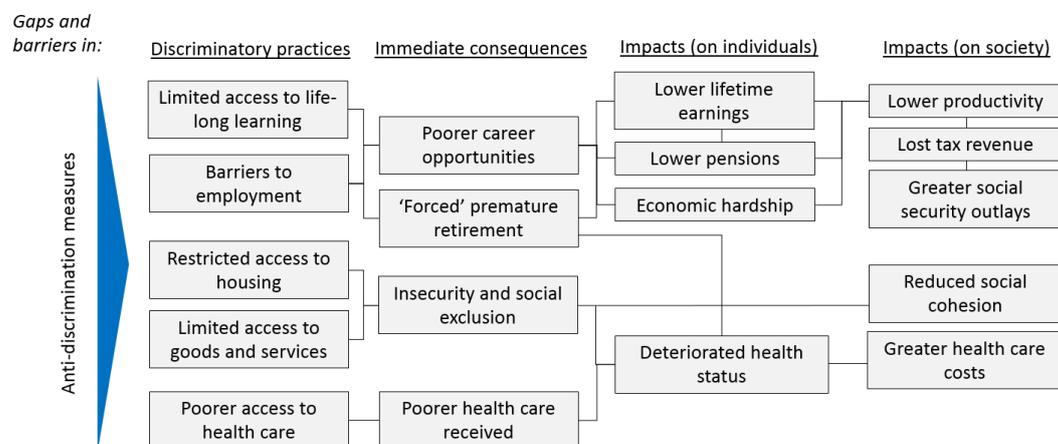
been found to increase productivity among team members. In addition, productivity seems to increase with age in jobs that require social skills (The Economist, 2017).

Life-long learning is another area where older people may face discrimination. Among workers in the 55-64 age group, only about 7% of male workers and 10% of female workers received work-related training (Duell, 2015). However, these shares varied between EU countries and by the educational level of the workers. A larger number of highly educated workers in the 55-64 age group received work-related training, compared to medium and lower educated workers (Duell, 2015). Survey results showed that three out of four firms in Belgium invested less in vocational training for older employees (AGE Platform Europe, 2016). Similarly, in France, training opportunities are not always offered to older workers approaching retirement age (Brun, 2015). Lack of learning opportunities for older workers might lead to fewer opportunities to progress in the workplace and make them less competitive in their field of work, creating a negative impact on finding employment in case of job loss (AGE Platform Europe, 2016).

5.2. Findings

The main gap identified for this ground of discrimination related to the lack of protection outside of the employment context [B10]. In addition, the barriers to the effective national implementation of the Employment Equality Directive [A3] are also relevant for age discrimination. Figure 16 presents an overview of the impact channels resulting from these gaps and barriers.

Figure 16: Impact channels of discrimination on the ground of age



Despite the existing legal protection from age discrimination in employment, weak implementation may result in instances of age discrimination. Indeed, the literature provides strong indications that age discrimination is still experienced in employment (see, for instance, Wood et al., 2008; Duell, 2015; European Commission, DG Employment, 2016). Age discrimination might result in barriers to employment and limited access to training for older workers. Overall, this leads to **poorer career opportunities** and, in some cases, older people might be 'forced' to retire prematurely as they are not able to find a job. These circumstances are likely to bring a **loss in earnings and pensions** for the individuals affected (Wood et al., 2008), resulting in possible economic hardship. **Premature retirement** can also have adverse effects on psychological well-being (Wood et al., 2008).

The issue of age discrimination in employment was investigated using the ESS data, and showed that employment rates peak for people in the age group 45-54 and decrease markedly for those aged 55-64. As this finding is likely to be partly explained by retirement, the retirement age of countries in the sample was also taken into account²⁴². Results then showed that people discriminated against on the ground of age are 17% **less likely to be employed** than those who do not report age discrimination²⁴³. Based on this finding, lost earnings were estimated to be in the order of EUR 182 to 228 billion. People in the 55-64 age group were also found to be at a higher risk (21%) of experiencing economic hardship. **Lost individual earnings** have an impact on the economy in terms of **lost tax revenue**, which was estimated to be in the range of EUR 88 to 110 billion. Limited access to life-long learning, and the associated lack of up-skilling for older people, as well as task allocation that does not take advantage of experience and human capital, can also contribute to lower productivity among those suffering from age discrimination. Lower productivity and lost tax revenue due to the employment pathway leads to an estimated **GDP loss** in the range of EUR 244 to 305 billion.

²⁴² The econometric analysis excluded 15 countries where the lowest age of retirement is less than 65 years.

²⁴³ This finding refers to the econometric model that excludes countries where the lowest age of retirement is less than 65 years.

The lack of protection from age discrimination outside of employment [gap B10] might affect access to goods and services, including housing, healthcare and education. The elderly often experience limited access to **housing**, as they may have difficulties in finding financial resources to adapt their homes to their changing physical needs (Ringelheim & Bernard, 2013) or in finding suitable accommodation. Due to their deteriorating physical condition, they may also experience difficulties in accessing public **transport**. The lack of suitable housing and limited mobility increases the risk of social isolation for elderly people, with possible impacts on their health status.

Older people might also experience discrimination in **access to healthcare**. They may be treated as a low priority by health services, with more resources used for younger people, may be forced to seek private medical treatment due to long waiting lists, or face refusal of treatment due to their age. Older people are also much more likely to be listed as DNR (do not resuscitate) should their health suddenly deteriorate. This may itself cause stress and result in deteriorated health status (Granath et al., 2008). The econometric analysis confirmed that reported discrimination on the ground of age was associated with **poorer health status**. This finding is in line with a previous study, which used the 2008 ESS data to investigate age discrimination and found that subjective health is strongly associated with experienced age discrimination (van den Heuvel & Santvoort, 2011). The loss in individual earnings due to poor health status was calculated in the range of EUR 318 million to 1.1 billion²⁴⁴, following the methodology used by Gambin (2005). The loss in individual earnings would eventually impact the real economy through tax revenue lost (estimated to be EUR 154 to 526 million) and lower expenditure, and result in GDP loss of an estimated EUR 427 million to 1.5 billion.

Restricted access to scholarships for students over the age of 26 can be considered a manifestation of age discrimination in education (Granath et al., 2008). The value of individual loss due to restricted access to scholarships was estimated to be in the range of EUR 6.3 to 8.6 billion²⁴⁵. This estimate was based on the study by Granath et al. (2008), which

²⁴⁴ This wide range of costs reflects the fact that the relationship between age discrimination and self-reported health ranges from 4-13%, the point estimate being 8%.

²⁴⁵ In the higher bound estimate, it is assumed that an average 34% of students receive scholarships (European Commission, 2014/2015), while the lower bound estimate sets this share at 25% (Granath et al., 2008).

assumes that students aged 26 or older are not entitled to scholarships. This assumption is in line with a European Commission report (2014-2015), although the age threshold to access scholarships varies between countries (being up to the age of 30 years in Germany, for example).

Table 18 summarises the impacts of discrimination on the ground of age estimated in this study. Other effects included in Figure 16 have not been estimated in monetary terms due to lack of relevant data.

Table 18: Summary of impacts of discrimination on the ground of age

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Lost earnings	EUR 182 - 229 billion (EUR 318 million to 1.1 billion lost due to bad health status and EUR 182 - 228 billion due to lower employment)	ESS (2010-2014), Eurostat and Gambin (2005)
	Access to scholarships	EUR 6.3 - 8.6 billion	Granath et al. (2008) and Eurostat
Society	GDP lost	EUR 244- 307 billion (EUR 427 million to 1.5 billion due to poorer health status and EUR 244-305 billion due to lower employment)	ESS (2010-2014) and Eurostat
	Tax revenue lost	EUR 88- 110 billion (EUR 154 - 526 million due to poorer health status and EUR 88 - 110 billion due to lower employment)	ESS (2010-2014) and Eurostat

*Source: See Annex 2 for more information about author calculations. * Cost estimates are annual figures and reflect price levels in 2016.*

6. Disability

6.1. Overview

The CRPD states that ‘persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’ (Article 1). According to Eurostat (2017a), in 2012, people with disabilities represented 17.6% of the age 15+ population in the EU-27, with disabilities being more common among women (19.9%) than men (15.1%). The most affected age group were people aged 65 and above (35.6%), while disabilities among people aged 45-54 and 15-44 were less common (18.8% and 8.5%, respectively). Given the **predominance of disabilities among older people** and the ageing population in the EU, the share of the EU population with disabilities is expected to increase. **Disability among young people** is also a pressing issue. Studies indicate that the majority of children with disabilities are

largely segregated in special schools and encounter difficulties in accessing mainstream education (FRA, 2015b; Ballesteros et al., 2013). The share of people with disabilities aged 15-34 that are neither in employment nor in education/training was 15 percentage points higher than others in 2011 (Eurostat, 2017a). Disability is likely to impact **daily activities**, ranging from personal care to household care. In 2012, 81.5% of people with disabilities in the EU-27 reported difficulties with basic activities, 43% reported difficulties with personal care activities, and 53.1% reported difficulties with household care (Eurostat, 2017a). Additionally, people with disabilities face a **housing cost overburden**²⁴⁶ of 12% compared to 10% for people without a disability (Eurostat, 2017a). In the EU, a large share of individuals with disabilities live in a materially deprived household (11.3%) compared to individuals without disabilities (6.4%) (Eurostat, 2017e).

Illustrative case: disability and social housing

In Bucharest (Romania), the criteria for social housing are based on allocating a certain number of points for different categories. Persons with disabilities accounted for four points in the allocation criteria, compared to 10 points for persons with higher education and 15 points for veterans and war widows, revolutionaries and former political detainees. Upon further investigation of these allocation criteria, the National Council for Combatting Discrimination found that these criteria established by the Municipality represented a limitation to access to public housing for persons with disabilities²⁴⁷.

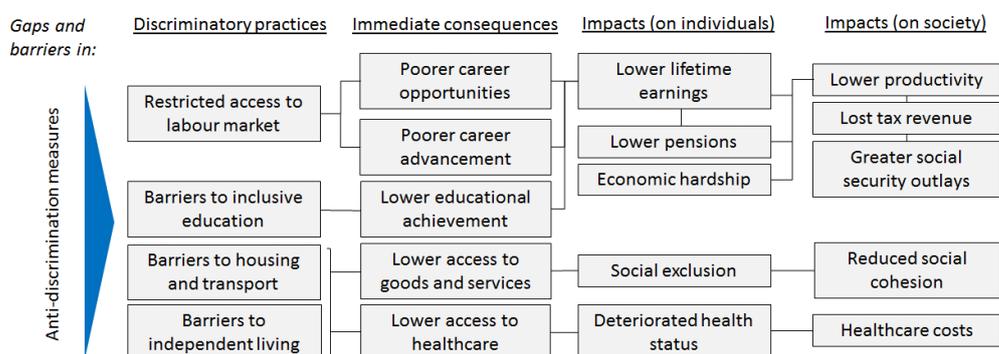
6.2. Findings

The main barriers to protection from discrimination on the ground of disability identified in this study related to the right to independent living [B11], and to inclusive education [B12]. People with disabilities are also affected by the cross-cutting barriers to the effective national implementation of the Employment Equality Directive [A3]. People discriminated against on the grounds of disability do not have legal protection at EU level outside of the employment context, including reasonable accommodation (see gaps [B13-A1]). Figure 17 presents an overview of the impact channels related to discrimination on the ground of disability.

²⁴⁶ Housing costs are deemed excessive and referred to as 'housing cost overburden' if they are greater or equal to 40% of disposable income (Eurostat, 2017a).

²⁴⁷ Iordache, R, [National equality body decision on social housing criteria in Bucharest](#), European Network of legal experts in gender equality and non-discrimination.

Figure 17: Impact channels of discrimination on the ground of disability



Discrimination on the ground of disability and on the ground of age have similar impacts in some respects. Weak implementation of the existing legislation and reluctance among employers may mean that people with disabilities experience **limited access to the labour market**. People with disabilities were found to face considerable difficulties in entering and remaining in the labour market (Beyer, 2016). Data from the EU Labour Force Survey (EU-LFS) show that people with different types of disorders have lower employment rates than individuals without disorders, even if they do not experience work limitations (see Table 19; Beyer, 2016).

Table 19: Comparison in employment rates, by type of disorder

Type of disorder	With disorder	With disorder and limitations	Without disorder
Mental and behavioural issues	40.9%	25.6%	69.2%
Musculoskeletal disorders	58.1%	43.2%	69.9%
Metabolic disorders	52.8%	32.1%	68.8%
Cardiovascular diseases	49.8%	29.1%	69.3%
Respiratory diseases	58.4%	N/A	68.5%

Source: Beyer (2016).

The analysis of the ESS data suggested that people with disabilities are, on average, less likely to be employed (between six and 19%, depending on the severity of disability) than people without disabilities, and people reporting discrimination on the ground of disability are on average 12% less likely to be employed. Based on these findings, lost earnings of people with disabilities are estimated to be in the range of EUR 468-763 million.

Due to discrimination, individuals with disabilities might also experience limited access to the fundamental right to **education**, as well as to **life-long learning**. European associations supporting the rights of people with

disabilities indeed report that this group still faces difficulties in accessing education and training (EASPD, 2017, Beyer 2016, and the European Disability Forum, 2009). Restricted access to education and training may contribute to lower earnings at individual level and to subsequent productivity loss at economy level. Based on ESS data, people with disabilities are estimated to be on average less likely to achieve tertiary education (between five and 11%, depending on the severity of disability) than people without disabilities. Lower educational achievement can result in **lower earnings** later in life. Lost earnings among people with disabilities due to lower educational attainment were estimated to amount to EUR 61-98 million in the EU. In addition, limited access to education for people with disabilities may result in stress and social exclusion. Although such effects could not be quantified, they may impose a high burden on individual and societal well-being.

Lost earnings due to both lower educational attainment and lower employment rates are expected to have an economic impact on society in terms of **lost tax revenue and GDP**. Based on Eurostat data on average annual earnings in the EU by educational level (Eurostat, 2017f), lost tax revenue in the EU was estimated in the range of EUR 255-416 million, while annual lost GDP was estimated between EUR 710 million and 1.2 billion. People with disabilities also experience **limited access to transport** and various **goods and services**, including housing. They struggle to find suitable and affordable **housing**, which may restrict them to live in specialised institutions. Although housing can be adapted to meet the specific needs of persons with disabilities, this might be unaffordable without public financial support (Ringelheim & Bernard, 2013). In the **healthcare sector**, discriminatory practices may include refusing assistance animals in hospitals, or insufficient methods for spreading information about (preventative) healthcare services (Granath et al., 2008). The greatest barrier in accessing healthcare was found to be the negative or biased attitudes of some healthcare professionals (Granath et al., 2008). These types of discrimination may lead to **insecurity, social exclusion and deteriorated health status**, which would translate into higher healthcare costs and reduced social cohesion. Psychological research showed that, in the US, discrimination on the ground of disability has adverse effects on mental health (Keita, 2007). Despite cultural and social differences between the US and the EU, such results are likely to be equally valid in the EU context.

Finding suitable housing might also contribute to the **higher living costs** faced by people with disabilities compared to people without disabilities (Brawn, 2014). This is line with analysis of the ESS, which found that people with disabilities are between 12 and 21% (depending on the severity of disability) more likely to experience **economic hardship**. In the UK in 2014, it was estimated that people with disabilities had to pay GBP 550 (equivalent to EUR 687.5) more on average each month to achieve a decent standard of living, with the Disability Living Allowance falling short of covering these higher costs by about GBP 200. Although extra costs are unique to each person’s circumstances, they were found to fall broadly into three main categories:

- Products and services needed by people with specific disabilities, such as wheelchairs, home adaptations, medicines, therapeutic treatments, special foods.
- Products and services needed by both those with disabilities and those without, but of which people with disabilities sometimes need more, such as needing a larger house to store medical equipment, paying for taxis more often, paying for assistance with household work.
- Products and services needed by both those with disabilities and those without, but that cost more for people with disabilities, for example insurance products (Brawn, 2014).

Based on the findings by Brawn (2014), the **additional costs of access to goods and services** faced by people with disabilities was extrapolated to EU level and estimated to be in the range of EUR 15-41 billion annually.

Table 20 presents an overview of the quantitative estimates of the impacts described above.

Table 20: Summary of impacts of discrimination on the ground of disability

	Type of impact	Quantitative estimates*	Sources for author calculations
Individual	Lost earnings	EUR 529 - 861 million (EUR 468-763 million due to lower employment and EUR 61-98 million due to lower attainment of tertiary education)	ESS (2010-2014) and Eurostat
	Higher costs of living (access to goods and services)	EUR 15-41 billion	Eurostat and Brawn (2014)
Society	GDP lost	EUR 710 million to EUR 1.2 billion per year (EUR 628-1,024 million due to lower employment and EUR 81-132 million due to lower level of tertiary	ESS (2010-2014) and Eurostat

Type of impact	Quantitative estimates*	Sources for author calculations
Tax revenue lost	education) EUR 255-416 million per year (EUR 226- 369 million due to lower employment and EUR 29- 47 million due to lower level of tertiary education)	ESS (2010-2014) and Eurostat

Source: See Annex 2 for more information about the author calculations. Cost estimates are annual figures and reflect price levels in 2016.

7. Findings by gap/barrier

This section draws together the evidence gathered from the ground-specific assessments, and provides an overall assessment by gap and barrier.

Table 21 presents the findings for the **horizontal gaps** identified in the State of Play analysis in Chapter 2 (see Table 7). For each horizontal gap, the relevant grounds, discriminatory practices, impact channels and estimated impacts on individuals and society are presented. The largest cost was evident for Gap A3 - barriers to the effective implementation of the Employment Equality Directive and the Racial Equality Directive (overall estimated GDP loss of EUR 246-316 billion). The costs due to hate crimes are significantly smaller in magnitude, which is likely due to the narrow focus on the impact channel of assault for where quantitative evidence could be generated. Hate speech in both online and offline forms may also have a significant impact on the psychological well-being of individuals, with subsequent impacts on productivity and healthcare costs suggested by research studies. Victims report feelings of anger, nervousness, inability to concentrate and poor self-confidence (Benier, 2017). These symptoms have been compared with those of post-traumatic stress disorder (Dzelme, 2008; Herek et al., 1999; Roberts et al., 2010). Moreover, hate speech threatens human dignity of the vulnerable groups that are addressed and at the same time it undermines the inclusiveness and social cohesion of our society, which can be considered as a public good (Waldron, 2012).

Table 21: Overview of impacts from the horizontal gaps¹

Gap/ barrier	Grounds affected	Description ²	Immediate consequences	Impact channels	Impacts on individuals	Impacts on society
A1	Religion or belief; sexual orientation; age; disability	No protection outside of employment	<ul style="list-style-type: none"> Discriminatory treatment in domains outside of employment 	<ul style="list-style-type: none"> Quality of goods and services received (education, health care, housing) Psychological and physical health Social exclusion 	<ul style="list-style-type: none"> Poorer housing conditions: 5% (religion and belief) Less tertiary education: 5% (disability) Lost earnings due to poor health status: EUR 783 - 854 million (sexual orientation, age and disability) 	<ul style="list-style-type: none"> GDP loss: EUR 1.05 - 1.15 billion Lost tax revenue: EUR 376-413 million
A2	Sex; race and ethnicity; religion or belief; sexual orientation; age; disability	Barriers to access to justice for victims of discrimination	<ul style="list-style-type: none"> Barriers discourage discriminated individuals from lodging a complaint (e.g. high costs, burden of proof) Discriminatory practices (including hate crimes) are not identified or reported Impunity of in-person or online violence with a 'hate' motive 	<ul style="list-style-type: none"> Instilled fear and insecurity Social exclusion Psychological health 	<ul style="list-style-type: none"> Physical assault: 7-12% higher risk (race/ethnicity, religion/belief and sexual orientation) Lost earnings: Up to EUR 355 million Poor health status: 2.1% higher risk due to assault 	<ul style="list-style-type: none"> GDP loss: EUR 25-545 million Lost tax revenue: EUR 9 - 197 million
A3	Race and ethnicity	Barriers to the effective national implementation of the Racial Equality Directive	Discriminatory treatment in all domains	<ul style="list-style-type: none"> Quality of goods and services received (education, health care, housing) 	<ul style="list-style-type: none"> Economic hardship: 17.5% higher risk Poorer health status: 16% increased risk Lost earnings due to lower 	<ul style="list-style-type: none"> GDP loss: EUR 2.4 - 10.5 billion Loss in tax revenue: EUR 0.85 - 3.8 billion

				<ul style="list-style-type: none"> • Psychological damage • Social exclusion • Reluctance to work 	<ul style="list-style-type: none"> • <i>employment</i>: EUR 1.8-7.8 billion • <i>Residential segregation</i>: 5% higher risk • <i>Unemployment</i>: 5% higher risk • <i>Assault</i>: 9.7% higher risk 	<ul style="list-style-type: none"> • <i>Healthcare costs</i>: EUR 36 - 57 million
	Religion or belief; sexual orientation; age; disability	Barriers to effective national implementation of the Employment Equality Directive	Discriminatory treatment in the domain of employment	<ul style="list-style-type: none"> • Social exclusion • Reluctance to work 	<ul style="list-style-type: none"> • <i>Lost earning due to higher risk of unemployment</i>: EUR 182 - 228 billion (age and disability) • <i>Economic hardship</i>: 14-20% higher risk (age and disability) 	<ul style="list-style-type: none"> • <i>GDP loss</i>: EUR 224 - 305 billion • <i>Loss in tax revenue</i>: EUR 88-110 billion

Note: The calculation of estimates is described in Annex 2. Only findings that were statistically significant are presented. Some estimates may be limited to some grounds. In such cases, the grounds are indicated in parentheses.

¹ The impacts on individuals and society are in annual EUR 2016 values.

² These gaps and barriers were identified in the State of Play analysis (see Table 7).

Table 22 presents the findings for the **ground-specific gaps and barriers**. Due to overlaps in impact channels for different gaps and barriers with respect to the same ground, it was not always possible to attribute impacts to each gap or barrier, but rather to all of the identified gaps and barriers combined. For example, the three gaps and barriers specific to race and ethnicity can both contribute to psychological damage. In addition, caution should be taken in comparing figures from Table 21 and Table 22 given some of the overlaps (see Chapter 2 for a description of these overlaps). The largest cost was evident for the gender pay gap (A1) which may in part be driven by the large number of individuals affected (about half of the EU population). The costs of other gaps and barriers for other grounds are also found to be substantial. In addition, an important caveat to the analysis was the availability of evidence, which was stronger for the ground of sex than other grounds. Quantitative evidence for hate crimes in particular is lacking.

Table 22: Overview of impacts for ground-specific gaps and barriers¹

Ground	Gap/barrier	Description ²	Impact channels	Impacts on individuals	Impacts on society
Sex	B1	Gender pay gap	<ul style="list-style-type: none"> Earnings Career advancement Reluctance to work 	<ul style="list-style-type: none"> Lost earnings: EUR 241-379 billion Poverty risk: 59% of the age 55+ population at risk of poverty are women Economic dependence: EUR 146-321 million due to increased risk of intimate partner violence 	<ul style="list-style-type: none"> GDP loss: EUR 540 billion (in 2030) Tax revenue loss: EUR 116-183 billion Productivity loss: EUR 318-350 million Healthcare costs: EUR 223-246 million
	B2	Violence against women	<ul style="list-style-type: none"> Instilled fear and insecurity Psychological status Social exclusion Physical injury Move residence 	<ul style="list-style-type: none"> Personal costs³: EUR 7 billion Specialised services⁴: EUR 2 billion Physical and emotional impairment: EUR 134 billion 	<ul style="list-style-type: none"> Health services: EUR 14 billion Criminal justice system: EUR 32 billion Civil justice system: EUR 2 billion Social welfare: EUR 9 billion GDP loss: EUR 30 billion
Race and ethnicity	B3-B5	<ul style="list-style-type: none"> Criminal law (Framework Decision on Racism and Xenophobia) Anti-discrimination law (Racial Equality Directive) 	<ul style="list-style-type: none"> Social exclusion Psychological status Quality of goods and services Reluctance to work Employment Lack of deterrence due to low sanctions and weak legal framework to tackle online hate crimes 	<ul style="list-style-type: none"> Lost earnings: EUR 1.8-8 billion Assault: 9.7% increased risk Housing: 4% higher risk of poor housing conditions Residential segregation: 5% higher risk Unemployment: 5% higher risk Economic hardship: 17.5% higher risk 	<ul style="list-style-type: none"> GDP loss: EUR 2.4-10.7 billion Tax revenue loss: EUR 854 million – EUR 3.9 billion Productivity loss: EUR 21-34 million Healthcare costs: EUR 15-23 million
Religion or belief	B6-B7	Lack of reasonable accommodation requirement in employment	<ul style="list-style-type: none"> Reluctance to work Career progression status 	No quantitative estimates obtained for these impact channels.	

Sexual orientation	B8-B9	Criminal law (homophobia not covered by hate crime in all Member States)	<ul style="list-style-type: none"> • Psychological status • Educational achievement • Access to housing • Social exclusion • Physical injury 	<ul style="list-style-type: none"> • <i>Lost earnings</i>: EUR 19-53 million • <i>Lost pension income</i>: EUR 1.5-3.1 billion • <i>Limited access to goods and services (housing)</i>: EUR 4-8.1 billion 	<ul style="list-style-type: none"> • <i>GDP lost</i>: EUR 25-71 million • <i>Tax revenue lost</i>: EUR 9-26 million
Age	B10	No protection outside employment	<ul style="list-style-type: none"> • Access to health care • Health status • Access to educational scholarships 	<ul style="list-style-type: none"> • <i>Lost earnings</i>: EUR 318 million to 1.1 billion • <i>Loss of scholarships</i>: EUR 6.3 - 8.6 billion 	<ul style="list-style-type: none"> • <i>GDP lost</i>: EUR 427 million to 1.5 billion • <i>Tax revenue lost</i>: EUR 88-110 billion
Disability	B11-B13	<ul style="list-style-type: none"> • Barriers to the right to independent living • Barriers to inclusive education • Barriers to reasonable accommodation 	<ul style="list-style-type: none"> • Social exclusion • Educational achievement • Access to goods and services • Barriers to employment 	<ul style="list-style-type: none"> • <i>Higher costs of living</i>: EUR 15-41 billion • <i>Lower earnings</i>: EUR 529--861 million 	<ul style="list-style-type: none"> • <i>GDP lost</i>: EUR 0.71-1.2 billion • <i>Tax revenue lost</i>: EUR 255-416 million

Note: The calculation of estimates is described in Sections 2-6 of this chapter. Only findings that were statistically significant are presented. ¹ Impacts on individuals and society are in annual EUR 2016 values when not indicated otherwise; ² These gaps and barriers were identified in the State of Play analysis (see Table 7); ³ Rehousing and civil (legal) expenses; ⁴ Social care and advice from civil organisations and NGOs.

Chapter 4: Policy options

Key findings

- The EU is well placed to contribute to the improving protection in the area in the sectors of employment, access to goods and services, social security, social advantages, criminal law and transport.
- In order to ensure equality and effectively fight racism and xenophobia, the EU must adopt an array of legislative and non-legislative tools, each addressing the various facets of the complex phenomena of discrimination, intolerance and racism.
- This section presents and assesses seven policy options: 1) Accession to the ECHR and to the Istanbul Convention; 2) Improve the implementation and enforcement of the legal framework; 3) Adopt legal acts to expand the protection against discrimination; 4) Amend the Framework Decision to include additional grounds; 5) Further gender equality in the employment sector; 6) Increase protection by expanding the application of positive action and reasonable accommodation; and 7) Use EU Funds to further equality.

Chapter 2 explored the EU legal framework and legal bases for action, while Chapter 3 assessed the costs of the gaps and barriers identified. This chapter presents potential avenues for EU action to address key gaps and barriers in equality and the fight against racism, and assesses the likely costs and benefits both for individuals and for society as a whole. In addition, an estimate for the share of the population that could potentially be affected by each option is presented in the assessment.

Considering the breadth of the topic, this study focused on identifying the key gaps and barriers linked to the current EU framework, as well as those related to EU competence areas. Strong competence and the depth of EU acquis in the area make the EU a key actor in addressing gaps and barriers in equality and the fight against racism (see Chapter 2). It is particularly well-placed to contribute to improved protection in the sectors of employment, access to goods and services, social security, social advantages, criminal law and transport. In other areas, such as education, Member State action remains crucial, with the EU playing a strong supporting role. It should be, nevertheless, noticed that the options suggested imply the cooperation and action of Member States in order to entirely achieve the net benefits. The CoNE, therefore, a share of the net benefits that can be attributed to EU action.

The main gaps and barriers identified in this study cover a wide range of issues and problems in the legal framework and its application, as well as the mechanisms established to tackle those issues, such as monitoring, access to justice, etc. A number of the gaps and barriers identified relate to specific grounds of discrimination (sex, race or ethnicity, sexual orientation, religion or belief, age, and disability), while others are horizontal, spanning most or all relevant grounds of discrimination. The gaps and barriers may also pertain to specific sectors (i.e. employment, education, access to goods and services, healthcare and education) or to several of these sectors. The same gap or barrier may require different level of intervention (legislative, policy, funding, etc.) if further equality is to be achieved within the EU.

In order to ensure equality and effectively fight racism and xenophobia, the EU must adopt an array of legislative and non-legislative tools, each addressing the various facets of the complex phenomena of discrimination, intolerance and racism. **Legislative options** can take the form of a regulation, a directive or a decision²⁴⁸. A **regulation** is binding in its entirety and directly applicable in all Member States, with no transposing measures needed. It contains provisions with general application and ensures considerable harmonisation across Member States. A **directive** is binding in terms of the outcome, with the form and method by which those results are achieved left to the discretion of each individual Member State. While this provides greater flexibility to Member States, there is a risk of inconsistencies in their approaches. The legislative option can also take the form of a **decision** adopted by the European institutions. Such decisions are binding in their entirety on those to whom they apply, and may follow either ordinary or special legislative procedures. The EU legislator, unless specifically provided otherwise by the TFEU, may opt for any of these three legislative forms. In the area of equality, the TFEU concerns mostly equality between women and men in the labour market, for which it prescribes the use of a directive (Article 153 TFEU).

The form chosen has an impact on the nature of the obligations adopted (e.g. a decision is not a fit for substantial legal changes), on the implementation of rights, and on political feasibility. Generally speaking, it is easier to achieve political consensus on the adoption of a directive than on a regulation.

²⁴⁸ Article 288 TFEU.

This chapter explores some avenues through which the gaps and barriers at EU level might be tackled. It does not provide an exhaustive list of measures. As the study supports a CoNE requested by the LIBE Committee, actions within the remit of the Committee have been favoured, i.e. actions relating to the protection of fundamental rights, discrimination other than that based on sex or occurring at the workplace and in the labour market, data protection and privacy, free movement, asylum, migration, police and judicial cooperation in criminal matters including terrorism, and substantive and procedural criminal law. Table 23 presents an overview of the options, which are discussed in greater detail in the rest of Chapter 4. The table presents only benefits and costs in a EU perspective to reflect the CoNE, while in the rest of the chapter benefits and costs faced by Member States are also mentioned.

Table 23: Assessment of the options to tackle gaps and barriers in equality at EU level in terms of benefits and costs

Option	Description	Gap(s)/ barrier(s) that could be addressed	Assessment of costs and benefits ²⁴⁹
1	Accession to the ECHR and to the Istanbul Convention	A1, B2	<p>Benefits: Potentially greater access to goods and services; increased legal commitment at EU level to combat violence against women.</p> <p>Costs: Costs are expected to be limited as Member States are already bound by the ECHR.</p> <p>Net benefits: Net benefits are positive and are a function of the coherence achieved between the ECtHR and CJEU.</p>
2	Improve implementation and enforcement (<i>strengthen equality bodies, training, EU mechanism for monitoring</i>)	A2, A3 and to some extent all other gaps and barriers	<p>Benefits: Reduced discrimination and access to justice, although much depends on the Member States. If EU action alone reduces discrimination by 5% it could lead to a gain in GDP of up to EUR 247-703 million.</p>

²⁴⁹ This column presents the potential benefits and costs of each option as well as the net benefits (benefits minus costs). The figures presented are annual estimates, unless otherwise specified. The benefits and costs represent only the share that can be attributed to the EU, in line with the concept of Cost of Non-Europe. For more details about the benefits and costs of each option, please refer to the rest of Chapter 4. The authors' calculations for the assessment of benefits are explained in Annex 3.

			<p>Costs: Double EU resources to promote awareness-raising, mutual learning and training (EUR 47 million) and to introduce an EU monitoring mechanism (EUR 4 million).</p> <p>Net benefits: EUR 196-652 million.</p>
3	Adopt legal instruments to expand protection against discrimination to cover additional grounds	A1	<p>Benefits: Reduced discrimination resulting in better educational and health outcomes. Assuming that EU action results in a 5% improvement in these impact channels, GDP may increase EUR 26.7-83.1 million.</p> <p>Costs: Adoption of legislation that has already been developed.</p> <p>Net benefits: Less than EUR 54.6 million²⁵⁰ depending on the time and resources involved to adopt the legislation.</p>
4	Amend the Framework Decision to include additional grounds	A2, B8	<p>Benefits: Assuming that EU action deters physical assault by 50% an increase in GDP of EUR 48 million (EUR 12-35 million) may be gained.</p> <p>Costs: Amendment of the Decision that has been adopted.</p> <p>Net benefits: Less than EUR 48 million depending on the time and resources involved to amend the Decision.</p>
5	Further gender equality in the sector of employment	B1	<p>Benefits: Increase in labour market participation and productivity.</p> <p>Costs: Payments for leave (e.g. paternity leave).</p> <p>Net benefits: EUR 0.1-3 billion for all forms of leave. An additional EUR 7-16 billion²⁵¹ for flexible working arrangements.</p>
6	Increase protection by expanding the application of positive action and reasonable accommodation	A1, B6, B7, B13	<p>Benefits: Increased integration into labour market for racial, ethnic and religious minorities.</p> <p>Costs: EU resources to promote awareness and training activities in the sector of employment.</p> <p>Net benefits: Gains from increased integration expected to exceed the EU costs of supporting this measure.</p>
7	Use of EU funds to enhance equality	All gaps and barriers	<p>Benefits: Greater awareness of discrimination and avenues to access justice.</p> <p>Costs: Opportunity costs of using the</p>

²⁵⁰ This is the point estimate for the benefits.

²⁵¹ These are annual average estimates, calculated by the authors based on the figures presented in the Impact Assessment for the Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, April 2017. The study presents net benefits of EUR 5.6-130 billion for all forms of leave and additional EUR 285-653 billion for flexible working arrangements over the period 2015-2055.

			funds for anti-discrimination and equality measures. Net benefits: Unclear due to trade-offs with other objectives of the EU funds.
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Option 1: Accession to the ECHR

The **ECHR** and the associated jurisprudence from the ECtHR has established a strong framework of fundamental rights protection across Europe. For some aspects of equality and the fight against racism, the ECHR provides complementary protection to EU law. For the freedom of religion and belief, in particular, the ECHR provisions are more extensive than EU law, as they apply across sectors and mandate a positive duty for state action in circumstances requiring differential treatment. In 2013, the Commission issued its proposal for accession, negotiation of which is ongoing, and would require alignment with CJEU *Opinion 2/13* (2013).

As all EU Member States are already bound by the ECHR, the most important benefit of EU accession to the ECHR would be the obligation for EU law itself to comply with the ECHR. Areas falling within EU competence would need to align with both the ECHR and the associated ECtHR jurisprudence. In addition, the ECtHR would have the right to review the compliance of EU action with the ECHR (Craig & de Burca, 2015). EU accession to the ECHR would make the Convention an integral part of EU law insofar as it relates to EU areas of competence.

The EU signed the **Istanbul Convention** on 13 June 2017 and is in the process of concluding that Convention. The Istanbul Convention is the first legally binding instrument tackling violence against women and domestic violence in Europe. It establishes obligations related to four main pillars:

- Preventing violence.
- Protection of victims.
- Prosecution of perpetrators.
- Integrated policies involving all relevant actors and authorities.

Once the EU accedes, the Istanbul Convention will form an integral part of EU law within the limits of EU competence in the field (relating chiefly to sexual harassment, criminal law, victims' rights, cross-border cooperation, and immigration and asylum). In addition, the EU will be legally bound to

adopt legal and policy measures to prevent and combat violence against women.

As of November 2017, 17 EU Member States have already ratified the Istanbul Convention²⁵². Exercise of this option would therefore create **one coherent framework** for human rights and equality for EU Member States. In practice, change is unlikely to be dramatic, as all EU Member States are already bound by the ECHR, including in the implementation of EU law and policies. Some important impacts have, however, been identified. The **case law of the ECtHR and the CJEU** would become more coherent and harmonious, thus reinforcing protection against discrimination. Similarly, accession to the Istanbul Convention would enhance the coherence between the CoE and EU frameworks. It would also ensure that EU law is in line with both the ECHR and the Istanbul Convention.

Legal protection might be strengthened in respect of positive action for religion and belief, as well as race and ethnicity, albeit to a lesser extent. To date, no cases of positive action have been presented to the CJEU outside the ground of sex. A number of such cases are in the case law of the ECtHR. This increased coherence could enhance the **credibility of the EU's human rights policies** and provide greater clarity for individuals with respect to their right to legal protection against discrimination.

Under the Istanbul Convention, the EU will have the opportunity to take action to harmonise definitions and sanctions of some acts of violence against women with a cross-border dimension. At present, different approaches by Member States affect the protection afforded across the EU, and EU action would thus ensure consistent implementation in line with the Istanbul Convention.

Table 24: Assessment of option 1: EU accession to the ECHR and to the Istanbul Convention

Individual benefits / fundamental rights
The fundamental rights of individuals would be better protected with a single coherent framework across Europe. The potential to resort to positive action could result in better access to goods and services for religious minorities across all sectors, and, to a lesser extent, for racial and ethnic minorities. It would also increase access to support services for victims of violence against women. Improved access to goods and services and social inclusion could lead to improved psychological well-being for all persons. Research indicates that minorities suffer

²⁵² Belgium, Denmark, Germany, Estonia, Spain, France, Italy, Cyprus, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Finland and Sweden.

poorer health, which may be partly linked to the psychological stress resulting from discrimination (Ikram et al., 2014; Williams et al., 2003; Mays & Cochran, 2001; Pascoe & Richman, 2009)²⁵³. About 7.4% of EU individuals aged 15 years and up could be affected²⁵⁴.

Economic benefits

Greater access to goods and services for racial, ethnic and religious minorities could potentially lead to increased employment and social inclusion for these individuals, and higher social cohesion and GDP for society. A large body of research has demonstrated how discrimination affects hiring decisions and employment conditions (e.g. Kaas & Manger, 2012; Andriessen et al., 2012). CJEU treatment of the case law of the ECtHR will determine the extent to which such benefits are realised.

Costs

The expected costs of implementing this option are minimal, given that all Member States are members of the CoE and are thus already bound by the ECHR. At an individual level, some efficiencies may be gained, as cases from Member States could be brought to either the ECtHR or the CJEU, with convergences in the applicable case law. Costs may be expected if the EU adopts additional legislative acts in order to align its legal framework with the ECHR. This could be understood as a fixed, one-off cost for the EU. Subsequent compliance checking of the new legislation would not impose an additional cost as it would be covered by the existing compliance checking procedures.

Cost of Non-Europe

The net benefits reflecting the CoNE are expected to be positive and are a function of the coherence achieved between the ECtHR and CJEU.

Option 2: Improve implementation and enforcement of the legal framework

There is limited research evidence on the impact of anti-discrimination legislation, especially in European contexts. However, our review identified a body of literature on the impacts of the Disability Act in the United Kingdom (Bambra and Pope, 2007; Bell and Heitmueller, 2009; Jones, 2009; Pope and Bambra, 2005). These studies found that legislation did not lead to improved employment outcomes for persons with disability. A lack of proper implementation and enforcement may be among the reasons. These findings underscore the importance of proper implementation and enforcement of the legal framework to ensure that individuals are to be effectively protected from discrimination. This option proposes five tools to improve implementation and enforcement of the EU framework:

- Strengthen equality bodies.
- Facilitate access to justice.
- Train enforcement actors.
- Empower national actors.
- EU mechanism for monitoring fundamental rights: using Article 2 TEU as a legal basis for infringement proceedings.

²⁵³ E.g. Ikram et al. (2014) found that rates of clinical depression were higher among ethnic minorities than others (3.8-12.9%, depending on the ethnic minority group, compared to 2.3% among the native population).

²⁵⁴ This estimate was obtained through analysis of the ESS. The share of the sample that reported belonging to a religious minority or a racial or ethnic minority was estimated.

As explained below, this option would help to address barriers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive (A3), and barriers to access to justice for victims of discrimination (A2).

The Racial Equality Directive, the Gender Equality Directive on Goods and Services, and the Gender Equality in Employment Directive saw the establishment of **equality bodies** in all EU Member States. Equality bodies play a key role in monitoring the implementation of non-discrimination legislation and assisting victims. As the point of entry of complaints of discrimination, they are also the drivers of awareness raising action and lead the fight against discrimination. Prior to this EU requirement, 20 Member States had no such body²⁵⁵. At present, however, the EU framework limits the work of equality bodies to the discrimination grounds of sex and racial and ethnic origin, and the grounds covered by these bodies therefore varies across Member States. In addition, **the capacity** of equality bodies to monitor and support the implementation of equality legislation varies considerably across Member States, depending on their structure, resources and the extent of their competences in handling complaints (e.g. ability to take cases before the courts). As indicated in Table 25, nine Member States have a predominantly tribunal-type mandate, while seven have a combined tribunal and promotion-type mandate. Among countries with a predominantly tribunal-type mandate, litigation powers may vary, creating different levels of enforcement. In Finland, for example, the equality body has the following powers: (1) Representation before the courts; (2) Bringing proceedings in its own name; (3) Intervening before the court; and (4) Formal decisions on complaints (e.g. decision or recommendation addressed to the parties), although these are not legally binding. Romania's equality body, by contrast, has only the latter two litigation powers, although its formal decisions on complaints are legally binding. Equinet has commissioned a study on the evolution of the mandates and resources of equality bodies over the past decade, which will be released in 2018²⁵⁶.

²⁵⁵ [Commission Staff Working Document accompanying the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation Summary of the Impact Assessment](#), COM(2008) 426 final.

²⁵⁶ The report is included in the 2017 Work Plan and is titled 'Investing in Equality: the changing mandates and resources of equality bodies in the past decade'. It will be launched at a conference in March 2018.

Table 25: Mandate types of equality bodies

Mandate type	Member States	Total number
Combined tribunal-type and promotion-type	BE, EE, HR, LV, MT, NL, SI	7
Predominantly promotion-type and legal support body	CZ, DE, DK, IE, EL, ES, FR, LU, AT, PT, SK, UK	12
Predominantly tribunal-type (quasi-judicial) body	BG, IT, CY, LT, HU, PL, RO, FI, SE	9

Source: Equinet: <http://www.equineteurope.org/-Equinet-Members-> (reviewed October 2017)

In order to strengthen equality bodies, the European Parliament could recommend that the Commission develops **minimum standards** for national equality bodies to provide independent assistance to victims of discrimination, monitor the application of the legislation, conduct research, publish reports and make recommendations (Hermanin & de Kroon, 2013). Such standards should include the need for necessary resources (financial, human and structural) to independently carry out their missions. In addition, equality bodies should be given competence to assist victims in judicial proceedings, conduct independent investigations, and/or impose effective sanctions. In June 2016, Equinet launched its working paper on developing standards for equality bodies (Equinet, 2016). However, the cost implications of these standards have not been explored.

Enforcement of equality legislation relies on effective **access to justice** for victims of discrimination, together with the application of effective sanctions and available remedies (European Commission, 2014b, p. 7). Equality bodies could play a role in improving access to justice for victims of discrimination and hate crime by providing victim support - including in judicial proceedings - and taking on cases before the courts. In addition, the EU should ensure that **effective, proportionate and dissuasive sanctions** are applied to violation of the Directives, including through moral (non-pecuniary) damages for victims of discrimination. The Commission should develop standards for sanctions and pecuniary damages, taking into account the national context, i.e. average national wage, the perpetrator's resources, and seriousness of the discrimination (Hermanin & de Kroon, 2013).

Finally, law enforcement actors should be trained to assist victims and identify discrimination and hate crimes. EU grants from the Rights, Equality and Citizenship Programme (REC) have already been allocated to deliver such training across the EU (see Table 26 for examples, and Option 7 for more information about the REC Programme). If the EU would double the amount of funding to promote awareness-raising, mutual learning and training, this would amount to EUR 47 million annually. Specialised training could help to improve reporting mechanisms, identify and record hate crimes, employ a victim-centred approach to hate crime investigations, and prosecute such crimes based on biased

motivations (FRA, 2015a, pp. 10-11). The lack of skills and awareness among law enforcement and criminal justice staff to effectively fight hate crime and discrimination has been recognised as a key barrier. Recent investigations suggest that in the past five years more than half of Member States have offered training to law enforcement actors and criminal justice authorities on handling hate crimes (EU Commission, 2017a).

Table 26: Judicial training activities that received REC grants in 2015

Country/ies	Project	Funding	Activities	Beneficiaries
BE	Building capacity to monitor hate crime and hate speech through online training	EUR 557,064	Development and distribution of 11 e-learning modules on hate crime, hate speech and policy-making. Presentation of six bias indicators	Police officers, prosecutors, national and local policy makers
BG, EL, IT	Building a comprehensive criminal justice response to hate crime	EUR 677,034	Development of four tools against hate crime, usable in any EU Member State, and a toolkit of training packages Prosecutors and hate crimes training (EL, IT); joint training for prosecutors and investigators (BG)	Prosecutors, law enforcement officers, judicial staff, and staff of criminal justice authorities
IT, MT, AT, PT, SE, UK	Hate no more: training and awareness raising to combat hate crime and hate speech	EUR 270,530	Development of a procedures handbook on identifying and interacting with victims of hate crime and hate speech in a respectful manner according to their needs and the specific crime impact. Training manual for professionals dealing with hate crime and hate speech victims (victim support, law enforcement and judicial practitioners). Train the trainer workshop (pilot programme)	Victim support workers, judicial practitioners, law enforcement, civil society working with groups vulnerable to hate crime and hate speech

Source: European Commission, DG Justice, 2015

Training can support the investigative and prosecution authorities to better identify and deal with hate crime and discrimination offences, as well as improving their interpersonal support to victims. Specific guidelines on the legal framework and standards for applying the legislation can further support enforcement authorities. The existence of specialised police units or prosecutors' offices for hate speech and crime (including online hate speech) would help to create and maintain expertise and resources, and facilitate cross-border

cooperation (European Commission, 2014c).

Alongside training enforcement actors, promoting the **empowerment of national actors** is important in the implementation of the EU legal framework. The EU could support national efforts to promote and protect equality and fight against racism through the exchange of good practices, distribution of information and provision of financial support. The EU should look for ways to assist national courts, equality bodies and victim support services, in both policy and practice.

The strengthened EU framework could also give the EU a role in **monitoring the compliance of the Member States with the ECHR and the Istanbul Convention when implementing EU law**. An EU monitoring mechanism to promote, protect and safeguard fundamental rights would strengthen the EU response to violations of these rights and help to protect EU values (Van Ballegooij & Evas, 2016). As a fundamental value, established in Article 2 TEU, non-discrimination should be protected by a strong mechanism. In 2016 a proposal was made for an EU Pact on democracy, rule of law and fundamental rights (DRF). The Pact would establish an **annual DRF European report** and an EU policy cycle for DRF. The costs of the report have been estimated at EUR 4 million, based on the Council of Europe's Venice Commission (Bárd et al, 2016). These costs would include the costs of an independent panel of experts. The costs related to the EU policy cycle for DRF would largely stem from the time and human resources involved in higher levels of inter-parliamentary dialogue and for Member States to more closely review country reports.

Pech et al. (2016) proposed **using Article 2 TEU as a legal basis for infringement proceedings**. This would apply in cases of systematic failure of Member States to effectively promote equality and implement EU non-discrimination values. Here, the Commission would bring infringement actions against Member States under Article 2 TEU. This might reduce the administrative costs for the CJEU, given the economies of scale (Van Ballegooij & Evas, 2016).

Table 27: Assessment of option 2: improve implementation and enforcement of the legal framework

Individual benefits / fundamental rights
Better implementation and enforcement of the EU legal framework could help to protect the fundamental rights of individuals. Reinforced protection would facilitate greater access to employment and goods and services for the groups in question. In particular, an expanded role for equality bodies could help to reduce the risk of discrimination across all grounds and

sectors, as well as improving access to justice. Equality bodies would then contribute more to monitoring and preventative actions, as well as ensuring an adequate response to discrimination. Individuals would have a more powerful body to turn to in cases of discrimination, one which could provide legal support and contribute to the resolution of the issue through decisions or mediation, in a more timely and cost-effective manner than the courts. Better implementation and enforcement of the Employment Equality and Racial Equality Directives, in particular, may lead to increased wages. The current loss in wages due to ineffective national implementation of these Directives was estimated to be EUR 184-236 billion²⁵⁷. In addition, better enforcement of legislation may also reduce barriers to access to justice, which is estimated to cost up to EUR 355 million²⁵⁸. At least 65% of individuals aged 15 years and up living in the EU would be affected²⁵⁹.

Economic benefits

Improved implementation and enforcement could generate benefits from the current EU legal framework, and increase the effectiveness of the legislative options proposed in this study (e.g. Options 3 and 4). Benefits may stem from the prevention of discrimination and increased access to justice. Better implementation and enforcement specifically of the Employment Equality and Racial Equality Directives may lead to an increase in GDP. This study estimates suggest that this increase could be up to EUR 226-317 billion²⁶⁰. Better enforcement of legislation supporting access to justice may also have an economic impact. Given substantial improvement, the potential economic benefits may be in the order of EUR 25 to 545 million²⁶¹. To fully achieve these benefits both the EU and the Member States should actively promote effective implementation of the current equality legal framework. If EU action alone would reduce discrimination by 5% it could lead to a gain in GDP of up to EUR 498 million (EUR 247-703 million)²⁶².

Costs

Expanding or strengthening the mandate of the equality bodies would require increased resources to carry out additional activities, especially for bodies with few resources, and this would represent a cost mainly for the Member States. In 2015, equality bodies' operating budgets varied considerably, from EUR 87,000 to EUR 23.3 million²⁶³. The activities of some equality bodies may lean towards the prevention of discrimination, while others may aim to facilitate access to justice following reported incidents. Awareness-raising activities are important for both prevention and access to justice. Activities may be oriented towards vulnerable groups or duty-bearers, such as employers. An estimated 90% of national bodies provide the former, while 80% provide the latter. The preparation and delivery of training for duty-bearers, such as schools, healthcare providers and social assistance providers, may incur further costs. If the EU would double its funding for awareness-raising, mutual learning and training activities, we estimate that the additional funding support would amount to about EUR 47 million annually²⁶⁴. Additionally, the European Commission and the Member States

²⁵⁷ This range reflects the estimated loss in wages associated with gap/barrier A2 and is presented in Table 21. Individual benefits would be the decrease in costs resulting from the policy option. Annex 3 provides more information.

²⁵⁸ This figure is the sum of the estimated loss in wages associated with gap/barrier A3, which are presented in Table 21. See Annex 3 for more information on the calculation.

²⁵⁹ The ESS was used to estimate the share of the population belonging to one or more of the following groups: female, religious minority, racial or ethnic minority, persons with partial or severe disability. LGBT could not be included as this is not reported in the ESS.

²⁶⁰ Please refer to Annex 3 for for more details on this calculation.

²⁶¹ This range reflects the estimated loss in GDP associated with gap/barrier A2 and is presented in Table 21. Annex 3 provides more information.

²⁶² Annex 3 provides more information on the calculations for this estimate.

²⁶³ These figures were obtained from a review of the Equinet Member pages, available at: www.equineteurope.org

²⁶⁴ The estimate amount of funding for EU support for awareness-raising, mutual learning and training activities is based on the REC budget for the period 2014-2020. More information on the calculations is provided in Annex 3.

would face an estimated cost of EUR 4 million for introducing an EU monitoring mechanism (Bárd et al, 2016).

Cost of Non-Europe

The CoNE related to the lack of EU action to improve implementation and enforcement of the legal framework is estimated to be EUR 196-652 million.

Option 3: Adopt legal instruments to expand protection against discrimination to cover additional grounds

The main gap in the EU legal framework concerns the absence of protection against discrimination beyond the employment sector for the grounds of **religion and belief, disability, age and sexual orientation** (*Gap A1*). One option here is to adopt legislation, preferably in a single instrument (directive, decision or regulation), or in separate instruments (i.e. separated by grounds of discrimination, or sector), that provides protection in the sectors of social security and healthcare, education, and access to goods and services.

In 2008, the Commission adopted a proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (the Proposed Equal Treatment Directive). The proposed Directive prohibits discrimination on the above-mentioned grounds in the following areas:

- Social protection, including social security, social assistance, social housing and healthcare.
- Access to education.
- Access to and supply of goods and services available to the public.

The Proposed Equal Treatment Directive has been under discussion at the Council for the last seven years²⁶⁵. Its adoption would be a key step in consolidating the EU equality framework.

If this option is to be effective in fighting discrimination, EU action should also provide safeguards with respect to the right to **reasonable accommodation**. Specifically, the concept of ‘disproportionate burden’ should not be used to deny this right to persons with disabilities or to religious minorities. For example, the right of a child with a disability to access education requires the child to be accepted in the school and receive appropriate support in order to benefit from the same opportunities provided to his or her peers (Ballesteros et al., 2013, p. 125). The concept has an implied cost-benefit impact; the concept of ‘burden’ is a

²⁶⁵ [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; Procedural file 2008/0140/APP and the version of the proposed Directive used for this Research Paper is dated 29 June 2017.](#)

reflection of costs, while the benefits to persons with disabilities are a function of the frequency and duration of the use of the relevant good or service, as well as the infringement on fundamental rights. Disproportionate burden would suggest that costs outweigh the benefits.

This horizontal gap results in uneven protection for the different discrimination grounds across sectors among Member States. This review found that two Member States offer no additional protection, while 18 offer some protection on the grounds of disability, age and sexual orientation in education, housing, social protection, and goods and services (see Table 28). However, it is worth noting that the level and scope of protection by ground and sector is likely to vary considerably in these 18 Member States, depending on the level of existing protection, national policy priorities, resources allocated and other considerations within the national context.

Table 28: Scope of mandate of national equality bodies in relation to the grounds of religion, disability, age and sexual orientation, outside of employment

Mandate	Number	Member States
No additional protection	2	EL, ES
Protection offered for some grounds in at least one of the following sectors: (1) education, (2) housing, (3) social protection and (4) goods and services	8	DE, EE, CY, MT, NL, AT, PT, UK
Protection offered for all grounds in all four sectors	18	BE, BG, CZ, DK, IE, FR, HR, IT, LV, LT, LU, HU, PL, RO, SI, SK, FI, SE

Source: Equinet, available at <http://www.equineteurope.org/-Equinet-Members-> (reviewed October 2017)

Table 28 above shows the grounds included in the mandates of the national equality bodies. There is a strong correlation between protection at national level and the grounds covered by the equality bodies. However, it is not an exact match, with the equality bodies in certain countries not entrusted with some of the grounds covered by the national legislation (e.g. the ground of language is not under the mandate of the Belgian equality bodies, although it is a protected ground under the legislation).

Assessment of this policy option draws from an impact assessment of the Proposed Equal Treatment Directive (Altan et al., 2014). The study identified three main cost categories:

- Administrative and regulatory costs borne by government authorities (e.g. increased costs for equality bodies due to expanded mandate).

- General compliance costs (e.g. legal advice, auditing, staff training, etc.) borne by companies and public service providers.
- Sector and ground-specific costs borne by companies and public service providers.

In addition, it should be noted that the EU would face relatively limited costs for the adoption of the Proposed Equal Treatment Directive.

The benefits can be understood as helping to fully integrate a larger share of society, outside the sector of employment, through ensuring better access to goods and services. Improved access to healthcare and education, for example, can improve earning potential (see Chapter 3). Research has shown that discrimination experienced on an everyday basis can increase psychological stress for the affected individuals (Williams et al., 2003; Mays & Cochran, 2001; Pascoe & Richman, 2009). By promoting social inclusion, this policy option may reduce the psychological stress experienced by vulnerable groups, thereby improving health and productivity. The impact assessment does not offer quantitative estimates for the benefits expected for individuals (Altan et al., 2014). However, based on our analysis, we estimated that GDP may increase by EUR 54.6 million (EUR 26.7-83.1 million) if EU action would result in a 5% improvement in education and health for discriminated individuals.

Table 29: Assessment of option 3: Adopt legal instruments to expand protection against discrimination to cover additional grounds

Individual benefits / fundamental rights
<p>Fundamental rights protection would be greatly enhanced and consolidated if this gap were addressed. In addition, the EU framework would become more coherent and better reflect the protection needs across all main sectors of activity. Individuals across the EU would receive the same protection from discrimination and would be similarly supported by equality bodies or the courts where their rights have been violated. Vulnerable groups such as the elderly, persons with disabilities, persons from religious minorities and LGBTI individuals could benefit from greater social inclusion. This would reduce psychological stress and improve access to education for persons with disabilities. Table 21 presents some of the costs to individuals and society due to these impact channels, and these would be addressed to a certain extent by exercising this policy option (<i>see Gap A1</i>). Assuming that the policy option leads to a 5% improvement in health status (for those experiencing discrimination on the grounds of age and/or sexual orientation) and educational achievement (for persons with disabilities), an increase in earnings could be expected in the range of EUR 20-62 million²⁶⁶. The degree to which the policy option could generate benefits depends in large part on the</p>

²⁶⁶ More information on this calculations can be found in Annex 3. The estimated improvement level of 5% may be optimistic, given that 18 Member States already extend some protection for the grounds and sectors specified in this option. Economic studies on the impacts of discrimination law in the employment sector have found limited impacts, suggesting that implementation and enforcement are key (see Option 2 for more information). Nonetheless, the calculation provides an indication of the potential benefits of a certain level of effectiveness.

implementation of the expanded legal protection (see Option 2).

An estimated 29% of the EU population ages 15 years and up would be directly affected²⁶⁷.

Economic benefits

Expanded protection against discrimination could increase social cohesion and improve the productivity of the affected individuals. This increase in individual earning potential would be expected to have an impact on the economy, with an estimated GDP increase of EUR 534 million to EUR 1.7 billion under this policy option. Assuming that EU action results in a 5% improvement in education achievement and health status of discriminated individuals, GDP may increase EUR 26.7-83.1 million²⁶⁸.

Costs

The costs faced by the EU would be limited to the time and resources involved in adopting the proposed legislation. In the five-year period after adoption of the Directive, the total administrative, regulatory and generic compliance costs for Member States would range from EUR 78.2 million (CZ) to EUR 493.2 million (DE) (Altan et al., 2014). Sector and ground-specific costs from the study are summarised below.

Ground	Types of costs	Findings
Religion and belief	As the action would imply changes in values and behaviours, the costs are assumed to relate chiefly to awareness raising and training activities to improve access to goods and services and to social services, including healthcare	N/A
Disability	Installing accessibility items (e.g. ramps) in public and private buildings to guarantee access to goods and services	From EUR 979.3 million (SE) to EUR 6,583 million (DE) (five-year timeframe)
Age	Improving healthcare for older patients (e.g. improving care services, familiarisation with new legislation, training)	EUR 14.5 million per year (UK) (10-year implementation period)
Sexual orientation	Pay-out for social advantages (e.g. pensions and marriage-related benefits) only in Member States that do not already guarantee such benefits As the action would imply changes in values and behaviours, the costs are assumed to relate chiefly to awareness raising and training activities to improve access to goods and services and to social services, including healthcare	N/A

Cost of Non-Europe

The CoNE related to the lack of EU action to expand protection against discrimination to cover additional grounds is expected to be less than EUR 54.6 million²⁶⁹, depending on the time and resources involved to adopt the legislation.

Option 4: Amend the Framework Decision to include additional grounds

The Framework Decision on Racism and Xenophobia and the Audiovisual Media Services Directive do not protect victims of hate speech and crimes

²⁶⁷ The ESS was used to estimate the share of the population belonging to one or more of the following groups: religious minority, racial or ethnic minority, persons with partial or severe disability. LGBTI could not be included as this is not reported in the ESS.

²⁶⁸ See Annex 3 for information on how these estimates were calculated.

²⁶⁹ This is the point estimate for the estimated benefits.

based on **sexual orientation and gender identity**²⁷⁰. As described in Chapter 3, surveys indicate that a large share of LGBT persons have suffered from hate crime and hate speech. Some Member States have established legal protection against hate speech and have indicated homophobia or transphobia as an ‘aggravating factor’ for criminal offences. Table 30 presents an overview of protection offered by Member States in 2009. Intersex and transgender individuals are not usually protected under the ground of sex but are, however, partially, covered by the broader ground of gender identity. They are a key group to be protected, with intersex individuals, for example, representing an estimated 1.7% of the population. They are also at a high risk of victimisation (Blackless et al., 2000).

Table 30: Coverage of LGBT in hate speech and hate crime in the Member States

	Number	Member States
Hate speech		
Criminal offence to incite hatred, violence or discrimination on the grounds of sexual orientation	12	BE, DE, DK, EE, ES, IE, FR, LT, NL, PT, RO, SE
Law(s) could be used to protect LGBT persons from hate speech although it is not specifically indicated	12	CZ, EL, HR, LV, LU, HU, FI, PL, SI, SK, FI, UK
Hate crime		
Homophobia and transphobia is an aggravating factor	10	BE, DK, ES, FR, NL, PT, RO, FI, SE, UK
Law(s) could be interpreted such that homophobia and transphobia are aggravating factors, but not specifically indicated	6	CZ, DE, LT, MT, AT, SK

Source: FRA, 2009.

This option would amend the Framework Decision to extend protection to the grounds of sexual orientation and gender identity²⁷¹. This would help to address barriers to access to justice for victims of discrimination (A2), and hatred based on sexual

²⁷⁰ The [Yogyakarta Principles on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics](#) defines **gender identity** as: ‘each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms’ and **sexual orientation** as ‘each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender’.

²⁷¹ Protection would extend to lesbians, bisexuals and gays. Transsexuals are already covered on the grounds of sex.

orientation not covered by hate crime/speech legislation in all Member States (B8).

The Framework Decision could be amended by the addition of ‘sexual orientation and gender identity motivation’ as a ground falling under the offence of **incitement to violence and hatred**. In addition, it could require courts to take ‘sexual orientation and gender identify motivation’ into consideration in the **determination of penalties** for crimes other than incitement to violence and hatred. These modifications could be achieved through a recast of the Framework Decision, or by the adoption of a similar instrument amending or complementing the Framework Decision.

Amending the Framework Decision would have several immediate consequences. Firstly, it would represent the **first legal protection of gender identity at EU level**. Secondly, to the extent that it is implemented and enforced effectively, it could **deter hate crimes and hate speech** and lead to an **increased prosecution rate** of such crimes. The impacts could potentially be reinforced and multiplied through **complementarities with the Victims’ Rights Directive**.

The impacts of this policy option would be contingent on action by Member States. While some Member States currently offer protection, this policy change would see most taking on an expanded role in the fight against discrimination. Member States may respond in several ways:

- Expand the mandate of the national equality body.
- Promote awareness of the new protection(s).
- Ensure that judges are equipped to handle cases of this nature.

The resources of equality bodies should be increased to match their expanded duties and help to ensure effective implementation of the policy option. The EU could facilitate effective implementation through activities such as monitoring transposition and implementation, exchanging best practices (including criminal law tools) and developing a multi-language training module for judges, prosecutors and other legal professionals. The EU has already provided resources for such activities in relation to the implementation of the Framework Decision (see Policy Option 7 and the box below)²⁷². Expanding this support to additional grounds would thus incur only marginal additional costs.

²⁷² See also Ammer et al., 2010.

Training judges and legal practitioners²⁷³

With regard to judicial training, the Commission set a target for the participation of 700,000 legal practitioners in the EU in European judicial training activities by 2020 (European Commission, 2011). A workshop was held in the European Parliament at the request of several JURI and LIBE Committees in April 2017 to review progress and challenges (European Parliament, 2017). The workshop identified the Council of Europe training programme 'Human Rights Education for Legal Professionals' (HELP) as the driving force for legal education on fundamental rights in Europe. Since 2015, HELP has offered courses on the EU Charter of Fundamental Rights and anti-discrimination law through its e-learning platform. The EU-funded 'HELP in the 28' training project supported the development of a new course entitled 'Fight against racism, xenophobia and homophobia'²⁷⁴, which has been delivered to judicial bodies in Spain, France, Italy and Austria. HELP courses have reached more than 750 judges, prosecutors and lawyers specialised in human rights in 16 Member States. The cost per participant is estimated to be EUR 1,900, with this cost borne by the Council of Europe, with EU support.

HELP's activities are complemented by the European Judicial Training Network (EJTN), which primarily provides traditional classroom-based training to judges and prosecutors on a wide range of legal specialisations in all Member States.

Information from the implementation of the current Framework Decision may provide insights into the effectiveness of the policy option. The 2014 Implementation Report demonstrated that the Framework Decision was taking effect, with 17 countries submitting data on the number of incidents and the number of cases prosecuted and sentenced.

Effective implementation of this policy option would increase the likelihood of higher levels of benefits being realised by affected individuals and society as a whole. Hate crimes have a dire impact on the individuals directly affected and those close to them. Hate crimes are a serious violation of fundamental rights as set forth by EU Charter, in particular the right to human dignity (Article 1), the right to life (Article 2), the right to the prohibition of inhuman or degrading treatment (Article 4)

²⁷³ This text was informed by the report: European Parliament. The Training of Judges and Legal Practitioners – Ensuring the Full Application of EU Law, Workshop, 12 April 2017.

²⁷⁴ Council of Europe, Programme Help in the 28, [Two modules – homophobia and transphobia for LGBTI. Racism and xenophobia. Fighting hate speech.](#)

and the right to respect for private and family life (Article 7). In addition, impacts on individuals may include poorer health, reduced access to goods and services, and social exclusion (see Chapter 3). Lower educational achievement and poorer employment outcomes may translate into lower productivity, reduced social cohesion and loss in GDP for society. Assuming that EU action deters physical assault by 50%, an increase in GDP of EUR 48 million (EUR 12-35 million) may be gained²⁷⁵. The literature review for this study found that hate speech and hate crime had the greatest impact on mental health (Russell et al., 2011; Birkett et al., 2009; Frietas et al., 2016).

Table 31: Assessment of option 4: Amend the Framework Decision to include additional grounds

Individual benefits / fundamental rights
<p>Stronger protection of fundamental rights for LGBTI persons across the EU, as set out in the EU Charter, in particular the right to the prohibition of inhuman or degrading treatment (Article 4).</p> <p>An analysis of the ESS finds that discrimination on the ground of sexual orientation is associated with a higher risk of assault (12%) compared to other grounds²⁷⁶. With less victimisation, individuals could benefit from better mental health, lower physical injury and improved access to goods and services. Chapter 3 outlined that perceived discrimination on the grounds of sexual orientation was associated with an increased risk of experiencing assault. If the policy option halved this risk, health status would improve and income would rise up to an estimated EUR 1.5 million²⁷⁷.</p> <p>An estimated 6% of the EU population ages 15 years and up would be directly affected²⁷⁸.</p>
Economic benefits
<p>Improved mental health status could lead to higher productivity and increased GDP. Assuming that EU action deters physical assault by 50% an increase in GDP of EUR 12-35 million may be gained. ²⁷⁹ Improved access to goods and services could lead to greater social integration and productivity.</p>
Costs
<p>The costs faced by the EU to implement this option would be limited as they relate mainly to the time and resources required to amend the Decision.</p> <p>Member States that already offer protection against hate crime for LGBTI persons are unlikely to incur additional costs. For other Member States, the costs of implementing this policy option would relate primarily to additional resources for equality bodies to raise awareness, prosecute and sentence cases related to hate crimes against LGBTI, and conduct research and monitoring. The structure and scope of activities offered by equality bodies would be unaffected. The additional resources needed would depend on the current level of resources, and the mandate.</p>

²⁷⁵ It should be noted that the estimated benefits of this option focus on health and productivity effects as main impact channels of physical assault. However, hate crimes can have additional impacts at individual and society level, similar to the ones of violence against women (see Chapter 3.III.1), which are not quantified in this study.

²⁷⁶ Discrimination on the grounds of race and ethnicity is associated with a 10% higher risk while discrimination on the grounds of religion and belief is associated with a 7% higher risk.

²⁷⁷ Please refer to Annex 3 for details on these calculations of the individual benefits.

²⁷⁸ An estimated 5.9% of the EU population identifies as LGBT (Dalia Research, 2016). An estimate of intersex was not included.

²⁷⁹ Please refer to Annex 3 for details on these calculations of the economic benefits.

In 2015, the operating budgets for equality bodies ranged from EUR 87,000 to EUR 23.3 million²⁸⁰.

Training for police and prosecution on identifying and prosecuting hate crimes would be important in effective implementation of the legislation. Examples of such programmes and their costs are presented in Option 2.

Cost of Non-Europe

The CoNE related to the amendment of the Framework Decision to include additional grounds is estimated to be less than EUR 48 million (corresponding to the economic benefits of this option). By how much the CoNE is lower than EUR 48 million²⁸¹ depends on the time and resources involved to amend the Decision.

Option 5: Further gender equality in the employment sector

As discussed in Chapter 3, women earn, on average, 16.3% less than men. Typical social and work arrangements that contribute to the gender pay gap include:

- Women bearing the burden of caretaking for dependents, including children, seriously ill or dependent relatives.
- Higher likelihood that women work part-time due to caretaking responsibilities.
- Stigmatisation of fathers taking leave from employment.
- Limited access to flexible work hours²⁸².

By addressing these structural factors, this policy option can contribute towards limiting the gender pay gap (Gap B1).

While the current EU legal framework addresses both **parental leave** and **flexible work arrangements** (in terms of hours and patterns)²⁸³, significant gaps remain. Paternity leave, for example, is not guaranteed. EU law provides protection for part-time workers with respect to entitlement to equal pay, benefits, pensions and working conditions, but this protection does not counter the disproportionate representation of women among part-time workers.

²⁸⁰ These figures were obtained from the review of the [Equinet Member pages](#).

²⁸¹ This is the point estimate for the estimated benefits.

²⁸² See Olivetti & Betrongolo (2017) for more information.

²⁸³ It establishes the individual right to parental leave of at least four months. Upon return, parents have the right to request changes to their work hours and/or patterns and such requests must be duly considered by the employer, taking into account both employers' and workers' needs.

In 2010, the Commission adopted a **proposal**²⁸⁴ **on work-life balance**. The proposed Directive foresees the right to a minimum of 10 working days' **paternity leave**. It further strengthens entitlements to **parental leave** and introduces more flexibility in the types of leave available²⁸⁵. The proposal also includes flexible arrangements, such as the **right to work remotely**, and extends the right to a flexible arrangement to all parents with children up to a certain age. Lastly, the Directive proposes up to five days of **carers' leave** for workers to care for seriously ill or dependent relatives. Compensation during parental or carer's leave would be compensated at least at the level of sick pay.

An **impact assessment** of the Commission Proposal provides estimates for the costs and benefits of this policy option (European Commission, 2017). For each option, several non-legislative and legislative actions were considered. The net present value of the benefits (benefits minus costs) over the period 2015 to 2055 were calculated, and the factors driving costs and benefits are indicated. According to the assessment, the policy options that would generate the greatest quantifiable benefits for society are flexible working arrangements and parental leave. Table 33 below presents a summary of the **estimated costs and benefits** for each type of policy with respect to companies, Member States and the economy. In our assessment, we present the annual net benefits, based on the estimates for the period 2015-2055 (see Table 32).

Considerable benefits would be generated by establishing paternity leave, although these are not fully reflected in the quantification. Such benefits would imply that men, as well as women, would be absent from work for a period after the birth of a child²⁸⁶. The cost-benefit analysis here focuses on the period of paternity leave; however, the greatest benefits may accrue subsequently. Research suggests that the balance of unpaid care work can be altered precisely at the point at which new caring responsibilities appear, as in the case of the birth of a child (OECD, 2017). Paternity leave can also support the recovery of women and reduce the risk of postnatal

²⁸⁴ [Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM/2017/0253 final.](#)

²⁸⁵ The Proposal includes four months of non-transferable parental leave and minimum income during the leave period.

²⁸⁶ Uptake of paternity and paternal leave by men is low in countries where such policies exist. To ensure the effectiveness of such policies, it is important either to provide men with incentives to exercise their leave options, or to make such leave mandatory. These considerations are taken into account in the impact assessment.

depression. The balance of unpaid care work could then be sustained with the support of other policies, such as parental and carers' leave (Redshaw & Henderson, 2013; Sejourne et al., 2012). Paternity leave may improve retention and productivity in the labour force. A number of studies point to the detrimental impact of gender inequality and the gender pay gap, in particular on productivity and economic growth (Cuberes & Teignier, 2014; Cuberes & Teignier, 2016; Pollitt et al., 2017). This suggests an academic consensus on the fact that gender inequality has a negative effect on economic growth (see Chapter 3 for more information). Policies to further gender equality could therefore contribute to increased productivity for men and women, as well as a more balanced distribution of work and unpaid care. This would also facilitate the full integration of women into the labour market and reduce their risk of poverty (OECD, 2016; Vaganay et al., 2016).

Table 32: Assessment of Option 5: furthering gender equality in the employment sector

Individual benefits / fundamental rights
Individuals benefit from all of the elements proposed, each of which promotes employment and social inclusion. Parental leave offers the greatest benefit in terms of real income (European Commission, 2017). In addition, this option promotes work-life balance and improves well-being for both parents as a result of having more time to spend with their family. Improved flexibility at work allows women to remain in the workplace, thereby reducing their pay gap and poverty risk.
Economic benefits
At the societal level, benefits accrue from increased labour force participation and productivity.
Costs
Hiring and training new workers are expected costs for businesses but these would be offset by long-term retention of workers. Compensation in the form of benefit payments is also expected to drive costs for Member States.
Cost of Non-Europe
The CoNE for promoting gender equality in the employment sector corresponds to the missed net benefits accruing from the introduction of maternity, paternity, parental and carer's leaves (EUR 0.1-3 billion annually) and of flexible working arrangements (EUR 7-16 billion annually)

²⁸⁷ The Impact Assessment study reports the net benefits over the 2015-2055 period are equal to EUR 5.6-130 billion for all forms of leave and to EUR 285-653 billion for flexible working arrangements (European Commission, 2017).

Table 33: Cost-benefit analysis findings for policy options to further gender equality

Policy change:	Net benefits (NPV 2015-2055)			
	Individuals	Companies	Member States	Society
Maternity leave	Increased employment: 4,000-5,000 new jobs by 2030 Increase in real income: EUR 0.2 - 0.6 billion by 2030	EUR 1,029 million Worker retention Install breastfeeding facilities in companies	EUR -2.4 to 5.8 billion Higher payments for maternity leave	EUR 8.3 - 13.3 billion Increased labour market participation particularly for working mothers
Paternity leave	Minimal impact on employment and net income	EUR -464 million to -7.8 billion Additional recruitment and training	EUR -1.1 to -2.4 billion Payment of paternity benefits	EUR -2.4 billion to -0.2 billion Increased employment Reduction in working hours
Parental leave	Increased employment: 6,000-55,000 by 2030 Change in real income: EUR -0.4 to -4.8 billion	EUR -233 million to -39.8 billion Short-term recruitment and long-term retention	EUR -1.9 billion to -4.2 billion Lower tax revenue	EUR -4.8 billion to 112 billion Increase in labour supply
Carer's leave	Increased employment: 6,000-34,000 by 2030 Increase in real income: EUR 0.1-1.7 billion	EUR -304 to 1,078 million Short-term recruitment and long-term retention	EUR -911 million to 23.8 billion Payment of carers' benefits	EUR -0.3 billion to 45.6 billion Changes in labour market participation and increases in productivity
Flexible working arrangements	Increased employment: 15,000-1 million by 2030 Change in real income: EUR -3.1 to 5.7 billion	EUR -126.4 to 3.1 billion Increased retention Adjustment costs	EUR 81.3 - 309.1 billion Increased labour market production. Reduction in hours worked	EUR 285.4 - 653.1 billion Increased tax revenue

Source: Impact Assessment for the Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, April 2017.

Option 6: Increase protection by expanding the application of positive action and reasonable accommodation

Achieving true equality of opportunity requires not only the prohibition of direct discrimination, but also the establishment of positive actions to ensure that individuals at risk of discrimination are afforded the same conditions and opportunities as their peers. Positive action and the provision of reasonable accommodation measures aim to place disadvantaged groups at a level equal to that of non-disadvantaged groups, thereby contributing to a more inclusive and tolerant society.

This option would help to address the lack of reasonable accommodation requirement in employment, and barriers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive (B9, B14, A1).

The divergence in Member State application of optional **positive action** provisions in EU equality legislation constitutes an important barrier to the effective implementation of the Equality Directives (Tymowski, 2016). In the absence of such measures, it becomes very difficult to promote the socioeconomic inclusion of disadvantaged groups and to achieve factual equality between different groups. Indeed, in situations of deep-rooted discrimination and exclusion, it may be close to impossible without the implementation of positive action measures. Positive action for Roma in the education sector, for example, may help to reduce discrimination and improve their integration into society. Local authorities in the UK must ensure that education is available for all children of compulsory school age (5-16 years old) residing temporarily or permanently in the area. Traveller and Roma children are therefore included (EU Commission, 2014). A number of examples of positive action measures are available from the Member States (and other countries) that could inform the development of this policy option (EU Commission, 2009).

Examples from the Member States – positive action to reduce discrimination in employment²⁸⁸

In 2017, the Brussels Parliament introduced an ordinance allowing labour inspectors to use 'discriminatory tests'. Two types of tests are permitted. In the first, CVs that are equivalent except for one factor related to discrimination (for example, age, ethnic origin and disability) can be sent to employers. The second test would allow for 'mystery calls' where the labour inspector places calls to services to see if discriminatory requests are fulfilled. This test would primarily focus on companies (*entreprises de titre-service*) that facilitate arrangements between individuals looking for domestic help and housekeepers. The 'discriminatory tests' must meet several conditions and should also investigate complaints and reporting.

²⁸⁸ Bribosia E., 2017, [The Brussels Parliament adopts an ordinance setting up new anti-discrimination tools on the job market](#), European Network of legal experts in gender equality and non-discrimination.

The Gender Recast Directive²⁸⁹, the Racial Equality Directive²⁹⁰, the Employment Equality Directive²⁹¹ and the Proposed Equal Treatment Directive²⁹² all contain a similar provision on positive action, which stipulates that '(w)ith a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to' the discrimination grounds protected by the Directives.

Member States may thus adopt positive action based on racial or ethnic origin in **various areas of socioeconomic life**, but only in the employment sector for the discrimination grounds of sex, religion and belief, disability, age and sexual orientation. The adoption of the Proposed Equal Treatment Directive would expand positive action based on all discrimination grounds to a range of sectors, thus ensuring that equality is promoted equally across different discrimination grounds.

Some Member States consider positive action an exception to equal treatment while others consider it an effective means to achieve equality (Burri & Prechal, 2009). International supervisory bodies have pointed out that, in certain situations, the adoption of positive action may be necessary to fight structural or indirect discrimination. The absence of a **legal obligation at EU level to adopt positive action** in certain situations limits its effectiveness in achieving full equality (Mulder, 1999). Similarly, participants at a seminar on positive action, organised by ENAR in 2007, agreed that there was an urgent need for a **more proactive approach to positive action at EU level** (ENAR, 2007).

One of the most **common misconceptions** limiting the effectiveness of positive action is the notion that positive action equals strict quotas, whereby preferential access to certain goods or services is given to disadvantaged groups solely on the basis of a protected characteristic. In fact, the opposite is true (De Schutter, 2007). This human rights instrument embraces a wide range of special temporary measures of varying

²⁸⁹ Article 3 Gender Recast Directive, taken together with Article 157(4) TFEU.

²⁹⁰ Article 5 Racial Equality Directive.

²⁹¹ Article 7 Employment Equality Directive.

²⁹² Article 5 Proposed Equal Treatment Directive.

intensity, many of which do not include preferential treatment for members of the target group. **Awareness raising and the exchange of best practices** are essential in this regard (Tymowski, 2016).

Currently, EU anti-discrimination law only includes the possibility for employers to **reasonably accommodate** the needs of persons with disabilities. The Proposed Equal Treatment Directive expands this option to other sectors, such as the provisions of goods and services, including housing and education. In addition, some Member States provide reasonable accommodation to persons with disabilities beyond employment (European Commission, 2016). Other protected characteristics, however, are ignored in existing or proposed EU legislation.

The concept of reasonable accommodation has **much broader potential** than its current use in EU anti-discrimination law (Tymowski, 2016). Extending the duty to reasonably accommodate the needs of **other protected groups** would enhance cultural diversity and promote the socioeconomic inclusion of different groups in European society²⁹³. This is particularly important for the discrimination ground of **religion** in light of rising levels of Islamophobia in the EU (ECRI, 2016). For instance, adapting the working hours of Muslim workers during Ramadan would be a significant step towards greater inclusion of Muslims in the workforce (Tymowski, 2016). The effects of the economic inclusion of Muslims would promote their social inclusion in parallel. As a result, not only would Muslims themselves enjoy the effects of such reasonable accommodation on religious grounds, but so, too, would employers, the economy and society as a whole.

Table 34: Assessment of option 6: increase protection by expanding the application of positive action and reasonable accommodation

Individual benefits / fundamental rights
The main benefit for individuals is greater social inclusion. Positive action and reasonable accommodation can help to bring protected individuals to the same level as their peers. Reasonable accommodation may support the employment of racial, ethnic and religious minorities in the labour force, leading to higher income and better social integration. Positive action for these groups in the sector of education may lead to better educational outcomes. Reasonable accommodation and positive action in other sectors may reduce psychological

²⁹³ European Parliament Resolution of 15 September 2016 on application of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 2015/2116 (INI), paragraph 17.

stress.
Economic benefits
Reasonable accommodation and positive action in the area of education and employment have the potential to increase labour force participation, productivity and economic output (GDP). In other sectors, the benefits could be reflected in stronger social cohesion and less residential segregation (in the case of housing).
Costs
In the United States, the law requires that employers accommodate the religious beliefs of their employees unless to do so represents an undue hardship. Examples of such reasonable accommodation practices include flexible scheduling, shift substitutions or swaps, and modifications to workplace policies and practices ²⁹⁴ . The costs of such practices are minimal by definition. Flexible working arrangements, as mentioned in the Commission proposal on work-life balance, may also be relevant under this policy option. Other costs could stem from changing attitudes and beliefs, e.g. through awareness raising and training activities.
Cost of Non-Europe
The CoNE for expanding the application of positive action and reasonable accommodation is the lost potential for social integration, which is expected to exceed the EU costs of supporting this option leading to a positive net benefit.

Option 7: Use of EU funds to further equality

Several existing EU funding mechanisms could be leveraged to effectively support legal instruments with the aim of fighting discrimination. The policy option focuses on two EU funding streams in the 2014-2020 period, whose specific objectives including combatting discrimination: the Rights, Equality and Citizenship (REC) Programme²⁹⁵ and the European Social Fund (ESF)²⁹⁶. It is important to note that these two funds have different objectives and management structures, as highlighted in Table 35. Possible actions that could be supported by EU funds include awareness campaigns, judicial training (see, for instance, Table 25 under option 2) and training to support the social inclusion of vulnerable groups. The role of EU funding can be important in addressing the lack of reasonable accommodation for religious diversity by supporting relevant training and awareness-raising activities in the workplace (ENAR, 2011).

Table 35: Overview of the REC Programme and the ESF

Fund	Management	Budget 2014-2020	Objectives	Areas covered
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²⁹⁴ U.S. Equal Employment Opportunity Commission, available at: <https://www.eeoc.gov/laws/types/religion.cfm>

²⁹⁵ The REC Programme 2014-2020 replaces three previous programmes: Daphne III on violence against women, young people and children; Fundamental Rights and Citizenship, aiming to support the respect of fundamental rights and to fight against racism, xenophobia and anti-Semitism and improve tolerance in the EU, among others; and PROGRESS Anti-discrimination and Gender Equality strands.

²⁹⁶ Of the five ESIF, the ESF seems the most relevant to address discrimination and inequality, as targets interventions promoting social inclusion and equality.

REC Programme	Centrally managed, calls for projects under COM	EUR 439 million ²⁹⁷	Promoting equality and non-discrimination	Hate crime, access to goods and services, access to healthcare
ESF	Shared management between COM and national managing authorities	EUR 83 billion, of which EUR 31 billion is for 'Social inclusion, fight against poverty and all forms of discrimination' ²⁹⁸	Supporting creation and improving quality of jobs, supporting social inclusion Fighting discrimination as horizontal principle ²⁹⁹	Employment, education (including life-long learning)

According to the thematic concentration rule, 20 percent of ESF resources in each Member State (equivalent to EUR 16.6 billion across the EU) must be spent on the 'Social inclusion, fight against poverty and all forms of discrimination' theme. However, the overall amount dedicated to the fight against discrimination is relatively small (EUR 0.6 billion, or 0.7% of overall ESF allocation) (Caimi, 2015). Nevertheless, many interventions co-funded by the ESF (but not classified strictly in this category of spending) contain measures to support vulnerable social groups, including groups at risk of discrimination (European Commission, 2010).

During the 2007-2013 financing period, social inclusion interventions under the ESF benefited almost 10 million people in the EU (McGregor & Sutherland, 2012). Although the majority of the interventions targeted the unemployed (27%), people with disabilities (7%) and women (7%) were among the most represented vulnerable groups. People aged 55 years and over represented 3% of beneficiaries, and Roma people represented 0.3% while other racial minorities represented another 1.2%³⁰⁰. Assuming the funds achieve the projected results, these beneficiary figures suggest that more attention could be paid to minority groups. In addition, interlinkages between the REC programme and the ESF could be promoted in order to generate synergies. Successful activities financed by REC could be replicated under the ESF, which has a substantially larger budget.

²⁹⁷ Data based on DG Justice, 2016.

²⁹⁸ Data on allocations based on the open data portal on ESIF: European Structural and Investment Fund, European Social Fund, viewed 28 September 2017 [European Social Fund data](#).

²⁹⁹ Fighting against discrimination has become a horizontal principle that applies to all five ESIF since the adoption of the Common Provision Regulation on ESIF (CPR) in December 2013.

³⁰⁰ Authors' calculation based on data from McGregor & Sutherland (2012).

The ESF can be viewed as complementary to the legal options, and a means to support their implementation. The funds help to finance anti-discrimination measures and assistance for vulnerable population groups who may be impacted by discriminatory practices in their everyday lives. The ESF particularly supports the following types of intervention:

- **Training** and coaching programmes for people at risk of social exclusion, aiming to integrate them into the labour market and other areas of social life.
- **Provision or adjustment of accommodation** for the socially excluded (on different grounds).
- Socioeconomic **integration** of marginalised communities, such as the Roma.
- **Educational and integration** programmes for those discriminated against.
- Public **awareness programmes** to counteract discrimination.
- **Support for NGOs** active in the area of non-discrimination.
- Strengthen the competence of **public administration bodies** to organise or monitor support programmes for people at risk of social exclusion.

Given their structures and mandates, the ESF can help to address direct and indirect discrimination in the areas of education and employment in particular, while REC projects can play a role in supporting anti-discrimination activities in other areas (e.g. health, access to goods and services). Again, this option is in addition to legal instruments. Anti-discrimination legislation and its effective implementation at Member State level are best suited to address the existing gaps and barriers comprehensively. EU funds can improve the effectiveness of social policies and anti-discrimination measures implemented by the Member States. As the implementation of the ESF falls under the rule of shared responsibility between the EU and Member States, the EU role is limited to influencing the allocation of funds towards certain objectives. Nevertheless, the EU institutions has a role in driving an equality agenda at the planning stage for the ESF strategy and budget, which are negotiated and agreed between the Member States represented in the Council of the European Union, the European Parliament and the European Commission.

The **effectiveness** of the ESF in fighting discrimination depends on the **priorities and management practices** of the respective managing authorities in each Member State and on the involvement of the relevant stakeholders in the disbursement of EU funding. According to a survey conducted by Social Platform (Caimi, 2015), NGOs in many Member States were not involved in preparing Partnership Agreements setting out national priorities for spending EU funds in the 2014-2020 period. In Hungary for example, organisations promoting the rights of LGBT persons were not given the opportunity to become involved in the process, even after a formal complaint was lodged with both the local authorities and the Commission (Caimi, 2015). Greater **involvement of NGOs and other civil society actors** promoting equality initiatives would be a valuable support measure in exercising this option.

This policy option would help to address barriers to the effective national implementation of the Racial Equality Directive and the Employment Equality Directive (A3), barriers to inclusive education (B12) and independent living (B11), the gender pay gap (B1), violence against women (B2) and barriers to access to justice for victims of discrimination (A2). This policy option could also help address online hatred and hate crime (gaps B4 and B8) through the training of law enforcement officials. This is discussed in Option 3.

Table 36: Assessment of option 7: using EU social funds to further equality

Individual benefits / fundamental rights
<p>This policy option can support better implementation of the anti-discrimination legislative framework, thereby leading to better protection of fundamental rights and protection from discrimination. EU funding ensures that support is available for vulnerable population groups even in financially constrained Member States that might not otherwise invest in measures to prevent discriminatory practices. At least 65% of the EU population ages 15 years and up would be affected³⁰¹.</p>

³⁰¹ ESS data were used to estimate the share of the population belonging to one or more of the following groups: female, religious minority, racial or ethnic minority, persons with partial or severe disability. LGBT could not be included as these data are not reported in the ESS.

Economic benefits

Enhancing the use of the ESF and creating synergies between the ESF and the REC Programme could harness the economic benefits from a more equal society (see Table 20). An important condition would be effective use of the funds.

The ex-post evaluation of the ESF 2007-2013 suggests that the ESF social inclusion measures provided employment support to disadvantaged groups (Panteia et al., 2016). ESF funding also contributed to the implementation of measures aiming at greater gender equality, such as childcare provision (Lodovici et al., 2016b). Earlier programmes were also found to be effective in achieving their objectives. Awareness raising, training and research activities funded under Daphne III were found to be more effective at protecting women, young people and children from violence than direct support to victims (ICF & Milieu, 2015). Several anti-discrimination projects under PROGRESS influenced legislative and policy action in the area of equality in some Member States (ICF, 2014).

Costs

The main cost associated with this option is the opportunity cost of using the funds for measures on anti-discrimination and equality rather than for other purposes. This cost would be particularly relevant for the ESF, as fighting discrimination is a primary objective of the REC programme.

Cost of Non-Europe

The CoNE for the use of EU social funds to further equality is unclear due to the trade-offs between various, diverse objectives of the EU funds.

Conclusions

This study set out to investigate the Cost of non-Europe in the area of equality and the fight against xenophobia. To do so, it identified 13 key gaps and barriers in EU legislation and action relevant to discrimination on the following grounds: sex, race and ethnicity, religion and belief, sexual orientation, age and disability. Three of these gaps and barriers were horizontal, meaning that they were relevant to several grounds. The remaining gaps and barriers were specific to a ground. The study proposes seven policy options that have potential to address some of these gaps and barriers to some degree.

A combination of approaches including desk review, econometric analysis and economic analysis was taken to assess the impact channels stemming from these gaps and barriers and their impacts on individuals and society. In addition, the implications for the fundamental rights for individuals was assessed. This investigation provided a basis to characterize the likely costs and benefits for each of the seven policy options.

The study has three main conclusions for policymakers in the EU and the Member States:

- Discriminatory behaviours on all grounds can infringe on the fundamental rights of individuals and can contribute to a wide range of impacts in their everyday lives that can be reflected in the sectors of employment, housing, healthcare and education. This study provides evidence underscoring the wide range of impacts due to discrimination and their magnitude.
- There are a range of policy options available to policymakers at the EU and Member State levels. These options include legislation action as well as cooperation. Options can help reduce the prevalence of discriminatory behaviours or facilitate access to justice for victims. Each option has potential to reduce the costs associated with one or more gaps and barriers.
- EU action in the area of equality and non-discrimination is substantial. However, little is known about its effectiveness, particularly outside the ground of sex. The limited information available about the implementation and enforcement of existing EU legislation suggests that more can be achieved through implementation and enforcement (Option 2). In addition, more evaluations and research of EU action is needed to identify where there is additional EU added value to gain.

The study draws on an extensive literature on the impacts of discrimination. However, there were notable gaps outside the sector of employment and on the grounds of race, ethnicity and religion. More research is needed on these areas particularly in the European context. Despite these challenges, the study findings suggest that the cost of non-Europe is significant and that the EU can take further action that will generate benefits to individuals and society.

Table 37 below summarises the findings of this study by showing how the policy options described in Chapter 4 can address the gaps and barriers identified in Chapter 2. In particular, the potential impact of each option (see last column) shows the extent to which the policy options address the gaps and barriers and contribute to mitigating discriminatory practices. For instance, introducing new legislation might not itself be sufficient to reduce discriminatory practices, as the evaluation report on the Equal Employment Directive suggests (Tymowski, 2016). Rather, improving enforcement and implementation can be assumed to have the strongest impact, while expanding the current anti-discrimination legislation has a smaller impact, as its implementation is not assured. A combination of measures to encourage better implementation, together with additional legislative measures, would also be effective (see gaps B6 and B7).

Table 37: Overview of gaps/ barriers, their impacts and relative policy options to address them

Gap/ barrier	Description ²	Impact channels	Impacts on individuals	Impacts on society	Policy options addressing the gap/ barrier
A1 (horizontal)	No protection outside of employment	<ul style="list-style-type: none"> Quality of goods and services received Psychological damage 	<ul style="list-style-type: none"> Poorer housing conditions: 5% (religion and belief) Less tertiary education: 5% (disability) Lost earnings due to poor health status: EUR 783 - 854 million (sexual orientation, age and disability) 	<ul style="list-style-type: none"> GDP loss: EUR 1.05 - 1.15 billion Lost tax revenue: EUR 376-413 million 	<ul style="list-style-type: none"> Option 1 (accession to the ECHR), option 3 (expand protection against discrimination), option 6 (expand application of positive action and reasonable accommodation)
A2 (horizontal)	Barriers to access to justice for victims of discrimination	<ul style="list-style-type: none"> Instilled fear and insecurity Social exclusion Psychological damage 	<ul style="list-style-type: none"> Physical assault: 7-12% higher risk (race/ ethnicity, religion/belief and sexual orientation) Lost earnings: Up to EUR 355 million Poor health status: 2.1% higher risk due to assault 	<ul style="list-style-type: none"> GDP loss: EUR 25-545 million Lost tax revenue: EUR 9 - 197 million 	<ul style="list-style-type: none"> Option 2 (Improve implementation and enforcement) Option 4 (Amend the Framework Decision)
A3 (horizontal)	Barriers to the effective national implementation of the Racial Equality Directive	<ul style="list-style-type: none"> Quality of goods and services received Psychological damage Social exclusion Reluctance to work 	<ul style="list-style-type: none"> Economic hardship: 17.5% higher risk Poorer health status: 16% increased risk Lost earnings due to lower employment: EUR 1.8-7.8 billion Residential segregation: 5% higher risk Unemployment: 5% higher risk Assault: 9.7% higher risk 	<ul style="list-style-type: none"> GDP loss: EUR 2.4 - 10.5 billion Loss in tax revenue: EUR 0.85 - 3.8 billion Healthcare costs: EUR 36 - 57 million 	<ul style="list-style-type: none"> Option 2 (Improve implementation and enforcement)
	Barriers to effective national	<ul style="list-style-type: none"> Social exclusion Reluctance to work 	<ul style="list-style-type: none"> Lost earning due to higher risk of unemployment: EUR 	<ul style="list-style-type: none"> GDP loss: EUR 224 - 305 billion 	

Gap/ barrier	Description ²	Impact channels	Impacts on individuals	Impacts on society	Policy options addressing the gap/ barrier
	implementation of the Employment Equality Directive		182 - 228 billion (age and disability) <ul style="list-style-type: none"> • <i>Economic hardship</i>: 14-20% higher risk (age and disability) 	<ul style="list-style-type: none"> • <i>Loss in tax revenue</i>: EUR 88-110 billion 	
B1 (sex)	Gender pay gap	<ul style="list-style-type: none"> • Earnings • Career advancement 	<ul style="list-style-type: none"> • <i>Lost earnings</i>: EUR 241-379 billion • <i>Poverty risk</i>: 59% of the age 55+ population at risk of poverty are women • <i>Economic dependence</i>: EUR 146-321 million due to increased risk of intimate partner violence 	<ul style="list-style-type: none"> • <i>GDP loss</i>: EUR 540 billion (in 2030) • <i>Tax revenue loss</i>: EUR 116-183 billion • <i>Productivity loss</i>: EUR 318-350 million • <i>Healthcare costs</i>: EUR 223-246 million 	Option 5 (Further gender equality in employment)
B2 (sex)	Violence against women	<ul style="list-style-type: none"> • Instilled fear and insecurity • Physical injury • Move residence 	<ul style="list-style-type: none"> • <i>Personal costs</i>³: EUR 7 billion • <i>Specialised services</i>⁴: EUR 2 billion • <i>Physical and emotional impairment</i>: EUR 134 billion 	<ul style="list-style-type: none"> • <i>Health services</i>: EUR 14 billion • <i>Criminal justice system</i>: EUR 32 billion • <i>Civil justice system</i>: EUR 2 billion • <i>Social welfare</i>: EUR 9 billion • <i>GDP loss</i>: EUR 30 billion 	Option 1 (accession to the ECHR), although there is limited EU competence.
B3 (race and ethnicity)	Ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia	<ul style="list-style-type: none"> • Social exclusion • Psychological status • Quality of goods and services 	<ul style="list-style-type: none"> • <i>Lost earnings</i>: EUR 1.8-8 billion • <i>Assault</i>: 9.7% increased risk • <i>Housing</i>: 4% higher risk of poor housing conditions 	<ul style="list-style-type: none"> • <i>GDP loss</i>: EUR 2.4-10.7 billion • <i>Tax revenue loss</i>: EUR 854 million – EUR 3.9 billion 	Option 4 (Amend the Framework Decision)

Gap/barrier	Description ²	Impact channels	Impacts on individuals	Impacts on society	Policy options addressing the gap/ barrier
B4 (race and ethnicity)	Online hatred insufficiently addressed by the Framework Decision on Racism and Xenophobia	<ul style="list-style-type: none"> Reluctance to work Employment 	<ul style="list-style-type: none"> <i>Residential segregation</i>: 5% higher risk Unemployment: 5% higher risk Economic hardship: 17.5% higher risk 	<ul style="list-style-type: none"> <i>Productivity loss</i>: EUR 21-34 million <i>Healthcare costs</i>: EUR 15-23 million 	<p>Option 4 (Amend the Framework Decision)</p>
B5 (race and ethnicity)	Barriers to the effective national implementation of the Racial Equality Directive (<i>overlap with A3</i>)				<p>Option 2 (Improve implementation and enforcement)</p>
B6-B7 (religion)	Lack of reasonable accommodation requirement in education	<ul style="list-style-type: none"> Reluctance to work Career progression status 	No quantitative estimates obtained for these impact channels.	No quantitative estimates obtained for these impact channels.	<ul style="list-style-type: none"> Option 2 (Improve implementation and enforcement) Option 6 (expand application of positive action and reasonable accommodation)
B8 (sexual orientation)	Hatred based on sexual orientation not covered by hate crime/speech legislation in all Member States	<ul style="list-style-type: none"> Psychological status Educational achievement Access to housing Social exclusion Physical injury 	<ul style="list-style-type: none"> <i>Lost earnings</i>: EUR 19-53 million <i>Lost pension income</i>: EUR 1.5-3.1 billion <i>Limited access to goods and services (housing)</i>: EUR 4-8.1 billion 	<ul style="list-style-type: none"> <i>GDP lost</i>: EUR 25-71 million <i>Tax revenue lost</i>: EUR 9-26 million 	<p>Option 4 (Amend the Framework Decision)</p>
B9 (sexual orientation)	No protection outside employment; discrimination in access to healthcare (<i>overlap with A1</i>)				<p>Option 3 (expand protection against discrimination)</p>

Gap/ barrier	Description ²	Impact channels	Impacts on individuals	Impacts on society	Policy options addressing the gap/ barrier
B10 (age)	No protection outside employment	<ul style="list-style-type: none"> • Access to health care • Health status • Access to educational scholarships 	<ul style="list-style-type: none"> • <i>Lost earnings</i>: EUR 318 million to 1.1 billion • <i>Loss of scholarships</i>: EUR 6.3 - 8.6 billion 	<ul style="list-style-type: none"> • <i>GDP lost</i>: EUR 427 million to 1.5 billion • <i>Tax revenue lost</i>: EUR 88- 110 billion 	Option 3 (expand protection against discrimination)
B11-B12 (disability)	<ul style="list-style-type: none"> • Barriers to the right to independent living • Barriers to inclusive education 	<ul style="list-style-type: none"> • Social exclusion • Educational achievement • Access to goods and services • Barriers to employment 	<ul style="list-style-type: none"> • <i>Higher costs of living</i>: EUR 15-41 billion • <i>Lower earnings</i>: EUR 529-- 861 million 	<ul style="list-style-type: none"> • <i>GDP lost</i>: EUR 0.71- 1.2 billion • <i>Tax revenue lost</i>: EUR 255-416 million 	Option 2 (Improve implementation and enforcement)
B13 (disability)	No protection outside employment, including reasonable accommodation (<i>overlap with A1</i>)				<ul style="list-style-type: none"> • Option 3 (expand protection against discrimination) • Option 6 (expand the application of positive action and reasonable accommodation)

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ANNEXES

1. EU COMPETENCE TO ACT IN THE AREAS OF EQUALITY, RACISM AND XENOPHOBIA

	Shared competence Article 4 TFEU	Coordination competence Article 5 TFEU	Supporting competence Article 6 TFEU	Specific legal bases in TFEU
Employment	√	√		<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation Article 8: eliminate inequality between men and women Article 153: equality between men and women with regard to labour market opportunities and treatment at work Article 157: Equal pay and equal treatment for male and female workers
Access to goods and services	√		√	<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation Article 8: eliminate inequality between men and women
Social security	√	√		<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation Article 8: eliminate inequality between men and women
Social advantages	√	√		<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation Article 8: eliminate inequality between men and women
Criminal law	√			<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation Article 8: eliminate inequality between men and women Articles 82-85: coordination of judicial cooperation in criminal matters; adoption of minimum rules defining criminal offences of particularly serious crimes with a cross-border dimension; cooperation between national authorities
Education			√	<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation Article 8: eliminate inequality between men and women
Transport	√			<ul style="list-style-type: none"> Articles 10 and 19: combat discrimination on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation

- | | | | | |
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| | | | | <ul style="list-style-type: none">• Articles 90-100 TFEU: legal basis applying to transport by rail, road and inland waterway: (a) common rules; (b) the conditions under which non-resident carriers may operate transport services within a Member State; (c) measures to improve transport safety; (d) any other appropriate provisions. Legal basis for appropriate measures for sea and air transport |
|--|--|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. ANALYSIS OF ECONOMIC AND INDIVIDUAL IMPACTS

This Annex presents an overview of the calculation of estimates for each economic and individual impact presented in Chapter 3, which followed the methodology described in that chapter. A combination of analytical approaches was employed, including econometric analysis, statistical analysis and economic modelling. The analysis drew on estimates and findings from the research literature, as well as Eurostat data. Firstly, the econometric approach (using the European Social Survey (ESS)) is presented, together with the relevant findings by area (e.g. education, employment, health). The calculations behind the costs related to individual and economic impacts by ground of discrimination (e.g. sex, race and ethnicity), are then explained.

European Social Survey (ESS)

An extensive econometric analysis was undertaken, using data from the European Social Survey (ESS), a cross-national survey conducted every two years via face-to-face interviews. The survey draws on probability samples that are representative of the population aged 15 and over living in private households. The survey covers topics such as politics, subjective well-being, social exclusion, perceived discrimination, immigration, health and socio-demographic profile³⁰². It is fielded every two years and, at the time of the analysis, the most recent available data were from 2014. Thirty-six countries have participated in at least one wave of the survey since it began in 2001.

This analysis drew on three waves of the ESS – 2010, 2012 and 2014 – and limited the sample to 18 EU countries³⁰³ (non-EU countries were excluded from the model). Where key variables were not available for earlier years, some of the analysis focused solely on the 2014 wave. The econometric approach follows that taken by a published study in the academic literature on the impacts of perceived discrimination on self-reported health (Alvarez-Galvez & Salvador-Carulla, 2013). A similar econometric approach was taken, and a similar set of control variables were incorporated. The methodology of the econometric analysis, like that of Alvarez-Galvez & Salvador-Carulla (2013), **identifies correlations and not causal relationships**. The relationships identified may indeed be causal, but there may also be reverse causality or omitted variable bias. As the main variables of interest are perceptions of discrimination, and these are likely to depend on many things that cannot be controlled for or observed, there may be omitted factors that lead to the outcome observed. For example, individuals who perceive discrimination may have a higher risk of unemployment. Perhaps this can be attributed to discrimination, but it may also be due to other factors such as skills that could not be controlled for or observed.

Similar to Alvarez-Galvez & Salvador-Carulla (2013), the analysis chiefly used logistic or ordered logistic regression. All of the dependent variables were binary or ordinal. The marginal effects, or the increased probability due to a factor, were computed from the coefficient estimates. To account for correlation between respondents within countries, the error terms in the regressions were clustered at country level. Robust standard errors were applied to account for heteroscedastic variances in the models, which was tested using the Breusch-Pagan test for heteroscedasticity. The combination of two sampling weights available from the ESS data files were applied to all descriptive and multivariate analyses: the post-stratification weights and the population size weights. This combination is recommended by the managers of the ESS for multi-country analyses (ESS, 2014). The post-stratification weights reduce sampling error, i.e. the likelihood of inclusion of each respondent, and potential non-response bias, while population size weights account for the different population sizes of countries included in the report (ESS, 2014).

Results from the econometric estimates were considered statistically significant if the p-value was less than 0.05, although the 0.1 level was considered where sensitivity analysis suggested that the result was sufficiently robust. The Chi-square (X^2) test was used to assess the statistical significance of differences in

³⁰² The data are available at: <http://www.europeansocialsurvey.org/>

³⁰³ The analysis considered 18 EU countries: Belgium, Czech Republic, Denmark, Germany, Estonia, Ireland, Spain, France, Lithuania, Hungary, Netherlands, Austria, Poland, Portugal, Slovenia, Finland, Sweden, United Kingdom. Other EU countries are not part of the ESS.

cross-tabulations for two categorical variables, e.g. the prevalence of Islamophobia by year.

The econometric analysis considered several dependent variables, which represent the possible effects resulting from discrimination on different grounds. The following dependent variables were considered:

Health status: A measure of health status was constructed based on the ESS question C7 'How is your health (physical and mental) in general? Would you say it is: ...very good; good; fair; bad; very bad?'. Regressions with this dependent variable were undertaken using an ordered logit specification, due to the ordinal nature of the variable.

Access to healthcare: A measure of access to healthcare was constructed based on the ESS question E14 'In the last 12 months, were you ever unable to get a medical consultation or the treatment you needed for any of the reasons listed on the card'? Reasons on the card included inability to pay or take time off work, the waiting list was too long, there were no appointments, the individual had other commitments, and the treatment needed was not available. A logistic model was used for this binary dependent variable.

Hardship: A measure of economic hardship was constructed based on the ESS question F42 'Which of the descriptions on this card comes closest to how you feel about your household's income nowadays?' Response options include: 'Living comfortably on present income; coping on present income; finding it difficult on present income; and finding it very difficult on present income'. Given the distribution of responses, the two former were grouped in a single category (medium-high income) and the latter two were grouped in another category (low income), resulting in a binary measure. A logistic model was used for this dependent variable.

Education: A measure of education level was constructed based on the ESS question F15 'What is the highest level of education you have successfully completed?' A binary measure was constructed, being equal to '1' if the individual completed ISCED4³⁰⁴ level of education or higher (post-secondary and tertiary levels), and '0' if the individual completed an education level lower than ISCED4. A logistic model was used for this dependent variable. In addition, the ESS asks respondents to report the number of years' education they have completed (question F16) in full-time equivalents, including years of compulsory schooling.

Violence: A measure of violence was constructed based on the ESS question C5 'Have you or a member of your household been the victim of a burglary or (physical) assault in the last 5 years?' A logistic model was used for this dependent variable.

Poor housing conditions: A measure of poor housing conditions was constructed based on the ESS question F14a 'Do any of the problems listed on this card apply to your accommodation?' Possible problems listed on the card included mould or rot in windows, doors or floors, damp walls or leaking roof, lack of indoor flushing toilet, lack of bath and shower, overcrowding, extremely hot or extremely cold. A logistic model was used for this dependent variable.

Employment: A measure of paid employment was constructed based on the ESS question F17a 'Which of these descriptions applies to what you have been doing for the last 7 days?' Possible response options included paid work, education, unemployed, permanently sick or disabled, retired, in community or military service, and housework. A binary measure was constructed, being equal to '1' if the respondent reported paid work, community service or military service.

Residential segregation: A measure of residential segregation was constructed based on the ESS question D12: 'How would you describe the area where you currently live?' Possible response options included an area where almost nobody is of a different race or ethnic group from most [country] people, some people are of a different race or ethnic group from most [country] people and many

³⁰⁴ International Standard Classification of Education, which is used to define different levels of education.

people are of a different race or ethnic group. A binary variable was constructed to indicate the first option.

Closeness to one's country: A measure of feeling close to the country of residence was constructed based on the ESS question D22: 'How close do you feel to [country]?'. Possible response options included very close, close, not very close and not close at all. A binary variable was constructed to indicate if the response was 'not very close' or 'not close at all'.

The independent variables of interest in the econometric models were binary variables indicating whether the individual is part of a group discriminated against on a specific ground. One of the key questions in the ESS is whether the respondent reports being part of a discriminated group, and, if so, on which ground. On the basis of these questions, variables on discrimination were created. Firstly, a dummy variable for being part of a discriminated group was created based on the ESS question C16 '(Would you describe yourself as being a member of a group that is discriminated against in this country? Yes; No; Don't know)'. Then, different grounds of discrimination were considered separately, as independent variables, based on the ESS question C17 ('On what grounds is your group discriminated against? Colour or race; Nationality; Religion; Language; Ethnic group; Age; Gender; Sexuality; Disability; Other; Don't know'). Some of the discrimination grounds were combined, based on the relatively high correlation between these variables in the ESS (see Table 38). Of note is the measure constructed for discrimination on the ground of race and ethnicity by combining 'Colour or race' and 'Ethnic group'. Discrimination on the grounds of nationality and language were also combined. Although the dummy variable corresponding to discrimination against nationality or language is not considered in the scope of the study, it was included in the different econometric models in order to avoid biases in the results.

Table 38: Correlations between different discrimination grounds as reported in the ESS

	Race	Nationality	Language	Ethnicity
Race	1.00			
Nationality	0.19	1.00		
Language	0.08	0.38	1.00	
Ethnicity	0.30	0.16	0.13	1.00

Note: Correlation coefficients range from 0 (no correlation) to 1 (perfect correlation). A higher correlation indicates a stronger association.

Following Alvarez-Galvez & Salvador-Carulla (2013), the econometric specification included the following independent control variables: gender, age, household size, education level, household income and domicile (whether living in city or rural area). Six age categories were created to facilitate the analysis: 14-24 years, 25-34 years, 35-44 years, 45-54 years, 55-64 years, and 65+ years. The analysis also controlled for belonging to a minority group, having disabilities and belonging to a religious group.

Results of the econometric modelling with the ESS

This section presents the factors obtained from the regression models using ESS survey data. These factors were used for the calculation of impacts by ground of discrimination, as described in the subsequent section of the Annex.

Health status

Using the ESS 2010-2014, the association between discrimination and self-reported health status was investigated. In a cross-tabulation of the two variables, a strong relationship was observed for discrimination by age and disability, but not for the other grounds.

Table 39: Discrimination and self-reported health status

Health status	Age		Disability	
	Did not perceive	Perceived	Did not perceive	Perceived
Very good	21%	12%	21%	4%
Good	44%	29%	44%	16%

Fair	27%	36%	27%	27%
Bad	7%	16%	7%	35%
Very bad	1%	6%	1%	18%

Note: ESS 2010, 2012 and 2014 waves. The differences are statistically significant at $\chi^2 < 0.00$.

This relationship was examined further through econometric analysis, and found that the impact of discrimination on the grounds of sexual orientation, age, disability, nationality or language and on other grounds is statistically significant at the 1% level. Respondents experiencing discrimination on these grounds were more likely to report poor health status than those who did not. However, the impact is weaker after controlling for household income (model 2), except for discrimination on the ground of sexual orientation (see Table 40). In fact, the impact of income on poor health status is statistically significant at 1%: low income (proxied by the response 'Finding it difficult/ very difficult on present income') is associated with poor health. This finding could indicate that income may be a mediating pathway. For example, while racial/ethnic discrimination does not directly predict poorer health status, it is associated with lower income, which is a key predictor of poor self-reported health.

Table 40: Discrimination and self-reported health status: controlling for other factors

Dependent variable: poor health status		
INDEPENDENT VARIABLES	Without income	With income
<i>Discrimination by ground:</i>		
Discr. gender	-0.189 (0.195)	-0.190 (0.223)
Discr. race or ethnicity	0.0393 (0.0860)	-0.0420 (0.0811)
Discr. religion	-0.0599 (0.102)	-0.0485 (0.107)
Discr. sexual orientation	0.380*** (0.0854)	0.404*** (0.0965)
Discr. age	0.564*** (0.130)	0.433*** (0.122)
Discr. disability	1.455*** (0.146)	1.349*** (0.132)
Discr. nationality or language	0.223*** (0.0719)	0.137* (0.0764)
Discr. other grounds	0.509*** (0.124)	0.375*** (0.138)
Disability	2.370*** (0.202)	2.260*** (0.187)
Belonging to a religion	0.00246 (0.0638)	-0.0322 (0.0487)
Belonging to a minority ethnic group	0.00566 (0.103)	-0.0962 (0.108)
Male	-0.239*** (0.0484)	-0.208*** (0.0472)
Living in a city, town or suburb (reference: country village, farm or countryside)	-0.0417 (0.0375)	-0.0429 (0.0337)
<i>Highest level of education (reference: upper secondary school or lower)</i>		
Post-secondary non-tertiary education (ISCED4)	-0.246*** (0.0704)	-0.153** (0.0670)
Tertiary education or higher (ISCED5 or ISCED6)	-0.633*** (0.0579)	-0.408*** (0.0547)
<i>Age (reference: 14-24)</i>		
Age 25-34	0.369*** (0.0914)	0.235*** (0.0822)
Age 35-44	0.703*** (0.0996)	0.568*** (0.0987)
Age 45-54	1.143***	1.049***

	(0.107)	(0.0993)
Age 55-64	1.555***	1.502***
	(0.166)	(0.159)
Age 65+	2.080***	2.064***
	(0.204)	(0.198)
<i>Income feeling (reference: living comfortably on present income)</i>		
Coping on present income		0.547***
		(0.0346)
Finding it difficult/ very difficult on present income		1.097***
		(0.0850)
<i>Year (reference: 2010)</i>		
2012	-0.0425	-0.0496
	(0.0526)	(0.0515)
2014	-0.0928**	-0.0538
	(0.0471)	(0.0474)
Constant	-1.504***	-2.009***
	(0.161)	(0.186)
Observations	115,272	114,308

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is poor self-reported health status (very bad, bad and fair). Model 1 does not include household income, while Model 2 does.

Poor health can have a negative impact on productivity, lowering income and earnings for employed individuals. Following Granath et al. (2008), this analysis drew on a study that estimated the impact of poor health on earnings, using the British Household Panel Survey (Gambin 2005). The study found that poor health reduced earnings by 14.3% on average. This finding was combined with the increased probability of poor health due to discrimination in order to calculate the impact of discrimination on different grounds on lost income.

Access to healthcare

Using ESS data, discrimination on some grounds was found to be associated with poorer access to healthcare. For example, 21% of those experiencing discrimination by race or ethnicity reported poorer access to healthcare compared to 14% of respondents who did not report such discrimination (see Table 41).

Table 41: Discrimination and reported poor access to healthcare

Ground of discrimination	Did not perceive discrimination on this ground	Perceived discrimination on this ground	Statistical significance
Gender	14.4%	25%	***
Race/ethnicity	14.4%	19%	***
Religion and belief	14.4%	22%	***
Sexual orientation	14.5%	19.7%	*
Age	14.5%	25.3%	***
Disability	14.4%	30.2%	***

Note: ESS 2010, 2012 and 2014 waves. The differences are statistically significant: *** p<0.001, ** p<0.01, * p<0.05.

However, after controlling for other factors, the relationship between poor access to healthcare and discrimination is only statistically significant for discrimination on the grounds of age and on other grounds (unspecified in the survey questionnaire and not corresponding to the grounds of discrimination considered in this study). Nevertheless, both having a disability and being a woman increase the probability of poor access to healthcare, with the relationship statistically significant at 1% level (see Table 42).

Table 42: Discrimination and access to healthcare: controlling for other factors

Dependent variable: poor healthcare access
INDEPENDENT VARIABLES

<i>Discrimination by ground:</i>	
Discr. gender	0.165 (0.293)
Discr. race or ethnicity	-0.109 (0.123)
Discr. religion	0.256 (0.167)
Discr. sexual orientation	-0.00327 (0.112)
Discr. age	0.437** (0.223)
Discr. disability	0.401 (0.414)
Discr. nationality or language	0.203 (0.174)
Discr. other grounds	0.691*** (0.123)
<i>Disability (reference: no disability)</i>	
Partial disabilities	0.634*** (0.0989)
Disabilities	0.704*** (0.130)
Belonging to a religion	0.0674 (0.111)
Belonging to a minority ethnic group	0.0938 (0.0804)
Male	-0.293*** (0.0420)
Living in a city, town or suburb (reference: country village, farm or countryside)	0.153*** (0.0365)
<i>Highest level of education (reference: upper secondary school or lower)</i>	
Post-secondary non-tertiary education (ISCED4)	0.237** (0.113)
Tertiary education or higher (ISCED5 or ISCED6)	0.0906 (0.0800)
<i>Age (reference: 14-24)</i>	
Age 25-34	0.236 (0.229)
Age 35-44	0.136 (0.272)
Age 45-54	-0.142 (0.150)
Age 55-64	-0.383* (0.206)
Age 65+	-0.949*** (0.244)
<i>Income feeling (reference: living comfortably on present income)</i>	
Coping on present income	0.405*** (0.0758)
Finding it difficult/ very difficult on present income	0.783*** (0.109)
Constant	-2.238*** (0.256)
Observations	33,223

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Note: ESS 2014. Logit regression model where the dependent variable is a binary measure of reported problems accessing healthcare.

Education

Education level

Using ESS 2010-2014 data, discrimination on the grounds of nationality and language was found to be associated with a lower level of education. By contrast, discrimination on the grounds of gender and sexual orientation was associated with a higher level of education completed (statistical significance at 1% level). The latter relationship may be due to reverse causality, where discrimination is experienced due to the relative elevated position of a discriminated group. Although the impact of discrimination on the ground of disability is not statistically significant, having a disability is associated with a lower level of education attained. People with disabilities are 11% less likely to have attained a high level of education and 5% less likely if they have a partial disability (statistically significant at 1%). Table 43 presents the complete results from the regression analysis.

Table 43: Discrimination and education level: controlling for other factors

Dependent variable: education level	
INDEPENDENT VARIABLES	
<i>Discrimination by ground:</i>	
Discr. gender	0.963*** (0.0732)
Discr. race or ethnicity	-0.121 (0.207)
Discr. religion	0.206 (0.213)
Discr. sexual orientation	0.768*** (0.0954)
Discr. age	0.0798 (0.116)
Discr. disability	-0.0419 (0.176)
Discr. nationality or language	-0.415*** (0.135)
Discr. other grounds	0.0268 (0.128)
<i>Disability (reference: no disability)</i>	
Partial disabilities	-0.289*** (0.0453)
Disabilities	-0.637*** (0.0776)
Belonging to a religion	-0.120 (0.0915)
Belonging to a minority ethnic group	0.110 (0.134)
<i>Age (reference: 14-24)</i>	
Age 25-34	1.691*** (0.141)
Age 35-44	1.506*** (0.128)
Age 45-54	1.195*** (0.158)
Age 55-64	0.996*** (0.108)
Age 65+	0.591*** (0.129)
Male	-0.0131 (0.0972)
Living in a city, town or suburb (reference: country village, farm or countryside)	0.467*** (0.0817)

<i>Year (reference: 2010)</i>	
2012	-0.0503 (0.0857)
2014	0.165*** (0.0473)
Constant	-2.091*** (0.146)
Observations	115,657

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is a binary measure indicating completion of a college degree or higher.

Years of education completed

The impact of discrimination on the number of years of education completed was investigated, with the results being very similar to those for level of education attained. Discrimination on the grounds of religion is associated with almost one year less of schooling, while discrimination on the grounds of gender and sexual orientation is associated with more years of education. The complete results from the regression analysis are presented in Table 44.

Table 44: Discrimination and years of education completed: controlling for other factors

Dependent variable: years of education completed	
INDEPENDENT VARIABLES	
<i>Discrimination by ground:</i>	
Discr. gender	2.460*** (0.341)
Discr. race or ethnicity	-0.506 (0.351)
Discr. religion	0.963** (0.349)
Discr. sexual orientation	1.428*** (0.348)
Discr. age	0.152 (0.289)
Discr. disability	0.157 (0.412)
Discr. nationality or language	-0.778** (0.340)
Discr. other grounds	0.316 (0.334)
<i>Disability (reference: no disability)</i>	
Partial disabilities	-0.435*** (0.130)
Disabilities	-1.438*** (0.197)
Belonging to a religion	-0.404* (0.199)
Belonging to a minority ethnic group	-0.578 (0.419)
<i>Age (reference: 14-24)</i>	
Age 25-34	2.185*** (0.160)
Age 35-44	1.709*** (0.146)
Age 45-54	0.923*** (0.251)

Age 55-64	0.0352 (0.341)
Age 65+	-1.635*** (0.505)
Male	0.162 (0.0998)
Living in a city, town or suburb (reference: country village, farm or countryside)	0.920*** (0.196)
<i>Year (reference: 2010)</i>	
2012	0.178 (0.155)
2014	0.551*** (0.134)
Constant	11.73*** (0.135)
Observations	114,608
R-squared	0.149

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Linear regression model where the dependent variable is the number of years of education completed (including compulsory schooling).

Assault and violence

The ESS data indicate that those experiencing discrimination on the grounds of gender, race or ethnicity, religion, sexual orientation, nationality or language, and other grounds are more likely to have experienced assault in the past year, or to have family members who have experienced assault, than those who do not experience such discrimination. The relationship remains statistically significant after controlling for other factors (see Table 45). A variable taking into account the interaction between discrimination on the grounds of race or ethnicity and on the grounds of religion was added for the models on assault since the regression results were not stable when weights were included and excluded. Following the inclusion of the interaction term, the stability of the estimates improved and it was retained in the final model specification. Table 45 presents the estimated marginal effects, or the increase in probability of assault, for the first three grounds that are of interest for this study.

Table 45: Discrimination and assault: controlling for other factors

Dependent variable: assault	
INDEPENDENT VARIABLES	
<i>Discrimination by ground:</i>	
Discr. gender	0.377*** (0.124)
Discr. race or ethnicity	0.574*** (0.127)
Discr. religion	0.446*** (0.142)
Discr. race or ethnicity and religion	-0.808*** (0.155)
Discr. sexual orientation	0.689*** (0.100)
Discr. age	0.319* (0.174)
Discr. disability	0.146 (0.109)
Discr. nationality or language	0.209** (0.0928)
Discr. other grounds	0.585*** (0.0628)

<i>Disability (reference: no disability)</i>	
Partial disabilities	0.144 (0.0907)
Disabilities	0.301*** (0.0577)
Belonging to a religion	-0.119 (0.0771)
Belonging to a minority ethnic group	-0.175** (0.0740)
Male	0.0103 (0.0312)
Living in a city, town or suburb (reference: country village, farm or countryside)	0.266*** (0.0429)
<i>Age (reference: 14-24)</i>	
Age 25-34	0.0713 (0.0825)
Age 35-44	-0.0126 (0.112)
Age 45-54	-0.0591 (0.0454)
Age 55-64	-0.312*** (0.0701)
Age 65+	-0.646*** (0.0965)
<i>Income feeling (reference: living comfortably on present income)</i>	
Coping on present income	-0.170** (0.0822)
Finding it difficult/ very difficult on present income	-0.0608 (0.133)
<i>Year (reference: 2010)</i>	
2012	0.0978* (0.0579)
2014	0.0463 (0.0561)
Constant	-1.512*** (0.131)
Observations	114,375

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is a binary measure indicating assault.

Table 46: Marginal effects for assault

Discrimination ground	Marginal effect	Statistical significance
Gender	6%	***
Race and ethnicity	9.7%	***
Religion	7.3%	***
Sexual orientation	12%	***

Notes: ESS 2010-2014. Marginal effects from the logit regression model presented in Table 47. The differences are statistically significant: *** p<0.001, ** p<0.01, * p<0.05.

Further investigation using the ESS data showed that experience with assault is associated with poorer health status.

Table 47: Assault and self-reported health: controlling for other factors

Dep. var. poor health	
INDEPENDENT VARIABLES	
Assault	0.133*

	(0.0729)
<i>Discrimination by ground:</i>	
Discr. gender	-0.312 (0.258)
Discr. race or ethnicity	-0.0866 (0.0733)
Discr. religion	-0.161 (0.0987)
Discr. race or ethnicity and religion	0.108 (0.108)
Discr. sexual orientation	0.287* (0.170)
Discr. age	0.228* (0.117)
Discr. disability	0.468*** (0.141)
Discr. nationality or language	0.144 (0.0942)
Discr. other grounds	0.154 (0.166)
<i>Disability (reference: no disability)</i>	
Partial disabilities	1.900*** (0.0658)
Disabilities	3.179*** (0.106)
Belonging to a religion	0.00511 (0.0514)
Belonging to a minority or ethnic group	-0.105 (0.110)
Male	-0.160*** (0.0417)
Living in a city, town or suburb (reference: country village, farm or countryside)	-0.102** (0.0474)
<i>Age (reference: 14-24)</i>	
Age 25-34	0.0763 (0.0860)
Age 35-44	0.393*** (0.105)
Age 45-54	0.809*** (0.115)
Age 55-64	1.197*** (0.169)
Age 65+	1.505*** (0.217)
<i>Income feeling (reference: living comfortably on present income)</i>	
Coping on present income	0.583*** (0.0491)
Finding it difficult/ very difficult on present income	1.091*** (0.0885)
<i>Year (reference: 2010)</i>	
2012	-0.0460 (0.0659)
2014	-0.0966* (0.0512)
Constant	-2.365*** (0.201)
Observations	114,301

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is a binary measure indicating bad health.

Economic hardship

Using the ESS, those experiencing racial/ethnic discrimination were found to be more likely to experience economic hardship than those who do not experience such discrimination (71% and 42%, respectively, $p < 0.001$). A variable taking into account the interaction between discrimination on the ground of race or ethnicity and on the ground of religion was added for the models on economic hardship since the regression results were not stable when weights were included and excluded. Following the inclusion of the interaction term, the stability of the estimates improved and it was retained in the final model specification. The relationship remains statistically significant after controlling for other factors (see Table 48).

Table 48: Discrimination and economic hardship: controlling for other factors

Dependent variable: hardship	
INDEPENDENT VARIABLES	
<i>Discrimination by ground:</i>	
Discr. gender	-0.00453 (0.275)
Discr. race or ethnicity	0.865*** (0.112)
Discr. religion	0.148 (0.179)
Discr. race or ethnicity and religion	-1.157*** (0.425)
Discr. sexual orientation	0.126 (0.353)
Discr. age	1.040** (0.468)
Discr. disability	0.702* (0.420)
Discr. nationality or language	0.724*** (0.164)
Discr. other grounds	0.973*** (0.149)
<i>Disability (reference: no disability)</i>	
Partial disabilities	0.603*** (0.0803)
Disabilities	1.063*** (0.111)
Belonging to a religion	0.252 (0.209)
Belonging to a minority or ethnic group	0.594*** (0.156)
Employed	-1.028*** (0.0732)
Male	-0.145*** (0.0498)
Living in a city, town or suburb (reference: country village, farm or countryside)	0.0379 (0.0844)
<i>Highest level of education (reference: upper secondary school or lower)</i>	
Post-secondary non-tertiary education (ISCED4)	-0.639*** (0.189)
Tertiary education or higher (ISCED5 or ISCED6)	-1.685*** (0.0981)
<i>Age (reference: 14-24)</i>	
Age 25-34	1.533*** (0.132)
Age 35-44	1.674*** (0.141)

Age 45-54	1.405*** (0.143)
Age 55-64	0.887*** (0.170)
Age 65+	0.123 (0.210)
<i>Year (reference: 2010)</i>	
2012	0.0164 (0.118)
2014	-0.369** (0.144)
Constant	-0.537** (0.235)
Observations	59,422

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is a binary measure indicating hardship.

Further investigation using the ESS data showed that economic hardship is associated with poorer health status. The results are presented in Table 49.

Table 49: Economic hardship and self-reported health: controlling for other factors

Dependent variable: poor health	
INDEPENDENT VARIABLES	
Economic hardship	0.937*** (0.0805)
<i>Discrimination by ground:</i>	
Discr. gender	-0.169 (0.330)
Discr. race or ethnicity	-0.0706 (0.151)
Discr. religion	-0.133 (0.189)
Discr. race or ethnicity and religion	0.234 (0.242)
Discr. sexual orientation	0.408*** (0.156)
Discr. age	0.0973 (0.160)
Discr. disability	0.398 (0.275)
Discr. nationality or language	0.229* (0.122)
Discr. other grounds	0.222 (0.165)
<i>Disability (reference: no disability)</i>	
Partial disabilities	1.907*** (0.0714)
Disabilities	3.278*** (0.169)
Belonging to a religion	0.0186 (0.0514)
Belonging to a minority or ethnic group	-0.173 (0.156)
Employed	-0.141** (0.0554)
Male	-0.163*** (0.0333)

Living in a city, town or suburb (reference: country village, farm or countryside)	-0.0454 (0.0424)
<i>Highest level of education (reference: upper secondary school or lower)</i>	
Post-secondary non-tertiary education (ISCED4)	-0.173* (0.0961)
Tertiary education or higher (ISCED5 or ISCED6)	-0.404*** (0.0824)
<i>Age (reference: 14-24)</i>	
Age 25-34	0.262** (0.126)
Age 35-44	0.616*** (0.142)
Age 45-54	1.000*** (0.144)
Age 55-64	1.340*** (0.174)
Age 65+	1.507*** (0.219)
<i>Year (reference: 2010)</i>	
2012	-0.0624 (0.0989)
2014	-0.109 (0.0865)
Constant	-2.259*** (0.191)
Observations	59,388

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is a binary measure indicating poor self-reported health status.

Housing

Using the ESS, those experiencing discrimination on the ground of race/ethnicity and on the ground of religion were found to be more likely to experience poor housing conditions than those who do not experience such discrimination (see Table 46).

Table 50: Discrimination and poor housing conditions: controlling for other factors

Dependent variable: house problems INDEPENDENT VARIABLES	With household size	Without household size
<i>Discrimination by ground:</i>		
Discr. gender	0.104 (0.147)	0.104 (0.152)
Discr. race or ethnicity	0.307** (0.132)	0.311** (0.134)
Discr. religion	0.345** (0.167)	0.353** (0.168)
Discr. sexual orientation	-0.423 (0.391)	-0.431 (0.378)
Discr. age	0.192 (0.267)	0.199 (0.266)
Discr. disability	-0.229 (0.167)	-0.227 (0.164)
Discr. nationality or language	0.267 (0.378)	0.261 (0.380)
Discr. other grounds	0.196 (0.145)	0.200 (0.146)

<i>Disability (reference: no disability)</i>		
Partial disabilities	0.338*** (0.0261)	0.341*** (0.0280)
Disabilities	0.278*** (0.0990)	0.284*** (0.103)
Belonging to a religion	-0.127 (0.102)	-0.123 (0.102)
Belonging to a minority or ethnic group	0.249** (0.114)	0.255** (0.118)
Employed	-0.126 (0.0831)	-0.132 (0.0857)
Male	-0.131** (0.0658)	-0.129** (0.0656)
Living in a city, town or suburb (reference: country village, farm or countryside)	0.0479 (0.124)	0.0494 (0.126)
<i>Size of household (reference: one person)</i>		
Two persons	-0.123 (0.0806)	
Three persons	-0.141 (0.106)	
Four persons	-0.140 (0.154)	
Five persons or more	0.0145 (0.0980)	
<i>Income feeling (reference: living comfortably on present income)</i>		
Coping on present income	0.464*** (0.128)	0.466*** (0.128)
Finding it difficult/ very difficult on present income	1.227*** (0.127)	1.239*** (0.122)
<i>Age (reference: 14-24)</i>		
Age 25-34	0.238*** (0.0725)	0.234*** (0.0674)
Age 35-44	0.00872 (0.0264)	0.00486 (0.0292)
Age 45-54	-0.201*** (0.0503)	-0.206*** (0.0461)
Age 55-64	-0.634*** (0.100)	-0.645*** (0.0737)
Age 65+	-0.934*** (0.129)	-0.928*** (0.150)
Constant	-1.802*** (0.164)	-1.899*** (0.147)
Observations	32,366	32,366

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2014. Logit regression model where the dependent variable is a binary measure indicating poor housing conditions.

Employment

The analysis of employment is drawn from the methodology used in Granath (2008) and the regression estimates from the ESS data. Analysis of the ESS shows that discrimination on the grounds of race or ethnicity, disability and other grounds (unspecified in the survey) is predictive of unemployment, after controlling for other factors. Compared to the other grounds of discrimination, discrimination on the ground of disability is the strongest predictor of unemployment (see Table 51).

Table 51: Discrimination and unemployment: controlling for other factors

Dependent variable: employed INDEPENDENT VARIABLES	With interaction age and discrimination	Without interaction age and discrimination
<i>Discrimination by ground</i>		
Discr. gender	0.183 (0.137)	0.170 (0.138)
Discr. race or ethnicity	-0.298*** (0.0955)	-0.298*** (0.0954)
Discr. religion	-0.0912 (0.229)	-0.0901 (0.227)
Discr. sexual orientation	0.132 (0.175)	0.134 (0.178)
Discr. disability	-0.793*** (0.141)	-0.805*** (0.150)
Discr. age	0.205 (0.576)	
Discr. nationality or language	-0.151* (0.0869)	-0.154* (0.0863)
Discr. other grounds	-0.299*** (0.0475)	-0.302*** (0.0504)
<i>Disability (reference: no disability)</i>		
Partial disabilities	-0.364*** (0.0447)	-0.364*** (0.0448)
Disabilities	-1.185*** (0.128)	-1.181*** (0.128)
Belonging to a religion	-0.166*** (0.0442)	-0.166*** (0.0442)
Belonging to a minority or ethnic group	-0.371*** (0.0675)	-0.371*** (0.0674)
Male	0.601*** (0.0436)	0.601*** (0.0438)
Living in a city, town or suburb (reference: country village, farm or countryside)	-0.00781 (0.0571)	-0.00747 (0.0572)
<i>Highest level of education (reference: upper secondary school or lower)</i>		
Post-secondary non-tertiary education (ISCED4)	0.600*** (0.0532)	0.600*** (0.0535)
Tertiary education or higher (ISCED5 or ISCED6)	0.837*** (0.0703)	0.837*** (0.0701)
<i>Age (reference: 14-24)</i>		
Age 25-34	1.788*** (0.0792)	1.785*** (0.0782)
Age 35-44	2.268*** (0.105)	2.266*** (0.105)
Age 45-54	2.519*** (0.115)	2.512*** (0.115)
Age 55-64	1.094*** (0.0707)	1.090*** (0.0723)
Age 65+	-1.791*** (0.0973)	-1.788*** (0.0944)
Discr. age	0.206 (0.580)	-0.239 (0.177)
Interaction discr. age and age 25-34	-0.535 (0.853)	
Interaction discr. age and age 35-44	-0.536 (0.865)	
Interaction discr. age and age 45-54	-1.022 (0.666)	
Interaction discr. age and age 55-64	-0.590 (0.559)	

Interaction discr. age and age 65+	0.131 (0.668)	
<i>Year (reference: 2010)</i>		
2012	0.0264 (0.0556)	0.0268 (0.0556)
2014	0.138** (0.0635)	0.138** (0.0635)
Constant	-1.215*** (0.138)	-1.213*** (0.137)
Observations	111,322	111,322

Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1. Errors are clustered by country.

Notes: ESS 2010-2014. Logit regression model where the dependent variable is a binary measure indicating employment (the variable has the value '1' if the respondent is employed and '0' if they are not).

Calculation of the costs of discrimination by ground

The Chapter 3 calculations are explained below, with ranges presented where possible. These ranges are often based on the 95% confidence interval of the key coefficient (e.g. the relationship between discrimination and employment).

Sex (Gap/Barrier B1)

Individual costs for the gender pay gap

Lost earnings: EUR 241-379 billion

The higher bound value of earnings lost annually was calculated by multiplying the difference in hourly earnings for men and women by the number of hours worked by women on average per year (based on Eurostat data). According to Eurostat, in 2014 the average hourly gross earnings for men were EUR 16.6 and for women EUR 13.75. The average number of hours worked per week by women was 34, and 39.7 for men (the most recent data are from 2004). Aggregating the number of hours worked per year gives the following estimate of an annual loss per working woman:

$$34 * (16.6-13.75) * 52 = 5,038.8 \text{ (5,050.9 after conversion to 2016 price levels) wage gap in annual terms}$$

The lower bound was calculated by applying the percentage reflecting the unexplained gender pay gap (10.9%) to the level of men's earnings.

Pension gap

Due to lower earnings and differences in labour market participation, on average, women receive lower pensions than men. Women participate less in the labour market and work fewer hours and years than men, which limits their pension benefits (European Commission, 2013a, EIGE, 2015). Furthermore, time spent taking care of children and other dependents is not recognised by pension systems. The pension gap varies widely across countries from 3.7% in Estonia to 48.8% in Cyprus.

Risk of poverty

The gender gap in pensions translates into higher poverty risks for elderly women compared to elderly men. The risk is heightened by the higher life expectancy of women (83 years, compared to 78 for men in the EU28 in 2012). For the EU as a whole, the percentage of elderly women at risk of poverty or social exclusion was 20.2% in 2014, compared to 14.6% of elderly men (Lodovici et al., 2016a). Women with care responsibilities are particularly exposed to low pension benefits and high poverty risk in old age, especially when they cannot count on survivor pensions or the income of a partner (European Parliament, 2016).

Economic dependence: EUR 146-321 million

The gender pay gap can contribute to women's economic dependence, which increases their vulnerability to domestic violence (OSCE, 2009; Harrington Conner, 2014). Economic dependence on male partners often creates obstacles for women who wish to leave a violent relationship (OSCE, 2009, p. 87). Harrington Corner (2014) argues that economic dependence makes it very difficult for women who experience intimate partner violence to leave the relationship and states that 'economic independence can provide freedom from abuse'. Reducing the gender pay gap may help to reduce this negative and costly phenomenon.

EIGE (2014) estimated the cost to the EU of intimate partner violence against women at EUR 109 billion in 2011. These results are based on an extrapolation of values from a UK study (Walby 2004). The share of these costs that could be reasonably attributed to the gender pay gap was approximated, using an estimate from an economic study (Aizer 2010). That study had investigated the relationship between domestic violence and the gender wage gap in California, using robust econometric techniques including instrumental variables. According to the study, narrowing the difference between the hourly wage between men and women by one unit can explain 0.24% (SE=0.09%) of the decline in domestic violence against women. This can be assumed to hold true for intimate partner violence in the EU. The difference between the average hourly wage for men and women in the EU-28 was calculated using the average hourly wage in 2016 of EUR 25.40³⁰⁵ and the adjusted wage gap of 10.9%. The difference was multiplied by the coefficient of 0.24% and the estimated costs of intimate partner violence against women in the EU-28, giving a total of EUR 233.3 million. The lower bound was obtained using the point estimate of 0.24% minus a standard error, while the upper bound was obtained from the point estimate plus a standard error.

Economic costs

GDP loss: EUR 540 billion in 2030

Several studies have estimated the impact of the gender pay gap on GDP change, with findings ranging from 0.3% to 17.6% (see summary in Table 48 below). Despite variation in the scope of the research and, consequently, in the results, all of the studies show a positive impact on GDP when the gender pay gap is narrowed. As some of the studies focus on non-EU countries or on specific Member States, this study presents the results from Pollitt et al. (2017), which covers all of the EU-28, as well as being the most recent study.

Pollitt et al. (2017) investigated the socioeconomic impact of increasing gender equality by using a macro-econometric model that covers the EU-28 Member States and is comparable to a Computable General Equilibrium model. The study considered three pathways to increase gender equality: reducing the gender gap in tertiary education, i.e. the difference in education fields between men and women; increasing the participation of women in the labour force; and reducing the gender pay gap. For each of these pathways, two scenarios were considered: slow and rapid progress towards reaching gender equality. General Equilibrium models take into account both supply and demand factors that shape the labour market, and can thus provide a more accurate and robust estimate for the macroeconomic impact of the gender pay gap than other modelling approaches. Pollitt et al. (2017) estimated that the potential impact of reducing the gender gap in tertiary education and activity rate would be a 1-2% increase in GDP per capita in 2030, while reducing the gender pay gap would increase GDP by up to 0.2% in 2030.

Mental health costs

Many studies document a higher prevalence of mental health disorders, including depression, among women relative to men, within the EU (Van de Velde et al., 2010). The gender pay gap may be one related factor (Platt et al., 2016). Depression may entail higher costs in terms of medical treatment (direct costs), as well as lower productivity and general well-being (indirect costs).

³⁰⁵ Eurostat, 2016a.

This study's estimates of mental health costs related to the gender pay gap are based on two research studies. Platt (2016) investigated the relationship between the gender pay gap and mental health using a propensity scores approach. Based on data from the United States, the study found that women have a higher likelihood of experiencing major depression when their income is lower than that of their male partner (Odds Ratio=2.43 with 95% confidence interval=1.95-3.04). The current study assumed the gender pay gap to have a similar effect on mental health in the EU, based on comparable rates of prevalence of major depressive disorders between the EU and the US, at 7% and 6.7%, respectively (Wittchen, 2011; US National Institute of Mental Health, 2015). Together, these estimates showed a 3.6% difference in the prevalence of major depression between women and men related to the gender pay gap (8.8% probability for women versus 5.5% probability for men). The range of this difference based on the 95% confidence interval was 3.5-3.8%.

The results of this study were combined with Eurostat data on the number of working women per Member State in order to calculate the number of working women likely to suffer from depression due to the existence of the gender pay gap.

The next step was to calculate the costs of depression related to the gender pay gap. Olesen (2012) estimated the total cost of major depression in Europe to be EUR 91,914 million in 2010, which corresponded to 12% of the total cost of all brain disorders. These costs were adjusted for 2016 levels, using the Eurostat price index for health costs (EUR 99,344 million). 26% of the costs associated with major depression were direct medical costs, 15% were direct non-medical costs, and 59% were indirect costs.

Data on the cost of major depression per country (calculated on the basis of Olesen, 2012) were combined with the factors relating to the prevalence of major depression in women due to the gender pay gap (based on Platt et al., 2016). The point estimate of costs equals EUR 575.48 million, while the range (estimated on the basis of the confidence interval as reported in Platt, 2016) is EUR 541.45 - 595.15 million. These costs represent about 1% of the overall costs of major depression in the EU-28. Direct costs (both medical and non-medical) linked to major depression were estimated in the range of EUR 223-246 million, and indirect costs in the range of EUR 318-350 million.

Gender violence

Estimates for the cost of gender violence against women were obtained from a 2015 EIGE study. The findings should, however, be interpreted cautiously, as the estimates are not based on the experiences of the Member States themselves. Building cost estimates for gender-based and intimate partner violence requires data on the prevalence, frequency, type and severity of the violence, which is not presently available in the EU. The 2012 FRA Survey of Violence Against Women was a critical first step in collecting comparable data from the EU-28 (FRA, 2014c). However, the data were insufficiently reliable to support cost estimates, due to differences across countries in the methodology used to collect data, and the small sample sizes.

In the absence of robust data, the EIGE study followed a strategy that extended the findings from the most robust study identified through a literature review (Walby, 2004). The study was undertaken in the UK, and the findings were extended to the EU-28 based on the population size of Member States. The UK study drew on evidence in respect of three main types of costs: lost economic output, provision of services, and personal impacts on the victim. The study presented estimates for overall gender-based violence, as well as intimate partner violence against men, women and both men and women.

Race and ethnicity (*Gap/Barrier B3-B5*)

Individual costs

Lost earnings: EUR 1.8-8 billion

Analysis of the ESS found that people discriminated against on the grounds of race and ethnicity face a loss in net earnings through two pathways: poorer health status and lower employment. These impacts were translated into monetary terms using the approach described below.

The number of people discriminated against on the grounds of race and ethnicity who experienced assault and as a consequence suffered poor health were estimated at approximately 56,509 in the EU. This estimate was based on ESS finding that 1.9% of the population experiences this type of discrimination, that the probability of assault for people discriminated against on the ground of race or ethnicity is higher by 6-13% (the range reflects a 95% confidence interval), and that the marginal effect of assault on poor health is up to 2.1%. In keeping with Gambin (2005), and based on Eurostat data on earnings as well as data on tax rates from the OECD (2017), net income lost for a discriminated person with poor health was estimated at the level of 25,548, with an aggregated individual loss of up to EUR 206 million (in 2016 terms).

Calculations related to lost earnings associated with lower employment were made using Eurostat data on average earnings in 2014 equal to EUR 34,210 (34,292 after conversion to 2016 levels). The number of employed persons discriminated against on the ground of religion and belief was estimated at approximately 4.1 million. Assuming (from ESS results) that 2-8% more people in this discriminated group could be employed if they were not discriminated against (the range reflects a 95% confidence interval net earnings lost were calculated at the level of 74.5% of gross earnings, according to tax rate data from the OECD (2017). The formula below shows the calculation:

Lower bound estimate: $0.745 * (2\% * 4,068,812) * 34,292 = \text{EUR } 1,767,123,271$

Upper bound estimate: $0.745 * (8\% * 4,068,812) * 34,292 = \text{EUR } 7,796,132,077$

The estimated lost earnings through the two pathways were summed, to total EUR 1.8 to 8 billion.

Economic costs

GDP loss: EUR 2.4-10.7 billion

GDP loss is calculated on the basis of lost gross wages through the pathways of poorer health status and lower employment. Similar to the net earning calculations, lost gross earnings (used as a proxy for lost GDP) were calculated to be up to EUR 277 million annually due to poorer health status, and EUR 2.4-10.5 billion due to lower employment. Total lost at GDP was therefore estimated at EUR 2.4-10.7 billion.

Tax revenue lost: EUR 854 million-3.9 billion

In 2016, the tax rate on labour was 36% (OECD, 2017) and so the loss in tax revenue is estimated (on the basis of GDP lost) to be in the range of EUR 854 million-3.9 billion annually (up to EUR 99.8 million through the pathway of poorer health status and EUR 854 million to 3.8 billion through the pathway of lower employment).

Mental health costs

For the ground of race and ethnicity, the costs of Major Depressive Disorder (MDD) were calculated using a similar approach to that for the gender pay gap described above. The estimates for this ground draw on two additional research studies. Ikram et al. (2014) investigated the relationship between ethnic discrimination and mental health using a logistic regression analysis of the Healthy Life in an Urban Setting (HELIUS) study from the Netherlands. The sample included individuals aged 18 to 70 years. A binary indicator for a clinical diagnosis of MDD was constructed using responses to the Everyday Discrimination Scale (EDS) and an algorithm to link with the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). Rates of MDD were higher among ethnic minorities relative to the native population (3.8% and 12.9%, depending on the ethnic minority group, compared to with 2.3% among the native population). Perceived depression was associated with higher odds of MDD after controlling for a number of variables, including education and employment (Odds Ratio=2.02 to 2.56, depending on the ethnic minority group). Based on these estimates, the

study calculated the Population Attributable Fraction (PAF) of perceived discrimination in the risk for MDD to be 20.1-25.5%.

Using the ESS 2010-2014 data, 1.9% of the sample were estimated to have experienced racial or ethnic discrimination. This share was multiplied by the EU population in 2016 to reach a figure of 9.8 million individuals who experience ethnic or racial discrimination. These figures were combined with the estimates from Ikram et al. (2014) to obtain an estimate for the number of individuals likely to have MDD due to ethnic and racial discrimination. This figure was then multiplied by the average per-capita cost of MDD in the EU, inflated to 2016 levels (Olesen, 2012).

In sum, ethnic discrimination is associated with a higher risk of major depression, translating to EUR 35.6 to 57.1 million in direct medical costs, direct non-medical costs and indirect costs. Based on Olesen (2012), 26% are estimated to be direct medical costs, 15% are direct non-medical costs, and 59% are indirect costs. This allows for total costs to be divided into estimated direct costs of EUR 21 to 34 million, and estimated indirect costs related to productivity and well-being of EUR 15 to 23 million. The ranges reflect different prevalence rates of MDD among the different ethnic groups in the study.

Religion and belief (Gap/Barrier B6 and B7)

Individual costs

Lost earnings: up to EUR 146 million

The number of people discriminated against on the ground of religion who experienced assault suffered subsequent poor health is estimated at approximately 11,379 in the EU. This estimate was based on the ESS finding that 1.5% of the population experiences discrimination on this ground, that the probability of assault for people discriminated against on the ground of race or ethnicity is higher by 2-12% (the range reflects a 95% confidence interval), and that the marginal effect of assault on health is up to 2.1%. In keeping with Gambin (2005), and based on Eurostat data on earnings as well as tax rate data from the OECD (2017), net income lost for a discriminated person with poor health was estimated to be at the level of 25,548, with an aggregate individual loss of up to EUR 146 million (in 2016 terms).

Economic costs

GDP loss: up to EUR 197 million

The impact on GDP is assumed to be equal to gross earnings foregone. Following the approach described above for net earnings, GDP loss due to poorer health status as a result of assault was calculated to be up to EUR 197 million.

Tax revenue lost: up to EUR 71 million

Tax revenue foregone was calculated assuming a 36% tax on labour. These estimates result in approximately EUR 71 million.

Sexual orientation (Gap/Barrier B8 and B9)

Individual costs

Lost earnings: EUR 19-56 million

The marginal effect of discrimination on the ground of sexual orientation on poor health status was estimated to be 4-12% (the range reflects a 95% confidence interval), with 0.5% of ESS respondents reporting discrimination on this ground. While the population of the EU-28 in 2015 was estimated to be 508.4 million (Eurostat), the calculation excludes those aged under 15 years (15.6%, based on Eurostat data). Combining the figures related to marginal probability of poor self-reported health with the factor relating poor health to

earnings (based on Gambin 2005) and with the figures on average annual earnings, the total aggregated loss in earnings was estimated to fall within the range of EUR 19-53 million.

Lower bound estimate: $0.5\% * 4\% * 15.6\% * 508,401,408 * 0.745 * 3,492 = \text{EUR } 18,960,134$

Upper bound estimate: $0.5\% * 12\% * 15.6\% * 508,401,408 * 0.745 * 3,492 = \text{EUR } 53,180,864$

Lost earnings calculations must also take into account the health impacts of assault. The number of people discriminated against on the ground of sexual orientation who experienced assault and suffered subsequent poor health was estimated to be between 9,374 and 18,749 in the EU. This estimate was based on the ESS finding that 5.9% of the population experiences discrimination on this ground, that the probability of assault for people discriminated against race or ethnicity is higher by 8-16% (the range reflects a 95% confidence interval), and that the marginal effect of assault on poor health is up to 2.1%. In line with Gambin (2005), and based on Eurostat data on earnings as well as tax rate data from the OECD (2017), net income lost for a discriminated person with poor health was estimated at the level of 25,548, with an aggregate individual loss linked to assault of up to EUR 3 million (in 2016 terms).

Combining the lost net earnings through the pathway of poor self-reported health and poorer health status associated with assault generated an estimated total loss in earnings of EUR 19 to 56 million.

Lost pension income: EUR 1.5-3.1 billion

According to Granath et al. (2008), total social expenditure in the EU on survivor benefits was EUR 123.7 billion in 2004 (based on Eurostat statistics). As same-sex partnerships and marriages are less common than heterosexual ones, and men (who account for the majority of same-sex partnerships) generally do not live as long as women, the authors of the study assumed that the number of widowers from same-sex marriages or registered partnerships (who are excluded from survivor benefits) would be lower than the share of LGB persons in the total population, at around 2% of the total population affected (estimates set the number of gays and lesbians at 3% of the total population above 20 years). Expenditure on survivor benefits could thus be 2% higher without this form of discrimination, corresponding to EUR 2.5 billion or EUR 3,091 in 2016 terms. The lower bound estimate was calculated by assuming a lower percentage of LGBT persons affected by the lack of survivor benefits – 1% instead of 2%, as assumed in Granath et al. (2008).

Housing: EUR 4-8.1 billion

Granath et al (2008) found several studies providing evidence of a substantial price mark-up for houses located in areas which welcome LGBT persons. These studies point to the existence of a significant hedonic price surplus (set at 15%). A large part (10%) is explained by the urge to avoid discrimination and harassment, with another element being the wish to live close to fellow LGBT persons, in order to improve opportunities for social interaction.

The authors estimated the annual total expenditure on housing in Europe at about EUR 1,365.8 million. Assuming that 5% of the population are lesbian or gay (Dalia Research, 2015), they would account for circa EUR 41 billion of housing expenditure per annum. Taking into account the 10% hedonic surplus, the price for avoiding harassment and discrimination related to housing could total EUR 4.1 billion in the EU-27 (higher bound estimate). The lower bound estimate was calculated by assuming a 5% increase in pricing instead of the 10% level used by Granath et al. (2008).

Economic costs

GDP loss: EUR 25-75 million

GDP loss is approximated by gross earnings lost. Following the approach described above for net earnings, gross earnings lost were calculated to be EUR 25-71 million annually due to poor health status and up to EUR

4 million due to health problems linked to assault. In total, lost GDP was therefore estimated to lie within the range of EUR 25 to 75 million.

Tax revenue loss: EUR 9-28 million

Tax revenue loss was calculated by applying the relevant tax rate (36%, according to the OECD, 2017) to the gross earnings loss. The estimated tax revenue loss was estimated to be in the range of EUR 9-28 million per year: EUR 9-26 million through the poor health status pathway and up to EUR 1.5 million through the pathway of health problems associated with assault.

Age (Gap B10)

Individual impacts

Earnings lost: EUR 182-229 billion

Lost earnings were estimated through two pathways: poorer health status and lower employment. Calculations related to lost earnings used Eurostat data on average earnings in 2014, equal to EUR 34,210 (34,292 after conversion to 2016 prices). The population discriminated against on the ground of age was estimated to be approximately 2.3 million in total – this number was calculated by combining the Eurostat data on population number by age category and the factors reflecting the share of people who are discriminated against on the ground of age by age category (only people aged 45 or older were included).

Analysis of the ESS showed that the group of people experiencing discrimination on the ground of age are 4-13% more likely to have poor health status (the range reflects a 95% confidence interval). This probability was used to calculate the aggregate earnings lost, similar to other sections, using the factors relating to poor health status, together with decrease in earnings (based on Gambin, 2005).

Lower bound estimate: $0.745 * (8.4\% * 3.8\% * 2,290,857) * 34,210 = \text{EUR } 318,029,837$

Upper bound estimate: $0.745 * (8.4\% * 13\% * 2,290,857) * 34,210 = \text{EUR } 1,087,996,812$

Calculations related to lost earnings associated with lower employment were made using the Eurostat data on average earnings in 2014, equal to EUR 34,210 (34,292 in 2016 terms). Using the ESS, the increased likelihood of individuals aged 55-64 years to be unemployed was estimated, excluding those countries where the retirement age is less than 64 years (if it differed by sex, the lower age was taken) in order to better estimate the probability of unemployment, rather than retirement. The results suggest that 16-20% more people in this group could be employed if they were not discriminated against (the range reflects a 95% confidence interval). Net earnings lost were calculated at 74.5% of gross earnings, according to OECD (2017) tax rate data. The formula below shows the calculation:

Lower bound estimate: $0.745 * (16\% * 4,068,812) * 34,292 = \text{EUR } 182,045,997,303$

Upper bound estimate: $0.745 * (20\% * 4,068,812) * 34,292 = \text{EUR } 227,557,496,629$

The total lost earnings resulting from the two pathways were summed at EUR 182 to 229 billion.

Scholarships: EUR 6.3-8.6 billion

The estimates related to scholarships are based on Granath et al. (2008). The authors found evidence of age restrictions in access to scholarships in many EU Member States, and assumed that students aged 26 or older are not entitled to scholarships. This assumption is in line with a European Commission report (2014/2015), although the report shows that the age threshold to access scholarships varies between countries, with Germany, for instance, having a threshold of age 30. The estimate of the individual financial loss due to restricted access to scholarship was calculated by multiplying the number of tertiary students in the EU (Eurostat, 2014) potentially affected by restrictions in access to scholarships, by the potential value of

scholarships (EUR 3,464). The value was then inflated to 2016 prices using the Eurostat Consumer Price Index. In the higher bound estimate (EUR 8.6 billion), it is assumed that on average 34% of students receive scholarships, based on a report from the European Commission, EACA (2014/2015) and in the lower bound estimate (EUR 6.3 billion), this share is set at 25%, based on Granath et al. (2008).

Economic impacts

GDP loss: EUR 244-307 billion

GDP loss was approximated by gross earnings lost. Following the approach described above for net earnings, gross earnings lost were calculated to be EUR 427 million to 1.5 billion annually due to poorer health status and up to EUR 244 to 305 billion due to lower employment. In total, lost GDP was therefore estimated to be in the range of EUR 244 to 307 billion.

Tax revenue lost: EUR 88-110 billion

Based on a tax rate of 36% (OECD, 2017) and the above calculation of lost earnings, the tax revenue lost was estimated to be in the range of EUR 88 to 110 billion: EUR 154-526 million due to poorer health status and EUR 88-110 billion due to lower employment.

Disability (*Gap/Barrier B11-B13*)

Individual costs

Lost earnings: EUR 529-861 million

Lost earnings stemmed from lower levels of employment and completion of tertiary education.

According to analysis of the ESS, individuals with partial disabilities were 6% less likely to work, while those with a severe disability were 19% less likely to work. A weighted likelihood of working was calculated, given that 75% of the population with a disability in the sample had a partial disability. This weighted likelihood was 9%, with a lower bound of 7% and an upper bound of 11%. In addition, the net annual earnings were equal to EUR 24,548 (2016 levels). Multiplying the number of people with disabilities with no limitation to work in EU-28 (reported by Eurostat in 2011 to be 271,433) by 9% percent and by the average net earnings (thus subtracting the 25.5% tax rate, as per OECD data), yielded a point estimate of EUR 617 million in lost earnings. The lower and upper bounds were calculated as follows:

Lower bound estimate: $7\% * 271,433 * 24,548 = \text{EUR } 468,067,125$

Upper bound estimate: $11\% * 271,433 * 24,548 = \text{EUR } 762,790,723$

A similar approach was taken for completion of tertiary education. The ESS analysis showed that persons with partial disabilities had a 5% lower likelihood (4-7%) of completing tertiary education, while those with a severe disability had an 11% lower likelihood (9-13%). The weighted likelihood was calculated, which was then multiplied by the EU-28 average wage differential between those with a tertiary education (33%) and those with less than tertiary education. The estimate, available from Eurostat, was EUR 12,744 (after inflation to 2016 values).

Lower bound estimate: $5\% * 271,433 * 12,744 * 33\% = \text{EUR } 60,655,712$

Upper bound estimate: $8.5\% * 271,433 * 12,744 * 33\% = \text{EUR } 98,204,468$

Cost of living: EUR 15-41 billion

The higher cost of living faced by people with disabilities was calculated based on findings from the literature. Brawn (2014) estimated that people with disabilities have to pay on average GBP 550 more per

month to achieve a decent standard of living, and found that the Disability Living Allowance available in the UK falls short of covering these higher costs by about GBP 200 on average. Therefore, the amounts of GBP 200 and GBP 550 were used as the lower and upper bounds, respectively, to extrapolate these costs to EU level. These amounts were first converted to EUR (using an exchange rate of the ECB for 2014 (1.25 EUR/GBP)) and inflated to 2016 level of prices using the Eurostat Consumer Price Index. These conversions gave a range of EUR 251-689. In order to extrapolate these values to the EU and take into account different price levels across the Member States, price level indices reported by Eurostat were used. The value estimated for the UK was adjusted by the factor 121.7 reported for the UK (i.e. the level of prices in the UK is 21.7% higher than the average price level in the EU). This adjustment gave a range of additional costs per person with disabilities of EUR 206-566. Subsequently, the relevant price level adjustment factors were applied by country; the value per country was multiplied by the number of people with disabilities reported by Eurostat per Member State. The aggregate values per Member State were summed up, totally EUR 14.6 - 40.6 billion.

Economic costs

GDP lost: EUR 710 million to EUR 1.16 billion

The total GDP loss was estimated through two different pathways: lower employment and lower level of post-secondary education. GDP loss due to lower employment was approximated by gross earnings lost and estimated at EUR 316 million. Following the approach described above for net earnings, the GDP loss was calculated as follows:

Lower bound estimate: $7\% * 271,433 * 34,292 = \text{EUR } 628,290,101$

Upper bound estimate: $11\% * 271,433 * 34,292 = \text{EUR } 762,790,723$

GDP loss due to lower level of tertiary education achieved by people with disabilities was estimated using a similar approach as for lost earnings.

Lower bound estimate: $5\% * 271,433 * 17,106 * 33\% = \text{EUR } 81,417,063$

Upper bound estimate: $8.5\% * 271,433 * 17,106 * 33\% = \text{EUR } 131,818,102$

Combining the estimated GDP loss through the two pathways, the total GDP loss is in the range of EUR 709.7 million - 1.16 billion per year.

Tax revenue lost: EUR 255-416 million

Tax revenue lost was calculated by applying the relevant tax rate (36% based on OECD, 2017) to the value of gross earnings lost:

Lower bound estimate: $7\% * 271,433 * 34,292 = 628,290,101 * 36\% = \text{EUR } 226,184,436$

Upper bound estimate: $11\% * 271,433 * 34,292 = 762,790,723 * 36\% = \text{EUR } 368,596,850$

Tax revenue lost due to lower educational level:

$36\% * \text{EUR } 81,417,063 = \text{EUR } 29,310,143$

$36\% * \text{EUR } 131,818,102 = \text{EUR } 47,454,517$

Combining the two different pathways, the total tax revenue lost was estimated to equal EUR 255-416 million per year.

Calculation of the costs of discrimination for the horizontal gaps/barriers

Estimates for the horizontal gaps drew heavily on the ground-specific results. Calculations for each of the three horizontal gaps and barriers are presented below.

Gap/Barrier A1: No protection afforded by EU legislation for: social security and healthcare, education or access to goods and services for the grounds of religion or belief, disability, age or sexual orientation

The cost to individuals of gap A1 was estimated as the sum of lost earnings due to poorer health status or lower completion of tertiary education. Poorer health status was estimated for age and sexual orientation, while lower completion of tertiary education was estimated for disability. Given the wide range for age, the point estimate was used in the sum.

Lost earnings were estimated as shown below. Each of the individual figures (e.g. EUR 19 million for sexual orientation) can be found in the ground-specific calculations and the summary tables by ground in Chapter 3.

Lower bound estimate: 19 million (sexual orientation) + 703 million (age) + 61 million (disability) = EUR 783 million.

Upper bound estimate: 53 million (sexual orientation) + 703 million (age) + 98 million (disability) EUR 854 million.

The loss to GDP was estimated as shown below. Each of the individual figures (e.g. EUR 25 million for sexual orientation) can be found in the ground-specific calculations and the summary tables by ground in Chapter 3.

Lower bound estimate: 25 million (sexual orientation) + 943.6 million (age) + 81 million (disability) = EUR 1.05 billion.

Upper bound estimate: 71 million (sexual orientation) + 943.6 million (age) + 132 million (disability) EUR 1.15 billion.

The loss to tax revenue was estimated as shown below. Each of the individual figures (e.g. EUR 9 million for sexual orientation) can be found in the ground-specific calculations and the summary tables by ground in Chapter 3.

Lower bound estimate: 9 million (sexual orientation) + 339.7 million (age) + 29 million (disability) = EUR 376 million.

Upper bound estimate: 26 million (sexual orientation) + 339.7 million (age) + 47 million (disability) = EUR 413 million.

Gap/Barrier A2: Barriers to access to justice for victims of discrimination

The cost to individuals of gap A2 was estimated as the sum of lost earnings due to the higher risk of assault. The econometric analysis found that discrimination on the grounds of race/ethnicity, religion or belief, and sexual orientation were associated with a higher risk of assault. Experience with assault was associated with lower earnings, translating into lower GDP and tax revenue.

Lost earnings were estimated as shown below. Each of the individual figures (e.g. EUR 9 million for sexual orientation) can be found in the ground-specific calculations and the summary tables by ground in Chapter 3.

The impacts due to higher risk of assault from discrimination on the grounds of race, ethnicity, religion and sexual orientation were estimated by aggregating the results by ground (see Table 49 below). Each of the individual figures for race/ethnicity, religion and belief, and sexual orientation can be found in the ground-specific calculations and the summary tables by ground in Chapter 3.

Table 52: Estimates for lost earnings, GDP and tax revenue (Gap/barrier A2)

	Increased risk of assault	Earnings loss	GDP loss	Tax revenue loss
Race and ethnicity	10%	Up to EUR 206 million	Up to EUR 277 million	EUR 0-100 million
Religion and belief	7%	Up to EUR 146 million	Up to EUR 197 million	EUR 0-71 million
Sexual orientation	12%	Up to EUR 3 million	EUR 25-71 million	EUR 9-26 million
Overall	N/A	Up to EUR 355 million	EUR 25-545 million	EUR 9-197 million

Gap/Barrier A3: Barriers to effective national implementation of the Racial Equality Directive and the Employment Equality Directive

Lost earnings, GDP and tax revenue due to a higher risk of unemployment as a result of ineffective implementation of the Employment Equality Directive and the Racial Equality Directive were estimated (see Table 50). In addition, there are healthcare costs associated with the Racial Equality Directive of EUR 35.5-57 million. These costs stem from the higher risk of poor mental health, as described in Chapter 3, Section 2.

Table 53: Estimates for the loss of earnings, GDP and tax revenue (Gap/barrier A3)

	Earnings loss	GDP loss	Tax revenue loss
Employment Equality Directive			
Lower employment - Age	EUR 182-228 billion	EUR 244-305 billion	EUR 88-110 billion
Lower employment - Disability	EUR 468-763 million	EUR 628-1,024 million	EUR 226-369 million
Sub-total	EUR 182-228 billion	EUR 244-305 billion	EUR 88-110 billion
Racial Equality Directive			
Lower employment	EUR 1.8-7.8 billion	EUR 2.4-10.5 billion	EUR 854 mln -3.8 billion
Sub-total	EUR 1.8-7.8 billion	EUR 2.4-10.5 billion	EUR 854 mln -3.8 billion
Overall	EUR 184-236 billion	EUR 246-316 billion	EUR 89-114 billion

3. ESTIMATES FOR THE POLICY OPTIONS

This section explains how some of the estimates presented in Chapter 4 were calculated.

Option 2: Improve implementation and enforcement of the legal framework

The estimate of EUR 47 million is based on the REC budget for the period 2014-2020. Specifically we take the average of the annual sum of funding across several specific objectives as presented in Table 54. The average of the last row of the table is 47 EUR million.

Table 54: REC annual funding levels by specific objective (EUR)

Year	2014	2015	2016	2017
Non-discrimination	11,080,000	13,635,280	13,635,000	13,231,000
Forms of intolerance	5,790,000	5,750,000	7,325,000	9,360,000
Persons with disabilities	5,896,000	5,816,000	6,000,000	6,089,000

Gender equality	8,385,000	6,907,000	6,586,000	6,384,000
Total	43,611,000	45,942,437	41,260,000	50,970,000

Source: REC Annual Work Programmes available online at: http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index_en.htm

The estimates for the benefits of this policy option are based on the estimates for two gaps/barriers: A2 and A3.

Better implementation and enforcement of the Employment Equality and Racial Equality Directives were assumed to address gap/barrier A2. Similarly, better enforcement of legislation supporting access to justice may help to address gap/barrier A3. We assume that EU action leads to a 5% improvement in the related impact channels, which are focused on assault and employment. The first row indicates the full cost associated gap/barriers A2 and A3. The second row is the cost assuming discrimination reduces by 5%. The last row presents the difference, which can also be understood as the benefits of the option (this is the figure presented in Chapter 4).

Table 55: Estimating the benefits (GDP gain) of Option 2

	Point estimate	Lower bound	Upper bound
Gap	EUR 10 billion	EUR 4.9 billion	EUR 14.1 billion
Gaps +Option 2 (5% improvement)	EUR 9.5 billion	EUR 4.7 million	EUR 13.4 billion
Benefits (difference)	EUR 497 million	EUR 247 million	EUR 703 million

Note: this assumes that the policy option leads to a 5% improvement in the pathways of health and education.

Option 3: Adopt legal instruments to expand protection against discrimination to cover additional grounds

The estimation for the benefits of Option 3 were estimated as follows: Firstly, it was assumed that this policy option would address gap A1. The costs of this gap (which stem from poorer health and educational outcomes as described in Annex 3) would be mitigated by exercising this policy option. It was also assumed that a new legal instrument could potentially lead to an improvement in health and education outcomes of 5%. The costs of the gap would thus be mitigated by the degree to which health and education outcomes improved³⁰⁶. The degree to which costs were mitigated by ground were then investigated. For example, discrimination on the ground of sexual orientation is associated with an 8% higher risk of poor health status. A 5% improvement would mean that this risk of poor health status is 5% lower (the difference would be $0.4\% = 5\% * 8\%$). This would lead to higher individual earnings, GDP and tax revenue as described in the ground-specific calculations. Table 56 presents the findings of the analysis.

Table 56: Estimating the benefits of Option 3

	Point estimate	Lower bound	Upper bound
Estimated costs due to Gap A1			
Earnings	EUR 814 million	EUR 398 million	EUR 1.24 billion
GDP	EUR 1.1 billion	EUR 534 million	EUR 1.7 billion
Tax revenue	EUR 393 million	EUR 192 million	EUR 599 million
Estimated costs due to Gap A1 + Option 3			
Earnings	EUR 733 million	EUR 378 million	EUR 1.2 billion
GDP	EUR 1.0 billion	EUR 507 million	EUR 1.6 billion
Tax revenue	EUR 374 million	EUR 183 million	EUR 569 million
Estimated benefits of Option 3 (Difference)			
Earnings	EUR 40.7 million	EUR 19.9 million	EUR 62 million
GDP	EUR 54.6 million	EUR 26.7 million	EUR 83.2 million
Tax revenue	EUR 19.7 million	EUR 9.6 million	EUR 29.9 million

Note: this assumes that the policy option leads to a 5% improvement in the pathways of health and education.

³⁰⁶ An alternative, more simplistic approach would be to assume that costs decrease by 5%.

Option 4: Amend the Framework Decision to include additional grounds

This econometric analysis found that discrimination on the ground of sexual orientation was associated with a higher risk of assault, which in turn was associated with poorer health and earning potential. The total loss in GDP due to a higher risk of assault was estimated to be EUR 4 million (see Table 22). Reducing the risk of assault by half would lead to an improvement of EUR 2 million to the economy.

This study specifically focuses on EU action and cooperation concerning equality and the fight against racism and xenophobia. Despite existing EU legislation and action it argues that there are still significant gaps and barriers to equal treatment and to adequate prevention and prosecution of, and compensation for, hate crimes within the European Union. The impact of the gaps and barriers identified – in action and cooperation – at EU level are assessed both in terms of economic impact and their impacts on economic rights and freedoms. To address these gaps and barriers, the study provides some options for EU action in the field.

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