

# Written submission from the School of Law, Politics and Sociology, University of Sussex (OEU0007)

## Summary

1. This submission is by members of the School of Law, Politics and Sociology at the University of Sussex. We welcome the opportunity to contribute to this inquiry to ensure that there is no regression in relation to equality protection in the UK once the UK leaves the EU. Many of the School's members conduct research that informs equality law and improves our understanding of discrimination.[\[1\]](#) There are fears that the UK's departure from the EU may be viewed by some as an opportunity to roll back years of progress in relation to tackling discrimination as the safety net of EU protection disappears.
2. Undoubtedly, the UK's equalities legislation has become stronger in recent years providing important protection for people who experience discrimination. Nevertheless, this has happened in the context of widening economic inequality, cuts in public services and restrictions on access to justice – all of which make it harder for victims of discrimination to realise the rights that exist on paper. If the UK leaves the EU, the next few years will be a period of great political, economic and social instability when it will be vital to ensure that protection against discrimination is strengthened not weakened and that a culture of support for equality and human rights is promoted throughout the UK. The rights that must be protected benefit everyone in the UK, not only supporting marginalised people and victims of discrimination but also making workplaces fairer for all and underpinning the legitimacy of our democratic institutions.

## A. Legislation

### The UK's equality law and framework

3. While some of the UK's equality law developed before parallel EU developments – for example the Race Relations Act 1965 – much of it has been driven by the EU, most notably following the EU Race and Employment Directives of 2000 which were the catalyst for the integration of equality law created by the Equality Acts 2006 and 2010 and also for the creation of a single statutory equality and human rights body – the Equality and Human Rights Commission (EHRC). Rights derived from the EU protect people with the characteristics protected under UK equality law, but have a far wider reach: employment protection in particular has been underpinned by EU measures, and this includes equal treatment for part-time workers, the right to unpaid parental leave, and health and safety protection – measures that enhance the rights of all workers although they often have a greater indirect benefit for people more likely to experience discrimination. For example, women are disproportionately represented in the part-time workforce so particularly benefit from protection for part-time workers.
4. While it has been stated that the Repeal Bill announced by the Government on 2 October will repeal the European Communities Act 1972 and convert existing EU law into domestic law, [\[2\]](#) there is then the possibility that the UK will amend or repeal any piece of legislation, including equality protection, without reference to EU law. The Bill will also end the jurisdiction of the Court of Justice of the European Union (CJEU) in the UK. The Court of Justice's decisions have contributed to strengthening equality protection and improving equality standards in areas such as equal pay, women's retirement provision and transgender equality. For example, the CJEU has ruled that discrimination on grounds of gender reassignment contravened the EC Equal Treatment Directive.[\[3\]](#) In this respect it is important that judgments of the Court of Justice that have subsequently been incorporated into domestic British law are not overturned and acquired rights are not undermined in a regressive manner.

## Protection relating to the individual protected characteristics

5. The role of the EU in the development of the UK's equality law is well-documented.[\[4\]](#) Taking disability as just one area where EU membership has supported the rights of disabled people in the UK, there are many examples:
  - As a result of the EU Employment Equality Directive 2000, all employees, not just those in workplaces with more than 20 employees, are protected against discrimination.
  - A ruling by the Court of Justice in *Coleman v Attridge Law (2008)*, changed the law to make it unlawful for employers to discriminate against carers and others because of their relationship with a disabled person.
  - As a result of EU regulations, transport operators are required to provide support for disabled travellers in the EU.[\[5\]](#)
  - Because of the Public Procurement Directive 2014, public bodies need to take into account accessibility criteria for people with disabilities.[\[6\]](#)
  - EU law makes it possible for UK disabled people living in other EU countries to receive benefits.[\[7\]](#)
  - The proposed European Accessibility Act will create a mechanism for ensuring that manufacturers and suppliers of products such as computers, phones, ATM and ticket machines meet accessibility standards, which UK law does not currently require.[\[8\]](#)
6. This is a snapshot of some of the ways that EU membership has and would in the future improve the lives of UK individuals with a protected characteristic in just one area. Similar lists could be drawn up in relation to the other protected grounds.

## Developing equality law and policy, and preventing regression

7. To ensure that no individual or groups are left behind in terms of discrimination, the EU has played an important part in extending parity of protection: for example, extending the principle of equal treatment for men and women to cover discrimination 'arising from a person's gender reassignment'.[\[9\]](#)
8. After leaving the EU, the UK would no longer benefit from new equality measures and standards. Some of these are already known. For example, in October 2016 the European Parliament approved a Directive requiring public bodies to make websites and mobile apps accessible. Once the Directive enters into force, member states must transpose it into their domestic law within 21 months. The Directive has been welcomed by disability campaigners but it is not known whether the UK will now transpose this Directive.[\[10\]](#)
9. We can expect future equality developments, including new areas of protection, where the EU will set standards, and promote awareness and good practice. Consider, for example, the recent role of Europe in helping to shift perceptions of HIV/AIDS from a 'security threat' to a human rights issue, and elaborating positive societal obligations to people living with HIV/AIDS.[\[11\]](#) Society's understanding of discrimination and the rights that individuals need in order to live fulfilling lives is constantly evolving and if the UK is not a full member of the EU it will find it more difficult to share in this progress.
10. Equality law in the UK has often been portrayed as a bureaucratic burden, most notably in recent years through the Red Tape Challenge which sought to identify which 'measures in the Equality Act 2010 are placing unnecessary or disproportionate burdens on business'.[\[12\]](#) However, the Government was unable to repeal elements of equality law that were based on EU law, suggesting that the EU provides an important minimum floor in terms of equality protection. And the Government's own research subsequently suggested that many employers recognise the need for a regulatory framework and find the impact of regulation to be minor.[\[13\]](#)

11. The EU has played a crucial role in progressing and protecting equal opportunities for women in the UK. While the UK already had legislation in place to help protect women from discrimination at work before joining the EU in 1973 it has only been with subsequent legally binding directives and regulations of the EU that women have been able to have access to substantive equality.<sup>[14]</sup> The Equality Act 2010, which codifies the complex array of legislation forming the basis of anti-discrimination law in the UK, mirrors and implements the key EU equal treatment directives including the Gender Recast Directive. While the Act does not itself implement EU Directives for the first time it does have the explicit aim of strengthening discrimination law to support progress on equality by replacing earlier domestic legislation which has implemented EU Directives. Significantly, the Equality Act 2010 enables Ministers to amend UK equalities legislation to ensure legislative consistency where changes are required by European law. The aim here is to ensure that areas of the Act which are covered by European law and those that are domestic in origin are not inconsistent with one another.<sup>[15]</sup>
12. More generally, all UK discrimination law is underpinned by and has to be consistent with EU law<sup>[16]</sup> and where there is a conflict EU law will override UK law. Even though the Equality Act 2010 goes further than most EU equal treatment Directives without them ‘there would be no underpinning and maintenance, or demand for maintenance, of the current provisions’.<sup>[17]</sup> The EU gender equality *acquis* therefore provides an important safety net. If the UK did leave the EU the additional layer of protection, accountability and recourse provided by the CJEU and related enforcement mechanisms would be lost. Having this additional layer of legal and judicial protection is particularly important in times of economic crisis as equality measures are often vulnerable in times of economic uncertainty. Without the minimum floor set by the EU, rights such as maternity leave and pay could be considered as ‘red tape’ constraining business.
13. A 2016 report by the Women and Equalities Select Committee found that while the government is committed to eliminating the gender pay gap in the UK labour market, little has been done to date to tackle it effectively.<sup>[18]</sup> There is still a system that is undermining productivity and perpetuating the gender pay gap. Added to this there is evidence showing that women returning from maternity leave still face high levels of discrimination and disadvantage in the workplace with a high percentage of women losing their jobs owing to maternity leave discrimination.<sup>[19]</sup>
14. This worrying state of affairs confirms that having this additional layer of protection is vital to ensure full equality in practice. It is precisely because of the legal enforceability of EU law that the UK legislator continues to introduce a series of national measures aimed at ensuring the effective implementation of the principle of gender equality.

### ***B. Courts, case law and appeals***

15. Given that the aim of the withdrawal of the UK from the EU is to achieve independence from the EU Institutions and thus also the CJEU, it is unforeseeable that the CJEU would continue to have a role of direct influence on UK case law. Brexit could mean that CJEU decisions would cease to be binding on the English courts. In practice however given the difficulty in severing ‘pure’ domestic law from EU law implementing national law, the UK courts are likely to continue to take into account the rulings of the CJEU, certainly in the interim or short-term. English courts have looked at the wording of EU Directives for the purposes of construing UK legislation and in this sense EU law has had a transformative effect on English discrimination law particularly in the field of employment.
16. The *Webb* case concerning an unlawful dismissal on pregnancy-related grounds is

illustrative.[\[20\]](#) The domestic legislation that the Court of Appeal had to interpret in this case was the Sex Discrimination Act (SDA) 1975. While the Court of Appeal held that the SDA did not automatically forbid the dismissal of a woman on the grounds of pregnancy and that to give it that meaning would be to distort rather than construe English law, then House of Lords took a different view.[\[21\]](#) By underlying how national law had to be open to an interpretation consistent with the Pregnancy Directive (92/85/EEC) if the duty of construction were to apply, it followed the ruling of the CJEU according to which dismissal based on pregnancy of a female worker amounted to direct discrimination.[\[22\]](#) The CJEU had already made it clear that the refusal to give a job to a woman on the grounds that she was pregnant was *per se* direct discrimination.[\[23\]](#) The Pregnancy Directive (92/85/EEC) prohibits the dismissal of a pregnant worker for reasons of her pregnancy.[\[24\]](#)

17. Equality and human rights cannot be viewed separately and overlap in many cases.[\[25\]](#) The protection provided by the European Convention on Human Rights (ECHR) through the UK Human Rights Act 1998 and through the European Court of Human Rights (ECtHR) will be more important than ever if the equality protection afforded to people living in the UK is diminished. In this regard we recommend the UK's ratification of Protocol 12 to the ECHR as a matter of urgency. However, replacing the Human Rights Act with a British Bill of Rights is a Government commitment that we can assume will be taken forward and it has also been suggested that leaving the EU might make it easier for the UK to withdraw from the ECHR at a later date.[\[26\]](#) In this case, it will be particularly important that any Bill of Rights is 'Human Rights Act plus' in terms of equality guarantees and the rights of minorities.[\[27\]](#)
18. The combination of removing protection under EU equality and the ECHR would leave UK citizens exposed to discrimination and abuse on an unprecedented scale. There is something profoundly troubling about one of the most developed nations in the world taking the view that it is acceptable to opt-out of human rights and equality guarantees. What message does this send to the rest of the world? Inevitably, were the UK to lose the protections offered under EU law and the ECHR, then there would be no European, supra-national, authority to whom individuals in the UK could refer in order to take their grievances further, again increasing the possibility that discrimination will go unchallenged and unremedied.
19. The remedies available for breach of EU law are more extensive than those available under the Human Rights Act because of the supremacy principle, that of indirect effect and state liability. Post-Brexit, while the UK would retain a robust and established civil and political rights framework, it would have a reduced diversity of rights with domestic force and limited remedial options for rights violations. This is also in light of the fact that the EU Charter of Fundamental Rights – a unique human rights instrument which is more comprehensive compared with the ECHR covering civil, political, economic and social rights[\[28\]](#) – will cease to have effect in the UK following Brexit. Moreover, the CJEU has had a decisive and bold role in expanding the scope of EU gender equality legislation (which is more detailed and nuanced compared with ECHR equality provisions) and also in promoting further full equality in practice with important positive action cases.[\[29\]](#) The ECtHR also relies on achieving a so-called 'European consensus' before moving forward and its judgments may thus have less transformative effects compared with those of the CJEU.[\[30\]](#) An exception is represented by key rulings on transgender people such as the *Goodwin* case,[\[31\]](#) which paved the way to new legislation, namely the Gender Recognition Act 2004.

### **C. Embedding equality principles**

#### **Equality beyond formal equality law and regulation**

20. Many of the ways that EU membership helps prevent discrimination in the UK are less visible or may not be labelled as 'equality' measures but nevertheless play an important part in changing attitudes, promoting good practice and supporting people who experience

discrimination. Moreover, it is important to embed not only equality law, but also a societal culture in which equality is respected and individuals know their rights. For this reason, the Committee's inquiry should extend beyond formal equality law and regulation to encompass the broader range of EU bodies, campaigns and projects that play a part in embedding equality as a value or set of principles and monitoring progress. The EU Fundamental Rights Agency (FRA) is the source of much, but by no means all, of this material.

21. Taking gender as an example, here the EU has also been relying on an array of non-legally binding measures such as gender mainstreaming, [\[32\]](#) which requires the EU and the Member States to seek to eliminate inequality and promote equality between women and men in all its activities also by relying on the involvement of regional or local non-state actors, social partners and civil society groups. [\[33\]](#) Gender mainstreaming has also been included in the European employment strategy (EES) as a key instrument to spread gender across key policy areas in the field of employment and as a tool to help strengthen work and family life reconciliation measures at national level. In the year 2000, the EES became part of a broader and ambitious pan-European socio-economic agenda, the Lisbon Strategy and subsequently the Europe 2020 Strategy both aimed at boosting the competitiveness, productivity and economy of the EU on the international plane and requiring key reforms at national level. While not unproblematic [\[34\]](#) gender mainstreaming measures can be a valuable tool for introducing change in the culture and perception of gender roles and gender equality generally – a necessary condition for effectively implementing legally binding equality measures.
22. Hate crime and the integration of Roma people are two instances where the EU is currently playing a leading role in addressing a growing or recently recognized equality concern. The UK experienced rising hate crime following the referendum [\[35\]](#) and withdrawal from the EU will mean we will no longer be a primary audience and beneficiary of EU resources to tackle hate crime, such as the recent 'Compendium of practices for combating hate crime' or funding for research on what works in preventing hate crime. [\[36\]](#)
23. In 2011, an EU Framework for National Roma Integration Strategies was adopted to address the exclusion of Roma people. A report on the UK's implementation of the Strategy in 2014 found that the UK government was not doing enough to address Gypsy, Traveller and Roma inequality, and it is likely that this initiative would lose any momentum without UK membership of the EU to act as an incentive to comply. [\[37\]](#)
24. Examples of two other recent EU equality-related initiatives are: CharterClick, a new accessible EU tool to help people identify violations of the Charter of Fundamental Rights, [\[38\]](#) and a report on the business case for diversity, clearly spelling out the gains that companies can obtain from eliminating barriers to LGBTI participation. [\[39\]](#) Most of these resources are publicly available, but on leaving the EU, the UK will be outside the formal mechanisms for communication and dissemination of such materials, making it less likely they will reach the individuals and organisations who could benefit from them.
25. At the current time, it is particularly important to note the EU's critical role in preventing a fragmented European response to the desperate plight of migrants and asylum seekers: the EU Asylum Directive establishes common standards of treatment for people fleeing persecution; [\[40\]](#) the European Asylum Support Office helps member states fulfil their international obligations [\[41\]](#) and; EU asylum law requires Member States to 'take into account the specific situation of vulnerable persons' by considering their special needs. [\[42\]](#)
26. It is also likely there will be a decline in momentum in pursuing equality objectives, as civil services resources are diverted to the implementation of Brexit. The Government Equalities Office and Equality and Human Rights Commission have already experienced significant

cuts to staff and resources, meaning that there are fewer individuals and less money dedicated to preventing discrimination.<sup>[43]</sup> A strong and well-resourced third sector of campaigning and service-providing organisations will become more important, but such organisations have been hard-hit by austerity measures and many – for example in the Violence Against Women Sector – have been forced to close.<sup>[44]</sup>

27. There are likely to be indirect and long term impacts on equality protection in the UK if the research community loses access to EU funding sources, as seems likely, particularly given that the UK is one of the largest recipients of research funding in the EU.<sup>[45]</sup> This will have an impact on the evidence base for equality and law in the future. For example, Sussex Law School is home to the SOGICA project which will provide new knowledge about the discrimination experienced by LGBTI asylum seekers in the UK with the aim of improving the UK's asylum law and policy.<sup>[46]</sup> Similar research projects will not be able to benefit from European research funding, thus severely limiting the UK intellectual and academic power to carry out crucial research in the fields of discrimination and equality.
28. Sharing of learning about what works across member states has always been an important way of making incremental progress in promoting equality. In some areas, the UK can learn from other EU member states; in others it has been a model to other countries, for example introducing same-sex civil partnerships in 2005. There is a risk that this will no longer be the case if the UK leaves the EU and we do not participate in any sharing of good practice and levelling up of protection across member states.
29. The promotion of a rights culture and existence across EU member states of a community of activists, lawyers, practitioners and others pursuing equality through European partnerships and networks (such as Equinet, ILGA-Europe, the European Women's Lobby and many others) is another phenomenon whose value is hard to measure in concrete terms.<sup>[47]</sup>
30. Turning to the role of the EHRC, as the statutory National Equality Body and National Human Rights Institution operating independently of Government, the EHRC has an important role to play in enforcing and promoting equality and promoting human rights. Its role will be more critical after the UK leaves the EU as it will be required to replace some of the EU's equality functions if only partially, for example, setting minimum standards of protection and ensuring they are met.<sup>[48]</sup>
31. Looking at the role of the Office for Disability Issues and the Government Equalities Office, equality work in the UK often suffers from being spread over different departments. While the Government Equalities Office has an overview and overall responsibility, different departments lead on different protected characteristics – the Office for Disability Issues on disability, and the Department for Communities and Local Government on race and faith. Better integration of equality work, whether through consolidation of equality work in a single department or another mechanism, would be helpful in showing the Government's commitment to preventing discrimination post Brexit.
32. The consultation asks what policy and/or legislative changes should be made to ensure that the UK is well placed to support strong equalities legislation and processes outside the EU. In addition to preserving existing equality and human rights law it will be important to consider what else needs to be in place for people to achieve their rights. These include an adequately resourced advice system and access to legal representation. Access to justice and austerity measures are not the immediate subject of this inquiry and yet they need to be recognised as part of the landscape that determines whether new equality measures are accessible to the individuals they were designed for. In a climate of diminishing economic resources, it is likely to be the most vulnerable in society who suffer most.

## Conclusion

33. As we have highlighted in our submission, while many of the implications of the UK leaving the EU remain unclear, the indications are that they will be negative for the people who most need protection from discrimination in the UK. In the short term, it is important for the government and policy makers to confront the greater toleration for prejudicial attitudes and hate crime that has been evident since June 2016. In the longer term, the priority will be to ensure that equality law is not weakened in the guise of saving money, reducing bureaucracy or restoring sovereignty, and that mechanisms and resources are maintained or created to enable UK stakeholders in all sectors and disciplines continue to work with EU partners to promote equality. Using Brexit to opt-out of equality and human rights guarantees should not be an option in the 21<sup>st</sup> century.

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- [1] For example Carmelo Danisi, [Protecting the Human Rights of people living with HIV/AIDS: A European approach?](#) *Groningen Journal of International Law*, 2015, 3 (2), pp. 47-79; Nuno Ferreira et al (eds.) 'The Equality Act 2010: five-years on', *Intl. Journal of Discrimination and the Law*, 2016, 16 (2-3). pp. 61-65; Samantha Velluti, 'The promotion of social rights and labour standards in the EU's external trade relations', 2016, *CLEER Papers* (5). pp. 83-113.
- [2] <https://www.gov.uk/government/news/government-announces-end-of-european-communities-act>
- [3] P v S and Cornwall County Council [1996] IRLR 347, ECJ.
- [4] <https://www.equalityhumanrights.com/en/our-human-rights-work/impact-eu-membership-equality-and-human-rights>
- [5] EU Air Passengers Regulation 2006, Rail Passengers Regulation 2007, Sea and Inland Waterways Regulation 2010, Bus and Coach Regulation 2011.
- [6] <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>
- [7] Regulation on the Co-ordination of Social Security Systems 2004.
- [8] This information was taken – with thanks – from '[UK Disabled People and their Families – Stronger and Safer inside the EU](#)' by Anna Lawson, Gerard Quinn and Hywel Ceri Jones, 2016, available at [www.disabilityrightsuk.org/sites/default/files/word/brexitjune62016.docx](http://www.disabilityrightsuk.org/sites/default/files/word/brexitjune62016.docx)
- [9] [http://ec.europa.eu/justice/gender-equality/files/law\\_reviews/directive\\_2004\\_113\\_report\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/law_reviews/directive_2004_113_report_en.pdf)
- [10] [http://www.edf-feph.org/Page\\_Generale.asp?DocID=13855&thebloc=34433](http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=34433)
- [11] Carmelo Danisi, [Protecting the Human Rights of people living with HIV/AIDS: A European approach?](#) *Groningen Journal of International Law*, 2015, 3 (2), pp. 47-79.
- [12] <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>
- [13] [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/128792/13-638-employer-perceptions-and-the-impact-of-employment-regulation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/128792/13-638-employer-perceptions-and-the-impact-of-employment-regulation.pdf)
- [14] E.g. the Gender Recast Directive (Directive 2006/54/EC) has important provisions on remedies and penalties, the burden of proof, victimization as well as the promotion of equal treatment through equality bodies, social dialogue and dialogue with NGOs, Articles 17-22 and 24-25.
- [15] Explanatory notes to s.203 of the Equality Act 2010, available at: <http://www.legislation.gov.uk/ukpga/2010/15/notes/contents>
- [16] See the detailed analysis carried out by the Trade Union Congress (TUC), *Women workers' rights and the risks of Brexit*, London 2016, available at: [https://www.tuc.org.uk/sites/default/files/Women\\_workers\\_and\\_the\\_EU.pdf](https://www.tuc.org.uk/sites/default/files/Women_workers_and_the_EU.pdf)
- [17] Aileen McColgan, oral evidence to the House of Commons Women and Equalities Committee: Impact of Brexit on the Equality Agenda, Wednesday 14 September 2016, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/impact-of-brexit-on-the-equalities-agenda/oral/38384.pdf>
- [18] Report available at <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/584/58402.htm>; see also House of Commons Women and Equalities Committee, 'Gender Pay Gap', Second Report of Session 2015-16, available at: <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/584/584.pdf>
- [19] Equality and Human Rights Commission, Report on Pregnancy and maternity discrimination, October 2016, available at: <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>
- [20] *Webb v EMO Air Cargo (UK) Ltd* (No 1) [1993] 1 WLR 49; see also *Pickstone v Freemans* [1988] 3 WLR 265 and *Lister v Forth Dry Dock and Engineering Cp Ltd* [1990] 1 AC 546, HL (a labour law case concerning the Business

Transfer Directive 2001/23/EC).

[21] *Webb v EMO Air Cargo (UK) Ltd* (No 2) [1995] 1 WLR 1454.

[22] C-32/93 *Webb* ECLI:EU:C:1994:300.

[23] C-177/88 *Dekker* [1990] ECR I-3941.

[24] Article 10.

[25] For example, in *Eweida v. United Kingdom* (no. 48420/10), Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms was invoked but also the UK Employment Equality (Religion and Belief) Regulations 2003. See also *Ladele v. United Kingdom* (no. 51671/10), *McFarlane v. United Kingdom* (no. 36516/10) and *Chaplin v. United Kingdom* (no. 59842/10).

[26] [http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB\\_16-82\\_Brexit-the\\_impact\\_on\\_equalities\\_and\\_human\\_rights.pdf](http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_16-82_Brexit-the_impact_on_equalities_and_human_rights.pdf)

[27] Elizabeth Craig, 'A right to cultural identity in a UK Bill of Rights', *European Public Law*, 2013, 19 (4). pp. 689-714.

[28] Chapter III is dedicated to the principle of equality.

[29] E.g. important cases such as Case C-409/95 *Marschall* ECLI:EU:C:1997:533 and Case C-158/97 *Badeck* [2000] ECHR I-1875 where the CJEU outlined its position towards positive action measures which is still valid in present days, compare with Case C-559/07 *Commission v. Greece* [2009] ECR I-47 where measures are identified as special treatment of women by the CJEU.

[30] E.g. *Runkee and White v United Kingdom* App No 42949/98 and 53134/99 (ECtHR, 10 May 2007); compare with *Konstantin Markin v Russia*, App No 30078/06 (ECtHR, 22 March 2012) where the ECtHR examined a CJEU decision in detail, Case C-366/99 *Griesmar v Ministre de l'Economie* [2001] ECR I-9383 where a distinction between positive action and special treatment was made.

[31] *Christine Goodwin and I v United Kingdom* [2002] 2 FCR 577.

[32] See Article 10 TFEU. See also the so-called 'Horizontal Social Clause', namely Article 9 TFEU. Article 9 TFEU combined with Article 5 TFEU gives further recognition to coordination processes and to mainstreaming the objectives of high levels of employment, social protection and social inclusion into other EU policies.

[33] F. Beveridge and S. Velluti (eds), *Gender and the open method of coordination. Perspectives on law, governance and equality in the EU* (Aldershot: Ashgate 2008).

[34] S. Velluti, *Employment and the Lisbon Strategy* in D. Papadimitriou and P. Copeland (eds), *The EU's Lisbon Strategy. Evaluating success, understanding failure* (Basingstoke: Palgrave Macmillan 2013), pp. 88-110.

[35] <https://www.theguardian.com/society/2016/sep/07/hate-surged-after-eu-referendum-police-figures-show>

[36] <http://fra.europa.eu/en/theme/hate-crime/compendium-practices>. The School of Law has EU funding to conduct a two-year study on the prosecution and sentencing process for hate crime, as part of the Preventing Hate Crime EU DG Justice Action Grants.

[37] <http://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/iris/2014/UK-civil-society-monitoring-report-en-1.pdf>

[38] <http://www.charterclick.eu/>

[39] [http://ec.europa.eu/justice/discrimination/files/report\\_companies\\_final\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/report_companies_final_en.pdf)

[40] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>

[41] <https://www.easo.europa.eu/>

[42] See discussion by Denise Venturi at <https://strasbourgobservers.com/2016/10/25/the-potential-of-a-vulnerability-based-approach-some-additional-reflections-following-o-m-v-hungary/>

[43] <https://www.parliament.uk/edm/2016-17/382>

[44] Susan Millns and Charlotte Skeet, 'Gender Equality and Legal Mobilization in the United Kingdom: Using Rights for Lobbying, Litigation, Defense and Attack', *Canadian Journal of Law and Society*, 2013, 28/2, pp.169-188.

[45] <https://royalsociety.org/~media/policy/projects/eu-uk-funding/uk-membership-of-eu.pdf>

[46] Sexual Orientation and Gender Identity Claims of Asylum project. This four-year project is the recipient of recipient of EUR 1,000,565 from the European Research Council.

[47] Dia Anagnostou and Susan Millns, 'Gender Equality, Legal Mobilization and Feminism in a Multi-level European System', *Canadian Journal of Law and Society*, 2013, 28/2, pp. 115-131.

[48] <https://www.ucl.ac.uk/laws/bridging-the-divide/docs/btd-report>