

The EU Referendum



Introduction

It is probable, after local elections, PCC elections and elections for the Mayor of London and London Assembly that British voters may be suffering voter fatigue but the EU Referendum is the single most important election this year.

The decision facing voters, to Remain in a reformed European Union or to Leave, is a monumental one. The decision is of as much significance to British Muslims as to ordinary voters.

The European Muslim population grew from 4% in 1990 to 6% in 2010 and is expected to rise by 2030 when Muslims are projected to make up 8% of Europe's population, according to population projections by the Pew Research Center. European Muslim communities are younger in profile, similar to the British Muslim population. In 2010, the median age of Muslims throughout Europe was 32, while the median for all Europeans was 40.

Challenges facing British Muslim communities do not stop at our border; Islamophobia and anti-Muslim hatred are transnational phenomena which require cross-border co-operation and strategies. Anti-Muslim discrimination and racism in the workplace is a huge problem in the UK where British Muslims face the highest rates of employment discrimination. The EU first introduced legislation to combat discrimination in employment on grounds of religion and it continues to monitor and challenge Member States' progress on tackling racism and discrimination in employment, housing, education and goods and services. No policy on countering terrorism can succeed without multilateral co-operation of the type afforded by the EU.

This referendum is about facing up to the realities of our contemporary political and social challenges and the effectiveness of supranational institutions in creating and implementing the policy responses we need to tackle the global issues we face.

In this briefing paper we have assessed some of the main policy areas impacting on Muslims in which the EU has played a role, from combating Islamophobia to upholding fundamental rights on race and religious equality and from counter-terrorism measures to the EU's role in global affairs. The benefits of our membership are vast and are significantly underestimated. Our position is firmly a vote in favour of Remaining in the EU.

Executive summary

- The EU has its problems, with an oft-cited democratic deficit (the failure to include the only elected assembly, the European Parliament, in co-decision making) and a mixed scorecard on a range of policy issues but we firmly believe we are better off In than Out.
- Withdrawal from the EU is a process and not an event. Voting to leave will incur years of delays as the UK re-negotiates key treaty agreements and trade deals with each of the EU Member States individually, and again with other trades bodies like the World Trade Organisation.
- It is true that the EU's decision-making structures contain a 'democratic deficit' but that assumes national parliaments are wholly democratic. How democratic is the UK parliament really when representation of women and minorities is lower than their proportion in the national population, and an unelected upper chamber plays a significant role in the legislative process?
- The EU has been accused of a lack of transparency over its policymaking procedures and of wasteful excess by its institutions. But these problems are not specific to the EU with the UK experiencing its MPs' expenses scandal and various lobbying scandals in recent years. We do need more transparency and policymaking and that applies as much in the UK as it does to EU institutions.
- Immigration has surfaced substantially during this referendum campaign with dubious claims made about the benefits accruing to the UK from one of the fundamental pillars of the EU – free movement of persons, goods, services and capital. According to analysis from researchers at University College London, the net contribution of EU migrants to the UK's public finances between 2000 and 2011 was £20bn. By contrast, between 1995 and 2011, immigrants from outside the EU made a negative contribution of £118 billion over 17 years (1995-2011) using more publicly-funded services, including the NHS, education and benefits, than they paid in tax. EU migration is good for the UK economy.
- It is fair to characterise Muslims as patriotic but not nationalistic. As with all universal religions, Islam transcends borders; casting aside ethnic, racial and linguistic differences to exhort a common humanity. The EU speaks to those fundamental values of universalist religions, promoting peace and dialogue between communities and countries alike, rather than nationalism which can all too often resort to use of racist and divisive overtones. The EU is a project of peace built on respect for difference.
- According to a poll conducted by YouGov in June 2015, Muslims were the second least tolerated group in seven European countries, including the UK (fourth). Anti-Muslim prejudice is a European phenomenon affecting Muslim communities across Europe. To challenge the condition of Muslims in the UK, without partnership and co-operation with countries and communities in the European Union is to fight the challenge with one hand tied behind our backs. By voting to Remain in the EU, as Muslims, we are promoting common cause and common strategies to a common problem – it makes sense to do so!
- Legal protection against discrimination on grounds of religion emerged as a consequence of an EU Directive (in 2000) and the protections British Muslims now enjoy, with religion as a "protected characteristic" began its journey into UK law

because of the EU. The EU is also the source of other equality rights, from gender equality to a full spectrum of protection on grounds of 'race' – in services, housing, employment and education. Given the migrant backgrounds of the majority of British and European Muslim citizens, and anti-Muslim bias as a basis for hostility and discrimination, the EU has taken vital steps in combating discrimination. The Equal Treatment Directive is the next stage in full scale protection for groups defined by religion (and other protected characteristics).

- The EU's appointment of David Friggieri as Coordinator on combating anti-Muslim hatred is indicative of the Union's positive and strategic contribution to tackling anti-Muslim hatred across the EU. Compare this to the British Government's response – the setting up of an Anti-Muslim Hatred working group the two most qualified members of which stepped down saying the Government's approach was "going backwards". The EU offers another avenue to address questions about the fundamental rights enjoyed by EU citizens.
- The EU provides critical assessments on the condition of EU citizens and their human rights. The Fundamental Rights Agency (FRA), produces regular evaluations serving as a barometer on human rights among EU Member States. The FRA has published a number of specialist reports looking at issues impacting European Muslim citizens from Islamophobia and media portrayals of Islam and Muslims to racial profiling and institutional racism. The FRA and the EU offer crucial contributions to the assessment of Islamophobia and racial/religious discrimination within the EU. If we leave, we would lose the benefits of human rights compliance, oversight and policy recommendations that ensue from the FRA's work on improving equal treatment and non-discrimination for British Muslims.
- Human rights promotion is a key pillar of the EU project, at home and abroad with the EU's emergence from a history of bloody conflict on the continent. There is some confusion over the role of European courts – the European Court of Human Rights and the Court of Justice of the European Union - and the effect of their decisions on the sovereignty of parliament. Importantly, arguments in favour of leaving the EU are rehearsed as means to end the 'deportation of suspected terrorists'. The European courts are a reminder that even those charged with heinous crimes, like Anders Behring Breivik, have rights. Would we rather submit to the discriminatory judgments of a British Government that ruled to extradite Talha Ahsan but not Gary MacKinnon? All human are equal, some are not more equal than others before the law.
- Domestic Governments have demonstrated a tendency to marginalise mainstream Muslim actors preferring to engage with non-representative organisations that lack credibility among Muslim communities. The EU, with its platforms and forums, such as the Colloquium on "Tolerance and respect: preventing and combating antisemitic and anti-Muslim hatred in Europe" enabled those Muslim groups usually sidelined in national policymaking forums to contribute a more authentic perspective on anti-Muslim hatred and hostility in EU Member States.
- Another example of mainstream Muslim organisations being able to speak out against government policies utilising international human rights forums is the recent visit to the UK by Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, who met with Muslim groups excluded from policy dialogue. Kiai criticised the Government's Prevent programme saying it risks "promoting extremism, rather than countering it." The EU is a vital organ for in the network of regional and international institutions that monitor Member States' human rights compliance.

- The EU's contribution to challenging Islamophobia goes beyond legal protections with the EU investing millions of Euros on research and civil society programmes to combat racism, intolerance and xenophobia. The EU will spend €439 million between 2014-2020 on its Rights, Equality and Citizenship programme including initiatives aimed at combating discrimination on grounds of race and religion.
- Membership of the EU confers on the UK power and influence in global affairs that it is incapable of mustering alone. The EU is the world's largest trading bloc and possesses the potential to enforce economic sanctions with far-reaching effect. Sanctions imposed by the world's largest single market are a more effective policy instrument than sanctions imposed by a single country alone. Moreover, within the EU, Muslims have the capacity to lobby for action in foreign affairs, such as the EU's role in the Quartet and the Middle East conflict.
- The EU is the largest donor to the Occupied Palestinian Territories with a regional budget of around €500 million. Outside the EU, the Palestinian issue would be left to the UK Government whose record is far from illustrious in standing up to Israel's violations of Palestinian human rights or its destruction of EU funded buildings and infrastructure.
- It has been suggested that the UK's relationship with the Commonwealth would be revitalised if we leave the EU but the claim is belied by the affinity the UK has with European nation-states – on trade and human rights - than those countries in the Commonwealth, such as India.
- Security is a key factor in our relationship with the EU offering advantages such as information sharing, cross border co-operation and access to databases that help national agencies tackle threats to collective security. Our security is better guaranteed in the EU than out.
- Approaches to counter-terrorism and counter-extremism are coalescing with strategies in the US and EU sharing strong policy similarities and agency methods with the UK's counter-terrorism strategy (CONTEST). While this is certainly cause for alarm, given the endemic problems and strategic failures of policies like Prevent, within the EU, British Muslims have the advantage of agencies like the FRA and the European Parliament scrutinising EU Member States in their approaches to counter-extremism, bulk data collection and 'snooping' policies.
- The EU Commission has taken the lead in producing a new Code of Conduct for IT companies, Facebook, Twitter, YouTube and Microsoft, to combat the spread of illegal hate speech online. The Code reinforces the individual efforts of Member States and provides a European-wide framework so that the internet remains a place of free expression and where European values and laws are respected.
- There are certain policy goals that cannot conceivably be met by unilateral means alone. Climate change, terrorism, poverty eradication are just some of the issues that require concerted, global action. At a time when policymaking is converging to adopt international approaches, a decision to leave the EU is a step in the wrong direction.

Promoting human rights

Key questions:

- **How does EU membership impact on UK human rights law?**
- **Has EU membership enhanced human rights protections for Muslims?**
- **Has the EU consistently upheld freedom of religion?**

Principal among contentions raised over the merits of Brexit is what is considered the 'interference' of EU courts in the UK's domestic arrangements amid rulings which have invited scorn for their 'undermining' of parliamentary sovereignty or frustrating the will of an elected government to, for instance, deport suspected terrorists.

There is much confusion that reigns over different human rights treaties to which the UK is signatory and the role of the respective courts responsible for adjudicating on matters of probable breach.

While current debate in the UK rests upon curtailing the 'interference' of the European Court of Justice (ECtHR) and emboldening the UK position vis-à-vis human rights judgments with the introduction of a British Bill of Rights, the treaty arrangements which mandate the role of the ECtHR are not invoked by a vote on the EU referendum being separate from the Charter of Fundamental Rights – which is enforced by the Court of Justice of the European Union (CJEU - one of the institutions of the EU), and the Council of Europe (to which the ECtHR owes its origins), which is not.

It is important to distinguish between the different sources of human rights law and the respective court systems that enforce them to appreciate both the source of human rights protections in the European Union and the ways in which treaty agreements and supranational institutions influence the human rights protections afforded to UK citizens.

Human rights: laws, courts and compliance

Human rights norms and the legislation developed on the subject have been influenced by different entities over time covering both universal and regional jurisdictions. The individual declarations on human rights which have helped form UK legislation, and the breakdown of the institutions and courts which uphold these treaty obligations or legislation, can be seen below.

The Human Rights Act (1998) incorporated the European Convention on Human Rights into UK law (section 1). It holds that it is unlawful for any public authority to act in a manner incompatible with the rights encompassed within the Act, and anyone whose rights have been thus violated can bring court proceedings in the UK against the public authority. A public authority includes a court or tribunal and any person whose functions are of a public nature. These include police officers; local authorities; government departments; nursing and care providers; and prison managers and staff. It also includes private bodies in some circumstances if contracted to carry out work for a public authority such as on a tendered basis.

Table 1 Human Rights treaties and legislations

United Nations	Council of Europe	European Union	UK Government
Declaration of Human Rights (1948)	European Convention on Human Rights (1953)	Charter of Fundamental Rights (2000/2009)	Human Rights Act (1998)
United Nations Special Rapporteurs	European Court of Human Rights (Strasbourg)	Court of Justice (Luxembourg)	UK Courts (and European Court of Human Rights in Strasbourg)
<p>Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p>Article 9 Freedom of Thought Conscience and Religion: 1. Everyone has the right to freedom of thought, conscience and religion; this includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject to such limitations as are prescribed by law and are 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 freedom of others.</p> <p>Article 14 Prohibition of discrimination: The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>	<p>Article 10 (Freedoms): 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in the community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised in accordance with the national laws governing the exercise of this right.</p> <p>Article 21 (Equality) 1. Any discrimination based on any ground such as 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 orientation shall be prohibited. 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.</p>	<p>Article 9 Freedom of Thought Conscience and Religion: 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are 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.</p> <p>Article 14 Prohibition of discrimination: The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights and the Human Rights Act shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>

Under section 3, UK judges are required to interpret all legislation, so far as is possible, in a way that is compatible with the ECHR. In doing so, the UK courts are required to “take account of” the judgments of the Strasbourg court when interpreting the ECHR rights, but need not always follow them (section 2 HRA).

In practice, the Human Rights Act also means that ‘Parliament will nearly always seek to ensure that new laws are compatible with the rights set out in the European Convention on

Human Rights'.¹ A memorandum setting out compliance with the ECHR will accompany a new Bill adhering to the requirement that rights compliance for new legislation is observed.

The Joint Committee on Human Rights examines rights compliance by scrutinising draft legislation with the purpose of considering its compatibility with human rights. It also looks at the Government's response to human rights judgements and scrutinises any Remedial Orders that amend legislation. Recent examples of the JCHR reviewing legislation for rights compliance include the Counter Terrorism and Security Bill (now Counter Terrorism and Security Act, 2015), the Investigatory Powers Bill and the forthcoming Extremism and Safeguarding Bill.

Despite British courts not being bound to consider decisions made by the European Court of Human Rights, if a person believes that their rights have been breached the case can be raised at Strasbourg through direct petition. It was, for instance, the ruling of the ECtHR in the case *Gillan and Quinton v. UK* 4158/05 [2010] ECHR 28 (12 January 2010), that led to the abrogation of section 44 of the Terrorism Act 2000 after the European Court ruled the power violated the right to respect for private life guaranteed by Article 8 of the ECHR. The Court later rejected an appeal by the British Government (July 2010) over the ruling leading to the replacement of section 44 with section 47a introducing a new, higher threshold requiring "reasonable suspicion". The introduction of the new law was accompanied by a new Code of Practice setting out requirements on observation of the new conditions on the exercise of the power.

Furthermore, the ruling of the ECtHR has been followed by rigorous examination and review of the stop and search powers resulting in the creation of the 'Best use of stop and search' tool to monitor police forces' operation of the powers. The ruling was also later followed by a consultation on the use of Schedule 7 powers at UK ports and airports. The longer-term impact of court rulings, such as in the case of section 44, cannot be underestimated. The ECtHR ruling in this case has been a catalyst for a raft of new measures introduced in the UK to tackle arbitrary and discriminatory use of stop and search.

By the same token, adverse judgments have impacted on the rights enjoyed by Muslims in respect to freedom of religion with rulings on, for example, restrictions on the wearing of religious symbols in schools and in other public bodies and the introduction of a ban on the wearing of full face veils in public places being upheld by the European Court.²

The ECtHR's ruling defending the French government's ban on the wearing of niqab in public places and its ruling on the wearing of religious symbols in public buildings are cited as adverse outcomes in relation to the defence of freedom of religion for Muslims. But it would be perverse to point to the European court's judgments and ignore decisions by the UK courts which have also ruled adversely on similar issues, such as in the *Shabina Begum* case.³

The CJEU has been called to adjudicate on two key religious discrimination cases, one from France and the other from Belgium. It has been asked to examine whether employers were in breach of anti-discrimination laws when dismissing two Muslims for refusing to remove their headscarves in the course of their employment at the request of their clients.

These cases place a spotlight on tensions between an EU citizen's right to exercise religious freedoms at work and concepts such as "strict neutrality" (where employers impose a prohibition on all employees wearing outward signs of, *inter alia*, religious beliefs). The

¹ <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

² *S.A.S v France* 43835/11 ECtHR 1 July 2014

³ *R v. Headteacher and Governors of Denbigh High School* (22 March 2006)

preliminary views of one CJEU adviser, Juliane Kokott, regarding the case originating from Belgium is uncomfortable reading but not binding. It is challenging times for Muslims and if British Muslims wish to have an impact beyond their borders, staying in Europe could be the only forum for meaningful political influence within and without. With the CJEU only relatively recently taking on these issues, it could be an opportune time to place pressure on such institutions to exercise its judgment with the human rights of European Muslim citizens in mind.⁴

A 'British Bill of Rights'

The British Bill of Rights, as proposed by the Conservatives, would seemingly "break the formal link between British courts and the European Court of Human Rights and make our own Supreme Court the ultimate arbiter of human rights matters in the UK".⁵ It has been suggested that this would remove any requirement for judges to take into account case law emanating from Strasbourg. This confuses the UK's membership of the Council of Europe with its membership of the EU and the different legal rights and remedies overseen by the ECtHR and the CJEU respectively.

Better in or out?

British Muslims enjoy human rights protections under domestic legislation and via our membership of the Council of Europe and the UN, neither of which will be affected by the EU referendum vote. The role of UN Special Rapporteurs and the rights monitoring body of the Council of Europe, the European Commission against Racism and Intolerance, evaluating the UK's compliance with human rights obligations set out in the UN declaration and the European Convention, will not be affected by the vote. The extant Human Rights Act (1998) protects human rights and this too will not be affected by the EU vote.

Recent examples of the UN's role in monitoring rights compliance include Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, who criticised the Government's Prevent programme saying it risks "promoting extremism, rather than countering it."⁶

The UN human rights committee in its review of the UK's compliance with the international covenant on civil and political rights (ICCPR) has criticised aspects of the UK's counter terrorism legislation, particularly in regards to surveillance powers and has recommended that Britain amend key counter-terrorism powers and revise laws on "snooping" by the security services.⁷

Our EU membership places us at the heart of human rights laws and the requisite legal systems and oversight mechanisms that ensure compliance. Our membership evinces an approach that signals that the UK sits among those nations that value human rights and allows our courts to draw on the expertise of the European courts in deliberating cases which allege breaches of fundamental rights. Our EU membership demonstrates our 'human rights commitment' through membership of a regional union that has established legal frameworks for human rights protection at home and abroad - and you can't put a price on that.

⁴ Top EU court adviser backs workplace Muslim headscarf ban, *BBC News* 31 May 2016

⁵ Conservative Party Manifesto 2015 p. 59

⁶ Prevent strategy 'could end up promoting extremism', *The Guardian* 21 April 2016

⁷ Britain told to review counter-terrorism powers by UN human rights committee, *The Guardian*, 23 July 2015

Advancing equality and non-discrimination

Key questions:

- **How has the EU advanced equality for UK citizens?**
- **How has the EU improved the condition of Muslims in the UK?**
- **What contribution has the EU made to tackling Islamophobia and racial/religious discrimination?**

There is one area in which the UK's EU membership has brought real and tangible benefits to British Muslims and that is in the field of equality and anti-discrimination.

The introduction of legal protection on grounds of religion and belief in the UK emanated from the EU in the form of the Employment Equality Framework Directive in 2000 (2000/78/EC) which established a general framework for equal treatment in employment and occupation and outlawed discrimination on grounds of religion and belief (as well as disability, sexual orientation and age) in the workplace.

Protection on grounds of religion and belief

The Directive was the first time UK law expressly addressed the issue of 'religion' as a basis for legal protection against discrimination. Prior to this, protections afforded to British Muslims were covered, imperfectly, by provisions which recognised 'race' as a basis for legal protection against discrimination. With the adoption of Directive 2000/78/EC, Muslims for the first time enjoyed a more relevant basis of protection in law; one based on their religious identity and religious practice.

The EU has adopted other Equality Directives, the Race Directive (2000/43/EC) and the Gender Goods and Services Directive (2004/113/EC) which establish equal treatment between people irrespective of racial or ethnic origin and protection against direct and indirect sexual discrimination in the provision of goods and services respectively.

The Race Directive which came into force in 1999 has a broad remit covering employment and training, education, social protection, membership and involvement in organisations of workers and employers (trade unions) and access to goods and services, including housing. The Employment Equality Framework Directive covers only employment. A proposed Directive to eliminate the 'hierarchy' of protections under extant Directives has been proposed, the Equal Treatment Directive, but this has not yet been adopted despite being in deliberation since 2008. It remains a major gap in the EU's equality framework.

The inclusion of religion and belief as a "protected characteristic" does not imperil the protections enjoyed by Muslims on religious grounds in the provision of goods and services in the UK, but the absence of the Equal Treatment Directive means that British Muslims living or working in another EU country may not enjoy the full spectrum of protections they do at home.

The Race Directive also provided for the creation of a national equality body (or bodies) to promote equal treatment of people irrespective of racial or ethnic origin. With the later Directive, on gender and religion and belief, age and disability, the remit of these national bodies has been widened. The UK Equality and Human Rights Commission, which came into being in 2007, oversees the UK's obligations in relation to equal treatment on grounds of

race, religion, sexual orientation, age and disability and monitors compliance by public bodies.

Since the introduction of the Employment Equality Framework Directive, we have seen further legal protections on grounds of religion introduced into UK law. For example, in 2001, the Anti-terrorism, Crime and Security Act which in Section 39 amended the Crime and Disorder Act 1998, and introduced 'religiously aggravated' offences alongside 'racially aggravated'. The change allowed for the possibility of prosecuting crimes motivated by a victim's racial or religious identity or presumed racial or religious identity. Also in 2001, we saw the first attempt to introduce 'incitement to religious hatred' as a new offence.

The EU Directive's preceding domestic law in the granting of protection on grounds of religion and belief is not to be underestimated given the hostility experienced by Muslim groups who advocated for the incitement to religious hatred offences as a necessary law when legal provisions on grounds of race proved inadequate to stem anti-Muslim prejudice particularly among far right groups.

Monitoring equality, promoting good practice

The European Network of Equality Bodies (Equinet), which brings together national bodies that oversee the implementation of the EU Directives on equality and national law on equality, draws expertise from across the EU, sharing good practice, providing peer support, monitoring variations between Member States in the implementation of Directives and creating a professional platform for capacity building. The work of Equinet is intended to further the goal of achieving enhanced and harmonised protection from discrimination across all EU Member States. Our membership of the EU facilitates the membership of the Equality the Human Rights Commission in Equinet and the professional benefits that derive from this.

The EU Network of legal experts in non-discrimination (now the European Network of legal experts in gender equality and non-discrimination) is another tier of expertise that monitors and reports on the implementation of equal rights protections in the EU and reports to the EU Commission. The Network's annual law review and thematic reports provide updates on legal and political development in Member States providing useful overviews on current practice and options for future policy considerations.

For example, in its 2011 Anti-discrimination Law Review, the Network observed that 16 of the 45 disputes that were reported in the field of employment were related to the wearing of religious clothing or signs, typically the dismissal of employees for wearing the headscarf in the workplace. Similarly, the Fundamental Rights Agency (FRA) in its 2010 annual report found that religious and cultural symbols at work were a prevalent issue in several Member States including in Germany, Denmark and the Netherlands.

The European Commission has also produced implementation reports on EU legislation covering racial discrimination and racist violence with a joint report in January 2014 on the 2000 Race Equality Directive and the 2008 Framework Decision on Racism and Xenophobia. The implementation reports are, again, an assessment of the situation in Member States with regards to transposition of EU law and progress on implementation.

In many respects, the UK is well ahead of other Member States when it comes to equality monitoring having in place robust mechanisms for data collection. Achieving equality and non-discrimination as outcomes requires data collection and requisite disaggregation but it also requires political will to address the situation reflected in equality data.

Our EU membership allows for the condition of British Muslims in relation to equal treatment and non-discrimination to be considered at both national and supra-national levels with the Equality and Human Rights Commission contributing to monitoring compliance and progress by the UK government. If we leave the EU, we lose the considerable benefit of monitoring, oversight and progress reports on the UK produced by the EU's specialist bodies.

Islamophobia

The European Parliament has noted that Islamophobia, as with anti-Semitism and other forms of racism and xenophobia, "represent a threat to the values and principles upon which the EU is founded."⁸

The European Union has adopted measures to combat racism and xenophobia, such as hate crime and hate speech, discrimination and intolerance in the Framework Decision 2008/913/JHA on combating racism and xenophobia. The Framework Decision calls for combating certain forms and expressions of racism and xenophobia by means of criminal law and obliges Member States to penalise public incitement to racist violence or hatred within a fundamental rights context (upholding freedom of speech).

The Framework Decision, in recognition of a ruling by the ECtHR which regards it necessary in "democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance," seeks to combat hate crime and hate speech while "respecting the fundamental rights of freedom of expression and association."

The ECtHR has also ruled, in a number of cases before the court, that countries must clearly state the motivation behind racist crimes or those committed because of a victim's religious belief arguing that overlooking the bias motivation behind a crime amounts to a violation of Article 14 of the European Convention of Human Rights (ECHR) on the Prohibition of Discrimination.

The 2008 Framework Decision calls on Member States to introduce "at least a minimum level of effective proportionate and dissuasive criminal penalties" to tackle racist and xenophobic offences. The Framework Decision also calls on EU Member States "to punish public incitement to violence of hatred directed against a person or persons belonging to a group including on grounds of religion, and the commission of such acts by public dissemination or distribution of material."

The UK fares considerably well compared to fellow EU Member States in this regard having introduced 'religiously aggravated' offences into domestic legislation in 2001 and incitement offences in 2006 (albeit with unequal protections between groups defined by race and those defined by religion). The UK is regarded by the Fundamental Rights Agency as one of few Member States collecting "comprehensive data" (figure 1).

But in this respect, comprehensive is a relative measure as we can see from the FRA report documenting the UK's submission of data on hate crimes and bias motivations across a number of categories. While 'religious intolerance' is covered as a generic category, there is no disaggregation of the data to discern the level of Islamophobic offences (figure 2). Moreover, with the problem of 'hidden Islamophobia', where anti-Muslim hate crime is dealt with under a racially aggravated label and not as religiously aggravated, a clear figure on the scale of Islamophobic crimes in the UK is not readily accessible from police recorded crime data.

⁸ *EU action against anti-Semitism and Islamophobia*, January 2016 [available at: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573901/EPRS_ATA\(2016\)573901_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573901/EPRS_ATA(2016)573901_EN.pdf)] last accessed 15 May 2016

With the introduction of a mandatory duty to record Islamophobia as a separate category of crime, in force as of April 2016, the UK will be better able to disclose data on Islamophobic attacks in the UK as it currently does with anti-Semitic offences.

Figure 1

Limited data	Good data	Comprehensive data
<i>Few incidents and a narrow range of bias motivations are recorded</i>	<i>A range of bias motivations are recorded</i>	<i>A range of bias motivations, types of crimes and characteristics of incidents are recorded</i>
<i>Data are usually not published</i>	<i>Data are generally published</i>	<i>Data are always published</i>
Bulgaria Cyprus Estonia Greece Hungary Ireland Italy Latvia Luxembourg Malta Portugal Slovenia Spain Romania*	Austria Belgium Czech Republic Denmark France Germany Lithuania Poland Slovakia	Finland Netherlands Sweden United Kingdom

Notes: *No evidence on hate crime data collection was found for Romania.

Information as of September 2012.

Source: FRA desk research and FRA analysis of data provided by the FRA's research network

Source: *Making hate crime visible in the European Union: acknowledging victims' rights* (Fundamental Rights Agency, 2012)

Figure 2

EU Member state	Racism / Xenophobia	Antisemitism	Sexual orientation	Extremism	Religious intolerance	Islamophobia	Anti-Roma	Disability	Gender Identity	Other / Unspecified
UK	■	■	■		■			■	■	
UK - England, Wales & Northern Ireland	31,486	488	4,883		2,007			1,569	357	
UK - Scotland	4,513	448			693			50	14	

Notes: Data are not comparable between EU Member States.

Data are included for 2010 as later data for all EU Member States that publish official data were not available at the time of printing.

"n/a" means that data for this bias-motivation were not published in 2010.

Data for Scotland cover the fiscal year: April 2010 to March 2011

Source: *Making hate crime visible in the European Union: acknowledging victims' rights* (Fundamental Rights Agency, 2012)

The Council of the European Union's conclusions⁹ on combating hate crime in the European Union in December 2013 called on Member States to transpose Framework Decision 2008/913/JHA and to:

⁹ Council conclusions on combating hate crime in the European Union (JHA Council meeting 5-6 Dec 2013)

- take appropriate measures to facilitate the reporting of hate crimes by victims and as far as possible also associations supporting them, including measures to build trust in police and other state institutions;
- collect and publish comprehensive and comparable data on hate crimes, as far as possible including the number of such incidents reported by the public and recorded by law enforcement authorities; the number of convictions; the bias motives behind these crimes; and the punishments handed down to offenders.

The Council further invited the EU's Fundamental Rights Agency to work together with Member States to facilitate the exchange of good practices and to assist Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes.

The FRA has established a Working Party on Improving Reporting and Recording of Hate Crime in the EU¹⁰ for a two year period (2014-2016) with the following objectives:

- Exchange of practices on:
 - encouraging reporting of hate crime and improving official recording of hate crime
 - enhancing cooperation, creating synergies and avoiding duplication between EU and international organisations, governmental bodies, law enforcement, criminal justice and civil society organisations to tackle hate crime with greater effectiveness
 - training for law enforcement and criminal justice personnel on how to deal with hate crime;
- Sharing developments relating to combating hate crime
- Testing practices exchanged by Member States represented in the working party

The UK has seconded experts to serve on the Working Party which will report its findings to EU institutions (Parliament, Council, Commission – particularly in expert groups); EU agencies (Eurojust, Europol, Cpol); International organisations; National human rights bodies and Civil society organisations.

Our membership of the European Union provides invaluable expertise and opportunities to improve the UK Government's response to tackling anti-Muslim prejudice and hate crime.

In September 2015, the EU held a Colloquium in Brussels on anti-Semitism and Islamophobia following which the EU Commission appointed Co-ordinators on combating anti-Semitism and anti-Muslim hatred, Ms Katharina von Schnurbein and David Friggieri, respectively. The two appointments are an important step in mainstreaming policy responses to anti-Muslim hatred in EU Member States.

Protection for Victims of Hate Crime

The EU Directive on the rights of victims of crime, which Member States had to transpose by November 2015 also covers hate crime foregrounding victims and their specific needs and protection.

Directive 2012/29/EU of the European Parliament and Council, 25 October 2012 established minimum standards on the rights, support and protection of victims of crime. The Directive was constructed in response to the 10 June 2011 resolution by the Council of the EU which

¹⁰ http://fra.europa.eu/sites/default/files/fra_uploads/annex_1_terms_of_reference_wphc_rome_tor.pdf

stated that ‘action should be taken at a Union level in order to strengthen the rights of, support for and protection of victims of crime’. Directive 2012/29/EU therefore aimed to “take significant steps forward in the level of protection of victim throughout the Union in particular within the framework of criminal proceedings.”¹¹

The Directive inclined Member States to commit to practices and actions aimed at supporting victims of hate crime in particular. It noted that victims of hate crime and other vulnerable victims tend to “experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation” and due care should be taken when assessing whether such victims are at risk of victimisation, intimidation and of retaliation and availing them of special protection measures’.¹²

Directive 2012/29/EU also obliged Member States to carry out individual assessments to determine whether victims are at risk of secondary and repeat victimisation, or intimidation and what special protection they require.¹³ Assessments are required to “take into account the personal characteristics of the victim” including race, religion and ethnicity as well as identify whether the incident was a hate crime.¹⁴

Article 22 of Directive 2012/29/EU requires Member States to ensure victims receive a timely and individual assessment to identify specific protection needs. The individual assessment must in particular take regard of “the personal characteristics of the victim; the type or nature of the crime; and the circumstances of the crime”. Therefore in the context of individual assessment particular attention must be paid to victims who have “suffered a crime committed with a particular bias or discriminatory motive which could, in particular, be related to their personal characteristics”.

As with the acknowledgement of the vulnerability of hate crime victims in the Council Framework Decision 2008/913/JHA, Directive 2012/29/EU seeks to ensure extra support is provided to victims of hate crime. Muslims who have experienced Islamophobic attacks in the UK, as with victims of hate crime generally often choose not to report the incident. As the *Challenge It, Report It, Stop It: Delivering the Government’s hate crime action plan* notes, there may be many reasons for this, including victims believing “that they do not think they will be taken seriously, or that the incident is not serious enough to report, or they do not think that the authorities will be able to protect them from further abuse”.¹⁵ The consideration of vulnerable victims of hate crime by the EU however and the action which Member States must take to protect victims may help increase reporting and ensure that victims come forward with the added confidence that protection measures will keep them safe from secondary and repeat victimisation, or intimidation.

The use of victimisation surveys to address the problem of under-reporting has been highlighted by equality groups as a means to collate information on hate crime that is not reflected in official data because of under-reporting. In the UK, the Crime Survey for England and Wales is a useful means to comparing levels of hate crime based on victim responses with police recorded crime data. Current surveys show that half of all hate crime (52%) in the UK do not come to the attention of the police.¹⁶

¹¹ Ibid.

¹² Ibid p 57

¹³ Ibid p55

¹⁴ Ibid p56

¹⁵ HM Government (May 2014) *Challenge It, Report It, Stop It: Delivering the Government’s hate crime action plan*. p. 16

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf

The FRA Working Party on Improving Reporting and Recording of Hate Crime in the EU has as an overall aim the “sharing of information on how to improve the reporting mechanisms for victims of hate crime and the identification, recording, investigation and prosecution of hate crimes in a multi-agency approach including police, prosecution, judges and civil society.” It is a welcome step in overturning consistently high rates of under-reporting.

Combating hate speech in media

The EU has also acted to ensure hate speech is absent from the media with the adoption of the Audio Visual Media Service Directive 2010/13/EU. The Directive states that Member States shall ensure that audio-visual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.

According to Article 3 of the Directive, Member States must ensure freedom of reception however, they may take measures to derogate and intervene in broadcasting for the reason of “public policy, in particular the prevention, investigation and prosecution of criminal offences, including the protection of minors and the fight against incitement to hatred on the grounds of sex, religion or nationality”.¹⁷

In addition, Article 9 requires Member States to guarantee that audio-visual commercial communications provided by media service providers under their jurisdiction do not include any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.¹⁸

There are a number of objectives of the Directive, one of them being to combat racial and religious hatred.¹⁹

The EU Commission recently announced the launch of a Code of Conduct on Illegal Online Hate Speech in partnership with Facebook, Twitter, YouTube and Microsoft. These social media companies have pledged to actively combat racism and xenophobia within the EU. According to the agreement reached, the social media companies have pledged to “review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary. The IT companies will also endeavour to strengthen their ongoing partnerships with civil society organisations who will help flag content that promotes incitement to violence and hateful conduct.”

It is worth noting that the UK Government's progress on tackling online hate speech, as documented in the updated Hate Crime strategy (2014), has seemingly been limited to anti-Semitism. The EU Commission's new Code of Conduct demonstrates the strength of the EU as a negotiating body and due regard for all types of incitement to hatred and violence. The EU's announcement stems from a dialogue initiated by the EU Commission with IT companies following the EU Colloquium on Fundamental Rights in October 2015 on ‘Tolerance and respect: preventing and combating anti-semitic and anti-Muslim hatred in Europe’.²⁰

¹⁷ Directive 2010/13/EU of the European Parliament and of the Council 10 March 2010 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN> (Article 3)

¹⁸ Ibid (Article 9 (c) (ii))

¹⁹ <https://ec.europa.eu/digital-single-market/audiovisual-media-services-directive-avmsd>

²⁰ EU Commission Press Release, *European Commission and IT Companies announce Code of Conduct on illegal online hate speech*, 31 May 2016

Reporting and research on Islamophobia by EU agencies

The FRA is one of the EU's decentralised agencies. Through the collection and analysis of data in the EU, the FRA assists in tackling challenges to safeguard the fundamental rights of EU citizens.

Reports specifically related to anti-Muslim hate crime in the EU conducted by the FRA (or its predecessor, the EU Monitoring Centre on Racism and Xenophobia - EUMC) include the report: 'Muslims in the European Union: Discrimination and Islamophobia'.²¹ This was accompanied by a study on 'Perceptions of discrimination and Islamophobia' based on in-depth interviews with members of Muslim communities in EU member States.²² The FRA later produced a 'Data in Focus' report on Muslims in the EU and experiences of discrimination.²³

The report, based on surveys conducted in 14 Member States, highlighted issues such as (a) low reporting of discrimination incidents, on average 79% of respondents did not report their most recent experience of discrimination in the last 12 months to any competent organization, or at the place where the discrimination occurred; (b) low reporting of hate crime, between 53% and 98% of victims of in-person crimes, depending on their country of residence, did not report the incident to the police and (c) low awareness of reporting centres, on average 80% of respondents could not name any organisation that can offer support or advice to people who have been discriminated against.

The findings have contributed to addressing the major obstacles faced by victims of anti-Muslim discrimination from public awareness on rights protections to support for civil society institutions working to assist victims of hate crime and discrimination. The second survey, EU-MIDIS II is currently underway and will assess progress made since the last survey in 2008.

The work carried out by the FRA and the EUMC previously, has helped uncover the extent of hate crime including Islamophobia in Europe. Being an independent agency, its research and analysis has provided a solid basis for national governments such as the UK to formulate policy encouraging the recording and reporting of hate crime and legal action to discourage potential perpetrators. As the Council of the EU and other legal actors 'request' advice from the FRA regarding matters of racism and xenophobia, its research is able to influence decisions on legislative proposals to combat hate crime. This can be seen in the FRA's 2013 Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime which, in response to a request of advice from the Council, explored "options and requirements to improve the situation of victim's rights in the area of hate crime based on FRA research".²⁴

In June, the EU's Fundamental Rights Agency (FRA) released its Annual Report examining Fundamental Rights in the EU for the period January to December 2015. The report examines progress by Member States on transposing EU legislation on Fundamental

²¹ EUMC (2006) *Muslims in the European Union: Discrimination and Islamophobia*.

²² EUMC (2006) *Perceptions of Discrimination and Islamophobia: Voices from Members of Muslim Communities in the European Union*.

²³ FRA (2009) *EU Minorities and Discrimination Survey (EU-MIDIS) Data in Focus report: Muslims*

²⁴ FRA (2013) *Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*, p. 6

Human Rights and Member States' initiatives on safeguarding and strengthening anti-racism and non-discrimination measures.²⁵

Notably, the report identifies xenophobic reactions to migration to the EU and Islamophobia as key human rights concerns over the last year. The reports notes these events have sparked xenophobic reactions with Member States that have seen the highest numbers of migrant arrivals being the most likely to face spikes in racist and xenophobic incidents. The report reiterates the need for Member States to enforce better systems for data collection on race and ethnicity in order to comply with their obligations on upholding fundamental rights.

Member States, of their own volition and without the overarching pressure from the EU, would not invest in implementing initiatives which comply with the FRA's recommendations, as shown in the FRA 2016 report. Britain is no exception. Should we elect to stay In, there will be continued political pressure from EU institutions for the UK to comply with recommendations and policy prescriptions which uphold Fundamental Rights.

Supporting research and advocacy on tackling Islamophobia, racism and xenophobia

With much discussion about the UK's EU membership resting on economic factors, particularly our financial contribution to the Union, it is noteworthy that the EU funds a range of programmes that support academic research into discrimination, hate crime and hate speech and further, provides funds to civil society groups, professional networks and victim-centred services which work to uphold fundamental rights of Union citizens and to meet the Union's policy objectives on equal treatment and non-discrimination.

The European Commission Directorate-General (DG) for Justice and Consumers is responsible for providing funding associated with tackling hate crime. The Rights, Equality and Citizenship Programme 2014-2020 is currently responsible for allocating funding for efforts to tackle hate crime.

The budget for the Rights, Equality and Citizenship programme in 2014-2020 is 439 million Euros. The planned budget and the breakdown of grant applications can be seen below:

Table 2

Budget Lines	Total Amount	% of the 2016 Programme funds
Ensuring the protection of rights and empowering citizens	25,306,000 EUR	43%
Promoting non-discrimination and equality	33,546,000 EUR	57%
Total	58,852,000 EUR	100%

More specifically, budgets are allocated to meet objectives including promoting the effective implementation of the principle of non-discrimination and to prevent and combat racism, xenophobia, homophobia and other forms of intolerance. As can be seen in the table below, through the Rights, Equality and Citizenship programme 2014-2020, the EU ensures that annually, a large budget is available to tackle anti-Muslim hate crime under the initiative of preventing and combating racism and Islamophobia.

²⁵ *Fundamental Rights Report 2016*. EU Fundamental Rights Agency. available at: http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-fundamental-rights-report-2016-0_en.pdf

Table 3

Specific Objective	Total Amount
“to promote the effective implementation of the principle of non-discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and to respect the principle of non-discrimination on the grounds provided for in Article 21 of the Charter”	13,635,000 EUR
Action Grants	5,055,000 EUR
Operating grants	2,200,000 EUR
Operating grant to de facto monopoly	1,090,000 EUR
Procurement	5,290,000 EUR
“to prevent and combat racism, xenophobia, homophobia and other forms of intolerance”	7,325,000 EUR
Action grants	5,975,000 EUR
Operating grants	1,100,000 EUR
Procurement	250,000 EUR
“to promote and protect the rights of persons with disabilities”	6,000,000 EUR
Action grants	454,000 EUR
Operating grants	3,000,000 EUR
Procurement	2,546 EUR
“To promote equality between women and men and to advance gender mainstreaming”	6,586,000 EUR
Action grants	4,200,000
Operating grants	950,000
Procurement	1,436,000
Total	33,546,000

Moreover, the European Commission will allocate 4,475,000 EUR of funding for initiatives which tackle and prevent racism and xenophobia with priorities for proposals as shown:

- Grassroots projects on preventing and combating Anti-Semitism and anti-Muslim hatred and intolerance;
- Projects on preventing and combating homophobia and transphobia;
- Projects promoting the development of tools and practices to prevent (counter-narratives), monitor and combat online hate speech, including but not limited to means of criminal law.
- Projects to create better understanding between communities, including religious communities, and prevent and combat racism and xenophobia through interreligious and intercultural activities

With a YouGov poll in 2015 placing Muslims as the second “least tolerated” minorities in seven countries of the EU, the Union’s commitment to tackling Islamophobia is of paramount importance.²⁶

²⁶ YouGov poll, *Intolerance in Northern Europe*, June 2015

Counter terrorism and civil liberties

Key questions:

- **Would the UK be more secure outside the EU?**
- **How has EU membership upheld human rights in counter terrorism policymaking?**

Counter-terror policies in the UK and in Europe tend to focus largely on the threat of international and religiously inspired terrorism with both domestic and regional threat assessments emphasising the level of threat posed by al-Qaeda or Daesh inclined groups and actors.

This threat assessment is in sharp contrast to data compiled by Europol in which 'Islamist terrorism' or 'religiously inspired terrorism' has been shown to account for less than 1% of all terrorism attacks on the mainland in 2006-2014. Similar findings have been shown in a joint report by experts from Royal United Services Institute, Chatham House, Institute for Strategic Dialogue and the University of Leiden on lone terror actors. The findings show that the number of terrorist attacks committed by right-wing lone actor terrorists in Europe between 2000 and 2015 was 33%, to 38% which were religiously inspired.²⁷

The International Centre for Counter Terrorism estimates the number of individuals who have travelled to Iraq and Syria across the Member States (barring Greece and Hungary) at between 3922 and 4294 foreign fighters with almost two thirds travelling from France, Belgium, Germany and the UK. At the time the report was published in April 2016, around thirty per cent of these foreign fighters had returned to Europe. Though it is unclear how many of these foreign fighters aim to return peacefully, their return has ostensibly been portrayed by governments as a potential security threat. Europol, for example, has cautioned that foreign fighters returning from the battlefields could use "their training, combat experience, knowledge and contacts" to carry out terrorist acts in the EU.²⁸ How likely 'blowback' is has been questioned by analysis profiling terrorism suspects and discerning the influence, if any, of links to training camps abroad or time spent overseas.²⁹

Nevertheless, recent months have seen a number of attacks linked to foreign fighters. These include the January 2015 attacks on the headquarters of Charlie Hebdo and the subsequent attack on a kosher supermarket in Paris, as well as an earlier attack by a French national who allegedly spent several months fighting in Syria before carrying out an assault on a Jewish museum in Brussels in May 2014. Foreign fighters also played a role in the attacks in Paris in November 2015, where at least seven of the perpetrators were found to have previously fought with Daesh, and in the most recent attacks in Brussels on 22 March 2016.

Joint policy co-operation and institutional arrangements

Although the primary responsibility of combating terrorism rests with Member States, the EU aims to "play a supportive role that helps respond to the cross-border nature of the threat".³⁰

²⁷ Smith, M. et al. (2016) Lone Actor Terrorism: Policy Paper 3: Motivations, Political Engagement and Online Activity. London: Royal United Services Institute.

²⁸ Europol, (2015) *EU Terrorism Situation and Trend Report 2015*. p. 22

²⁹ Asim Qureshi. (2014). *Blowback – Foreign Fighters and the Threat They Pose* (London: CAGE)

³⁰ European Council and Council of the European Union, *Response to foreign terrorist fighters and recent terrorist attacks in Europe* (2015) <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/foreign-fighters/#feedback-form> [accessed 05/05/15]

There are several bodies within the EU institutional landscape that play a role in formulating, implementing and monitoring EU counter-terrorism policy.

The EU Counter Terrorism Coordinator (CTC) is responsible for recommending priority areas of action and concrete policies to the Council of the EU. As part of the EU, Member States are committed to increasing cooperation on cross-border issues, such as asylum, migration, border control, organised crime and terrorism.

The Directorate General on Home Affairs facilitates knowledge exchange between practitioners within the Radicalisation Awareness Network (RAN) which brings together practitioners from around Europe working on the prevention of radicalisation. The DG describes RAN as a network of frontline or grassroots practitioners from around Europe who work daily with people who have already been radicalised, or who are vulnerable to radicalisation.

Practitioners include police and prison authorities, but also teachers, civil society representatives, and youth workers. In RAN working groups, practitioners may share their extensive knowledge and first-hand experience with one another, and peer review each other's practices.

At a more practical, two EU agencies, EuroJust and Europol, assist member states including the UK in investigations and prosecutions of terrorism-related offences. Joint investigation teams and collaboration within the judicial network on the subject of criminal matters are also useful tools when combating extremism and terrorism. The European Criminal Records Information System enables the connection of criminal records thereby facilitating the exchange of information between Member states regarding convictions.

EU counter-terrorism policies

The EU responded to the terrorist attacks on 11 September 2001 by developing an *ad hoc* programme of measures drawn-up by the General Secretariat of the European Council and expediting proposals for Framework Decisions on Terrorism and the European Arrest Warrant (EAW). Both the Framework and the EAW were already being prepared by the European Commission in accordance with an EU Plan to implement the principle of "mutual recognition" in civil and criminal matters published in January 2001.³¹

The consensus on these two pieces of legislation and the speed in which they were politically agreed following just six weeks of negotiations has been noted by *Statewatch*, particularly as the EU Convention on Extradition that the EAW replaced had taken almost four years to agree and had not been ratified by all Member States at the time.³² This suggests the significant impact 9/11 had on counter-terror policymaking and co-operation in the EU.

The EU counter terrorism strategy was adopted by the European Council in 2005 with the aim of "making Counter Terrorism not only a domestic, but a cross-cutting element of a common security policy".³³

In April 2015, the European Agenda for Security was adopted. The strategy sets forth "a shared agenda between the Union and Member States" on security with the aim of "an EU

³¹ Hayes, B. and Jones, C. (2013?) *Catalogue of EU Counter-Terrorism Measures Adopted since 11 September*. Statewatch. P. 8

³² Ibid. p. 8

³³ International Centre for Counter-Terrorism (2016), *The Foreign Fighters Phenomenon in the European Union: Profiles, Threats, & Policies*. P. 11.

area of internal security where individuals are protected in full compliance with fundamental rights.”³⁴

The EU’s counter-terrorism programme, subtitled ‘Prevent, Protect, Disrupt, Respond,’ is believed to have been inspired by the UK’s ‘CONTEST’ strategy which also consists of four strands.³⁵

The EU Commission’s “Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU’s response” outlined ten areas where “Member States and the EU could take more action to prevent radicalisation” and provided best practices based on findings by the Radicalisation Awareness Network and other bodies.³⁶ Policies have also been introduced to dissuade and disrupt ‘suspicious’ travel including the introduction of the second generation Schengen Information System which allows for “exchange of information between national border control authorities, customs and police authorities on persons who may have been involved in serious crime”.³⁷

Ethnic Profiling and adverse effects of CT policies

“Ethnic profiling” has been defined by the Open Society Justice Initiative (OSJI) in its 2009 report as “the use by law enforcement of generalizations grounded in ethnicity, race, religion, or national origin – rather than objective evidence or individual behaviour – as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity.”

The practice of ethnic profiling occurs in a range of police activities including stop and search, identity checks, raids, surveillance, monitoring practices, data mining, and arrests.

In its 2012 Handbook of Good Practices for reducing ethnic profiling in the EU, the OSJI criticised the Fundamental Rights Agency’s 2010 guide for its use of the term “discriminatory ethnic profiling” stating “Ethnic profiling refers specifically to a form of discrimination in law enforcement; to add the adjective “discriminatory” to the term misleadingly suggests that they may be non-discriminatory ethnic profiling.”

Profiling existed long before the 9/11 terror attacks and police across Europe have in the past targeted minorities for heightened attention and suspicion. The UK is the only European Member State that systematically gathers data on policing and ethnicity with data quality having improved in recent years with the inquiry into stop and search practices by HM Inspectorate of Constabulary (2013) and subsequent constabulary progress reports published in 2016.

Discriminatory ethnic profiling by law enforcement agencies is evident in other European countries. As noted, the data relating to ethnic profiling in the EU is limited as information regarding race and law enforcement is only available in a handful of Member States with the UK leading the way in the practice of collecting criminal justice data and undertaking research on law enforcement practices including police stops and their impact on different

³⁴ European Commission (2015) Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions *The European Agenda on Security* COM(2015)

³⁵ Hayes, B. and Jones, C. (2013) *Catalogue of EU Counter-Terrorism Measures Adopted since 11 September*. Statewatch. P. 9

³⁶ European Commission (2014) *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions – Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU’s Response*.

³⁷ International Centre for Counter-Terrorism (2016), *The Foreign Fighters Phenomenon in the European Union: Profiles, Threats, & Policies*. P. 5.

groups. However the European Union Minorities and Discrimination Survey, conducted during 2008 by the Fundamental Rights Agency provides evidence of ethnic profiling throughout Europe. For instance, in six out of the ten Member States where minority and majority respondents were surveyed, minority respondents were stopped more often by police in the last 12 months.³⁸

Some “extreme” differences can be noted between majority and minority populations in EU nations. In Hungary, 15% of majority respondents were stopped in the twelve months recorded in comparison with 41% of Roma respondents, whilst in Greece 23% of majority respondents and 56% of Roma respondents were stopped in the last twelve months. In Spain, 12% of majority and 42% of North African respondents were stopped in the last 12 months, similar to France where 22% of the majority and 42% of North African respondents were stopped over the same period.³⁹

As noted by the FRA, ethnic profiling is unlawful because it can contribute to the deterioration of relations between different groups in society and because it offends human dignity.⁴⁰ It is also harmful to society because it can create tensions and mistrust between different communities. It is therefore described as counterproductive. If action is taken on the basis of unlawful profiling it can result in increasing racial tensions fuelling resentment within minorities towards the police and majority population. Certainly, the EU Network of Independent Experts on Fundamental Rights have noted “in cases where relations where the public are soured, this can also have a negative impact on intelligence-gathering and other forms of cooperation with minority communities”.⁴¹

In some respects a focus on the impact of alienation and discriminatory policies has brought welcome attention to some of the root causes of radicalisation.⁴² However, counter-radicalisation strategies often rest on broad generalisations about religious practice with police and intelligence services targeting practitioners of certain tenets of Islam without concrete evidence of an individual’s involvement in terrorist activities.⁴³

Addressing the negative impact of CT policy on Muslims

The EU and its associated bodies have, in general, played a positive role in combating discriminatory ethnic profiling carried out by law enforcement and intelligence agencies in Member States. Despite this, there is evidence to suggest that actions carried out by the EU have on occasions contributed to discriminatory practices and the shaping of European Muslims as a suspect community. Data mining is an area which has directly led to discriminatory ethnic profiling whilst contributing to an atmosphere of hysteria conflating Islam with terrorism. Data mining is a practice where large databases of personal information such as immigration or student records, health and housing information are subjected to computerised searches based on a specific profile.

Ethnicity, national origin and religion figure heavily in these profiles and these searches are used to identify individuals for further investigation. Following 9/11, German Police embarked on a specific policy of data mining, building a profile searching for males between 18 and 40

³⁸ FRA (2010) *European Union Minorities and Discrimination Survey: Data in Focus Report: Police Stops and Minorities*. P. 5

³⁹ Ibid, p. 8

⁴⁰ FRA (2010) *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*. P.19.

⁴¹ EU Network of Independent Experts on Fundamental Rights (2006). Para 54.

⁴² Ibid, p. 90.

⁴³ Open Society Foundations (2012) *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*. P. 20.

years of age who were current or former students and who were Muslims coming from a specific list of 26 countries. The search was carried out between 2001 and 2003 and singled out almost 32,000 persons who fitted all criteria. Personal data of 200,000 to 300,000 persons had been stored in the data base – the computerised profile did not lead to a single arrest.⁴⁴

More recently, the EU through the European Parliament agreed a provisional agreement on Passenger Name Record data (December 2015). Members of the European parliament approved a Directive on 14 April 2016 which will require airlines to provide EU countries with information on their passengers with the proposed aim of fighting terrorism and crime.⁴⁵ The EP has in the past rejected such proposals which were first submitted in a Commission Directive in February 2011. Passenger name records contain private data about people on flights such as contact details, travel dates and itineraries. These are collected during reservation and in the check-in procedure. The proposed new rules will apply to flights to and from destinations outside of the EU but Member States could also apply them to flights within the EU. The role of the European Parliament as co-legislator on this policy highlights the importance of the elected assembly in scrutinising the legislative proposals for compliance with fundamental rights.

It has been noted that the central problem with the demands for the provision of PNR in bulk to the authorities is that it is, and can only be, aimed at facilitating data mining and profiling by means of these records linked to other data sets such as bulk communications or financial transaction data. This currently occurs in the US and is “clearly also the main aim of the PNR scheme”.⁴⁶ The EU PNR Scheme, when incorporated into national laws of Member States and collected at an EU level are likely to facilitate the creation of ‘dynamic algorithm based lists’. Such lists however, are by their very nature of highly dubious reliability with many false positives – people are wrongly labelled as high risk on anti-terrorist databases.⁴⁷ Algorithm based decision making may also lead to discrimination as profiles and decisions based upon them become increasingly unchallengeable. The consultative committee of the convention for the protection of individuals with regards to automatic processing of personal data therefore concluded that the compulsory suspicions provision of PNR data in bulk does not serve a legitimate aim and dynamic algorithm based data mining and profiling violates the most fundamental duty of the State and the EU to respect human identity.⁴⁸

One other area where the EU has perhaps contributed towards discriminatory ethnic profiling is with regards to counter-radicalisation methods. Indicators of radicalisation have been applied in a multi-state European police training project developed with funding from the European Commission. Community Policing for Counter Radicalisation was established in 2010 and is a project led by the Belgian Federal Police with a further 10 Member State partners including the UK. COPPRA created a pocket guide for police officers to detect ‘radicalisation indicators’ in early stages and longer manuals have been introduced to police academies and trainers. These materials highlight that along with other factors, officers should examine changes in physical appearance with a focus on facial hair, changes in religious practice and participation in closed meetings.⁴⁹

⁴⁴ FRA (2010) *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*. P. 14.

⁴⁵ European Parliament News (2016) *PNR: Collecting Data on International Passengers*. Available at: <<http://www.europarl.europa.eu/news/en/news-room/20150218STO24902/PNR-collecting-data-on-international-passengers>> [accessed 12 May 2016]

⁴⁶ *Ibid*, p. 91.

⁴⁷ *Ibid*, pp. 25-26.

⁴⁸ *Ibid*, p. 108.

⁴⁹ Open Society Justice Initiative (2011) *A Background Paper for the Working Party on Terrorism*. P. 7.

Though the guides caution officers to rely on a range of factors and that none of the indicators constitute evidence per se that a process of radicalisation is taking place, as background paper for the Terrorism Working Party noted in 2011, extensive research has found “that factors which fit existing stereotypes carry greater weight than other information in guiding individuals including police officers perceptions and discretionary decision making”.⁵⁰ In July 2011, the COPPRA Project was prolonged for another two years with Prevention Of and Fight Against Crime (ISEC) Funding from the Commission. In 2011 the Open Society Justice Institute noted that “absent” of “Modification” COPPRA risked promoting ethnic profiling amongst front line police officers across EU countries.⁵¹

Upholding Fundamental Rights

Though, as presented above, the EU in some instances has perhaps contributed to the construction of suspect communities and encouraged a practice of discriminatory ethnic profiling, it should be noted that the Union and the relevant bodies have added a further layer of scrutiny to Member State policy, developed good practices with regards to counter-terror policy and have often lobbied for changes to legislation and practice to ensure fundamental rights and freedoms are not threatened.

Research conducted by the EU’s Fundamental Rights Agency has played a crucial role in exposing areas where discriminatory ethnic profiling occurs in Europe. The FRA’s European Union Minorities and Discrimination Survey is an example of the EU’s oversight mechanisms on rights compliance by Member States. With incidents of discrimination and victimisation going widely unreported in the EU, along with limited data collection in many EU states, the EU Midis provided the “most comprehensive evidence...of the extent of discrimination and victimisation against minorities in the EU”, and proposed measures to prevent profiling.⁵²

In line with the EU-Midis research, the FRA produced 'Understanding and Preventing Discriminatory Ethnic Profiling: A Guide'. This included a number of recommendations to police and law enforcement agencies of EU Member States such as providing clear guidance to officers of when reliance on racial, ethnic or religious characteristics is permissible, to reduce the risk of differing interpretations as well as a reliance on stereotypes and prejudice.

Other recommendations set out by the FRA include the introduction of stop and search forms, the internal monitoring and detection of disproportionality and an emphasis on law enforcement agencies producing good suspect descriptions and good intelligence to ensure more effective, and ultimately successful, stops and searches. It also promotes the importance of quality encounters with regards to stops and searches, in addition to the provision of public complaints mechanisms.

By providing cases studies of good practices across the EU, the FRA provides opportunities for Member States to learn from other policy initiatives of actions taken by foreign law enforcement agencies in other EU nations. For example, “behavioural analysis” was presented as an effective way of determining reasonable suspicion by the Netherlands Police Force’s “Search and detect and react training programme”. Similar initiatives have been recently trialled in the UK with police officers undergoing training to detect ‘unconscious bias’ which can impede effective policing and harms community relations.⁵³

⁵⁰ Ibid, pp. 7-8.

⁵¹ Ibid.

⁵² FRA (2010) European Union Minorities and Discrimination Survey: Data in Focus Report: Police Stops and Minorities. P. 2.

⁵³ All 32,000 Met officers sent on course to detect ‘unconscious’ race prejudice, *London Evening Standard*, 18 February 2016

The EU has also ensured the availability of research funding through Council decision 2002/630/JHA July 2002, which established a framework programme on Police and Judicial cooperation in criminal matters. The main objectives of these programmes include “developing, implementing and evaluating European police in connection with creating the area of freedom, security and justice and with fighting and preventing crime; promoting networking, mutual cooperation and exchange of information; and encouraging cooperation with the applicant countries and other non-EU countries.”⁵⁴ Research carried out under this directive has helped to provide further insight into ethnic profiling.

Oversight mechanisms

Member States must ensure their national laws surrounding policing, data collection and counter-terrorism legislation fall in line with the directives set out by the EU and its related bodies, as well as the European Convention of Human Rights and common laws formulated through the European Court of Human Rights.

The text adopted by the European Parliament on “profiling, notably on the basis of ethnicity and race in counter terrorism, law enforcement, immigration, customs and border control” of 24 April 2009 in particular identified the problem of profiling as a pressing issues in the above areas. It therefore made a number of recommendations to the Council which were instructed to be forwarded to the Commission and to the governments and parliaments of Member States. It recommended a number of policies to reduce profiling and the practice of data mining in discriminatory fashion, including arguing for “strong safeguards established by law which ensure appropriate and effective judicial and parliamentary scrutiny of the police and secret services including their counter terrorism activities”.⁵⁵

Another example of the oversight of nation state policy is the work of the Commissioner for Human Rights established by the Council of Europe which as highlighted in the above section, is distinct from the EU, however no country has ever joined the EU without first being a member of the Council of Europe. Part of the Commissioner’s work is to conduct visits to member states to help raise the standards of human rights protection in all Council of Europe states. Visits aim at pursuing direct dialogue with the authorities of member nations and look into specific issues.

The importance of this work can be seen in Commissioner Nils Muižnieks’s visit to the UK between 17 and 22 January 2016 where he assessed the current legislative framework on surveillance by the intelligence and security agencies, at some of the oversight mechanism which are now in place and the plans to reform the legislative framework by way of the Investigatory Powers Bill. His visit also studied the issues surrounding the Prevent strategy.

During his visit and in the memorandum on surveillance and oversight mechanisms published in May 2016, the Commissioner for Human Rights highlighted a number of issues and problems with surveillance oversight mechanisms designed to ensure public authorities act in ways compatible with the Human Rights Act 1998, whilst providing recommendations.

With regards to the Investigatory Powers Bill which aims to overhaul the existing investigatory powers framework, the Commissioner also raised concerns associated with the Council of Europe’s standards on human rights.

⁵⁴ European Council (2002) European Council Decision 2002/630/JHA 22 July 2002.

⁵⁵ European Parliament (2009) *European Parliament Recommendation to the Council of 24 April 2009 on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control*. Text available at: <
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-314>>.

The Commissioner further stressed problems with the UK government's Prevent programme. Specifically, he spoke of "concerns that the Prevent programme runs the risk of isolating the very communities whose cooperation is most needed to fight violent extremism".⁵⁶ The Council of Europe, through the Commissioner, therefore emphasised that "reinforcing community support and gaining the confidence of communities should be the government's priority" and reiterated that "anti-terrorism policies and legislation which run counter to European democratic values and human rights are not only contradictory to the Council of Europe member states' international obligations, but are also counterproductive".⁵⁷

In 2006, the European Union Network of Independent Experts on Fundamental Rights issued an opinion on racial and ethnic profiling, in which they recommended the adoption a legal framework to prohibit this practice to the "extent that factors such as race or ethnicity or religion or national origin should not be used as indicators of criminal behaviour", in general or within a context of counter-terror policy.⁵⁸ Similarly, the Network recommended Member States clarify the conditions under which authorities may exercise discretionally powers in areas such as identity checks or stop-and-search procedures and to sanction any behaviour amounting to racial or ethnic profiling, through the use of criminal penalties and by providing "civil remedies to victims or by means of administrative or disciplinary sanctions".⁵⁹

The EU also ensures good practice sharing with regards to counter-terror policy. In respect to radicalisation for example, the European Commission created the Radicalisation Awareness Network under Communication 2010 673 Objective 2. The aim of the network has been to promote action to empower "communities and key groups engaged in the prevention of violent radicalisation and recruitment".⁶⁰

One noteworthy contribution made by RAN on tackling radicalisation has been in its input to the 2014 communication from the EU Commission on "Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response".⁶¹ RAN supported the development of a thoughtful and rounded communication from the Commission recommending national strategies "involving non-governmental organisation, front line workers, security services and experts in the field".⁶² Within this, the RAN's contribution rightly promoted "building trust within and between communities, promoting a better understanding of each other's sensitivities and problems, engaging different sections of society and much more".⁶³

⁵⁶ Ibid, P. 9

⁵⁷ Ibid, p. 9019

⁵⁸ United Nations Human Rights Council (20 April 2015) *Report of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance*. Human Rights Council Twenty Ninth Session, Agenda item 9, p. 10

⁵⁹ Ibid, p. 11

⁶⁰ European Commission (2012) *Charter of Principles Governing the RAN*. P. 1.

⁶¹ Ibid, p. 4

⁶² Ibid

⁶³ Ibid

Global affairs and human rights promotion abroad

Key questions:

- **Does the EU set a common foreign policy in a way that undermines British foreign policy?**
- **What has the EU done to resolve the Middle East conflict?**

The EU is the world's most successful example of a regional bloc bringing peace, prosperity and a common identity to 500,000,000 people across the region.

From its humble beginnings in the European Coal and Steel Community in the postwar era to today's 28 member regional bloc, the European Union is an incredible achievement. From its history of conflict to its aspiration for peace and solidarity among European nations, the EU exemplifies what is possible when nation-states overcome nationalistic sentiments in pursuit of common goals for economic security and social harmony based on the free movement of people, goods, services and capital.

The EU's transformation of relations between the nations of Europe has been complemented with the bloc's role in international affairs with its programmes on supporting democracy and human rights abroad and development aid.

The Lisbon Treaty sets out the role of the Union's Common Foreign and Security Policy as:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The EU External Action Service (EEAS) was established under the Lisbon Treaty to support the Union's implementation of a Common Foreign and Security Policy and came into being in December 2010. The EEAS is the EU's diplomatic service. The Lisbon Treaty sets out the purpose of the EEAS as:

This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States.

The High Representative for Foreign Affairs and Security Policy leads the work of the EEAS. The post was first held by Baroness Catherine Ashton and is now held by Federica Mogherini.

The EU does not replace or supplant the role of national governments in setting national foreign policy and Member States retain a veto on foreign policy proposals at the EU level. The advantage of the UK's membership of the EU is its capacity to manage a unilateral foreign policy while contributing to and influencing the development of the Union's Common Foreign and Security Policy.

Development and enlargement

The European Neighbourhood Policy (ENP) covers 16 countries and comprises the EU's closest neighbours: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine. The ENP offers partner countries a privileged relationship with the EU as a means of advancing democracy and human rights, the rule of law, good governance, market economy principles and sustainable development in the EU's neighbourhood. In 2007-2013, the EU provided partners with over €12 billion in grants for the implementation of the ENP.

The 2014-2020 programme, renamed the European Neighbourhood Instrument will expend €15.4 billion to participating countries to build on previous achievements and support the strengthening of relations with Neighbourhood countries. The ENI aims to bring tangible benefits to both the EU and its partners utilising an incentive approach based on country progress on a deep and sustainable democracy and progress in implementing agreed reform objectives.

EU and the Middle East conflict

The Interim Association Agreement between Palestine National Assembly (PNA) and the EU was signed in February 1997 and came into force in July of that year. The agreement fell within the EU's European Neighbourhood Policy Instrument (ENPI).

The Action Plan agreed by the EU and the PNA, as with all similar bilateral plans between participating countries in the ENPI, devotes financial resources to and monitors progress on the following key areas: political issues – including the development of political institutions based on the values of the Union of democracy, the rule of law and human rights; and economic and social sectors – including structural and fiscal reforms, trade liberalization and human development policies.

According to the Interim Agreement, the limitations experienced by the Palestinians in the full implementation of the agreement terms under duress of the state of occupation is acknowledged with the Action Plan stating “*Joint action will be required both to bring about the implementation of the Roadmap and to continue the preparations for statehood.*”⁶⁴

The EU-PA Interim Agreement alludes to progression towards a full Association Agreement, similar to the contractual relationship with the EU currently enjoyed by Israel, “*upon the establishment of an independent Palestinian state.*”

The EU is the largest donor of international aid to the Palestinians with a €500 million budget. The EU is also a member of the Quartet of nations (alongside the United Nations, United States and Russia) and acts as a mediator in the Middle East conflict.

The 2014 progress assessments on the European Neighbourhood Instrument in relation to Palestine noted the financial support provided by the Union to the Palestinians with total ENI funding amounting to €309.5 million. €87 million was allocated to the UN's Relief and Works Agency (UNRWA) in support of Palestinian refugees. The remaining amount of €52 million was allocated to support to governance (€13 million); Support for investment, trade and vocational training (€10.5 million); Hebron Wastewater Treatment Plant (€15 million); Support to Area C (€3.5 million) and support to East Jerusalem (€10 million).

⁶⁴ *EU-Palestinian Authority Action Plan* [Online] available at:
http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf

The indicative financial bilateral allocation under the ENI for the period 2014-2015 will be in the range of €508 - €621million. Targeted priority sectors of EU cooperation are: support to governance at local and national levels; support to private sector and economic development; support to water and land development.

A recent strategic evaluation of the EU's co-operation with Palestine identified a number of limitations to EU policy in the Middle East conflict noting the achievement of certain key goals while recognising the greater obstacles which remain to peace: the growth of Israeli settlement building in the Occupied Territories and the failings of democratic governance in the Occupied Territories amid the constraints of non-contiguous borders.

According to the Evaluation of the European Union's cooperation with Palestine and support of the Palestinian people the EU has "played a pivotal role in PA state-building efforts, including by promoting strong, democratic institutions and engaging with civil society" but it has done "little to remove the most significant obstacles to sustainable Cooperation outcomes and the achievement of a viable, democratic and contiguous Two-State solution, particularly Israeli occupation and settlement policies and the political division of the West Bank and Gaza. Absent effective measures to address these obstacles, the EU is unlikely to achieve its goal of a Two-State solution."

The recognition of the obstacles standing in the way of a two state solution place a greater onus on the EU to take decisive steps to end Israel's occupation of the Palestinian Territories and make firm progress toward a full Association Agreement with Palestine on the basis of independent statehood. Tinkering around the edges with development aid while neglecting the fundamental obstacles to statehood and Palestinian sovereignty leaves EU policy in a state of disarray. The EU has the capacity to exercise its diplomatic clout, economically and politically, to pursue for a two-state solution objective more coherently and decisively. Such has been argued in letters to the President of the European Council and the former High Representative for Foreign Affairs by the EU's Former Leaders Group.

In a letter sent in 2010, the former leaders told Lady Ashton that while the "EU has always maintained that settlements are illegal" it "has not attached any consequences for continued and systematic Israeli settlement expansion in the OPT, including East Jerusalem. We therefore strongly believe that the EU must make absolutely clear that enhancement or upgrading of the EU-Israel Association Agreement and other bilateral agreements and programs will not occur unless settlements are frozen."⁶⁵

In a letter sent in 2015, the European Eminent Persons Group (EEPG) on Middle East issues are more scathing saying EU policy has merely supported the "preservation of the Israeli occupation of the West Bank and imprisonment of Gaza".⁶⁶

The EEPG called for the EU to adopt "tougher measures to contain [Israeli] settlement expansion and steps to operationalise the EU's policy of non-recognition of Israeli sovereignty beyond the 1967 borders across the full range of EU-Israeli relations".

The EU can and should play a more significant role in establishing an independent and viable Palestinian state alongside a secure Israel ensuring that the Union's policies are consistent with European popular sentiment which is favourable to the plight of Palestinians.⁶⁷

⁶⁵ <http://www.usmep.us/usmep/wp-content/uploads/2010-12-10-EFLG-letter-to-EU.pdf>

⁶⁶ <http://static.guim.co.uk/nl/1431517700142/EEPG-letter.pdf>

⁶⁷ <http://www.pewglobal.org/2002/04/17/americans-and-europeans-differ-widely-on-foreign-policy-issues/>