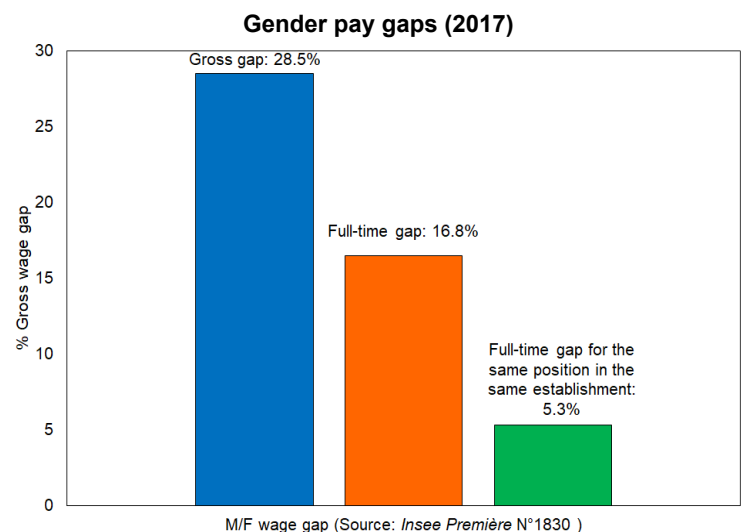


Labour Market Discrimination: How Is It Measured and What Is Its Economic Cost?

Cyprien Batut, Chakir Rachiq

- The legal definition of discrimination is a difference in treatment based on unlawful grounds such as age, origin, religion and sexual orientation. France's Defender of Rights reports that 80% of people confronted with a situation of discrimination have taken no steps to try to enforce their rights.
- Numerous empirical approaches confirm the existence of labour market discrimination based on age, origin, gender, sexual orientation, religion and disability in France. A quarter of all French people say that they have experienced discriminatory behaviour in the last five years. Certain types of discrimination can give rise to inequality in the workplace. For example, women in the private sector earn on average 5.3% less than men in the same position and the same establishment with the same working hours (see chart below).
- In addition to being illegal, labour market discrimination generates economic losses. Although it is hard to establish a causal link between worker diversity and business performance, reducing discrimination reportedly brings macroeconomic gains due to a higher degree of integration of groups experiencing labour market discrimination.
- There are public policy measures designed to reduce labour market discrimination, such as active measures to reduce inequality of treatment in the workplace (the "Egapro" index) and information campaigns to counter stereotypes. Others are designed to act on the direct repercussions of discrimination, such as board quotas (2011 Copé-Zimmerman Act) and financial incentives to hire people discriminated against for their place of residence (the "emplois francs" programme).



Source: Insee, all wage earners.

Interpretation: In 2017, women in the private sector earned on average 28.5% less than men. This gap in full-time equivalent pay narrows to 16.8%. The pay gap is 5.3% for wage earners working in the same position and establishment with the same working hours.

Coverage: Private sector, mainland France 2017, excluding apprentices and trainees, agriculture jobs, and people employed by individuals.

1. There are strict laws governing the statistical measurement of discrimination

1.1 Legal definition, remedies and sanctions for discrimination

The legal definition of discrimination is a difference in treatment based on unlawful grounds. Differentiating between employees or applicants for a job, internship, work placement or in-house training constitutes discrimination when it is on unlawful grounds such as origin, gender, age, disability, sexual orientation or religion.¹

A distinction is made between *direct discrimination*, where one person is treated less favourably than another person is, has been or would have been treated in a comparable situation based on unlawful grounds, and *indirect discrimination*, where an apparently neutral practice would put someone at a particular disadvantage for one of the reasons prohibited by law.

A number of legislative provisions specify the legal definition of discrimination, list unlawful grounds for discrimination and define the associated sanctions. The first prohibition of discrimination arose out of the 1958 French Constitution, which lays down in its Article 1 the equality of all citizens before the law, without distinction "of origin, race or religion". The French Anti-Discrimination Act 2001-1066 of 16 November 2001 defines 18 grounds² of direct discrimination. In enacting the EU directives of 29 June and 20 November 2000 into French law, Act 2008-496 of 27 May 2008 also introduced the prohibition of indirect discrimination.

Perpetrators of discrimination are punishable under criminal law: an individual employer who commits an act of discrimination in the hiring process is liable to a fine of up to €45,000 and a three-year prison sentence. Legal entities can also be accused of discrimination in the hiring process and incur a fine of up to €225,000.

In 2020, 5,196 claims were filed with the French Defender of Rights for discrimination.³ The statistics office of the French Ministry of the Interior reported very low numbers of offences for the same year (227 offences for racist, anti-Semitic and xenophobic discrimination and 31 for discrimination on the grounds of gender, family situation and pregnancy)⁴ since their figures only cover reported discriminatory behaviour. The Defender of Rights estimates that 80% of people confronted with a situation of discrimination have taken no steps to try to enforce their rights. This is particularly the case with discrimination in access to employment (93% of cases not reported) and when the discrimination is perceived as being based on origin (88% of cases not reported).⁵ This may be due in part to the difficulty for a lone individual to prove discrimination in a hiring process given that applicants generally present other distinguishing characteristics than those discriminated against. Large-scale blind testing campaigns on hiring processes, using such instruments as anonymous CVs, are often necessary to prove discrimination⁶ (see section 2).

1.2 Statistical measurement strictly governed by law

In practice, there are laws governing the production of ethnicity statistics in France, which complicates the measurement of discrimination based on origin.

In a 2007 decision,⁷ the French Constitutional Council barred the processing of data necessary for conducting diversity measurement studies as being in infringement of Article 1 of the French Constitution. More specifically, the following is prohibited:

- The processing of data of a personal nature indicating, directly or indirectly, the racial or ethnic origins of persons. This is prohibited even in the

(1) Nevertheless, the principle of non-discrimination, which is guaranteed by the Labour Code, does not bar differences in treatment. Any restriction must be both justified by the nature of the task to be performed and proportionate to the objective.

(2) The grounds based on international and French legislation are available on the French Defender of Rights website: www.defenseurdesdroits.fr/en/combating-discrimination-and-promoting-equality

(3) Defender of Rights (May 2021). Annual Activity Report 2020 - these claims covered a range of situations: work, access to housing, access to public services, etc.

(4) *Les atteintes à caractère raciste, xenophobe ou antireligieux en 2020* - Interstats Analyse No. 34.

(5) Defender of Rights (March 2017). *Annual Activity Report 2016* www.defenseurdesdroits.fr/sites/default/files/atoms/files/raa-2016-en.pdf

(6) In 2020, for example, the French labour and housing ministries published the findings of a study conducted on 103 businesses revealing persistent discrimination against origin and place of residence in the hiring process: Challe L., Chareyron S., l'Horty Y. and Petit P. (2020), "Discrimination dans le recrutement des grandes entreprises : une approche multicanal".

(7) Decision No. 2007-557 DC of 15 November 2007 with comment by the French Constitutional Council.

event of express consent given by the person if it is based on the use of an ethnic or racial classification system to categorise the individual's origin.

- The introduction of race or religion variables in administrative records.

The French Constitutional Council noted, however, that "the processing of data necessary for carrying out studies regarding the diversity of origin of peoples, discrimination and integration may be done in an

objective manner". It explained that such objective data may, for example, be based on a person's name, geographic origin or nationality prior to adopting French nationality. Subjective data based on "sense of identity", for example, can also be collected by statistical surveys. In practice, a number of official statistical surveys, including the 2008-2009 and 2019-2020 Trajectories and Origins surveys, include questions on "sense of identity".

2. Discriminatory behaviour is frequent on the French labour market

A number of approaches are available to measure discrimination, and all of them find labour market discrimination in both France and other developed countries.

2.1 The experimental approach

The practice of blind testing on CVs uses field experiments to reveal discriminatory practices. It entails answering real job vacancy advertisements or sending out speculative applications with CVs and covering letters from fictitious applicants with equivalent education and work experience who differ in terms of an unlawful discriminatory characteristic in order to find out whether that characteristic influences the recruiter's decision. Blind testing campaigns mainly tend to focus on ethnic origin, but also look at gender, religion and place of residence.⁸

Studies using this method have found discriminatory practices in France based on origin, age, religion and, to a lesser extent, gender:

- A 2019 study by Quillian et al. compares the findings of blind testing campaigns in different countries on the criterion of origin. The campaigns conducted in

France show that, for equivalent applications, the probability that French applicants assumed to be white by the study's authors will be asked for an interview is 50% to 100% higher than for French applicants that the same authors assume to be non-white minorities. This compares with a 20% to 40% difference in Germany, the United States and Norway.⁹

- Older applicants are found to have 50% less chance than younger applicants of being asked for a job interview in many professions.¹⁰
- Likewise, assumed affiliation with a minority religious community can reduce the odds of landing a job for an equivalent CV.¹¹
- A 2019 blind testing campaign covering 103 large companies in France also finds discrimination in job access by place of residence in the industrial sector and in Paris.¹²
- Regarding gender, an IPP study (2021) finds that applications from men and women are on the whole treated in the same way by employers.¹³ However, women may be discriminated against when they are

(8) du Parquet L. and Petit P. (2019). "Discrimination à l'embauche : retour sur deux décennies de testings en France." *Revue Française d'Économie*, Vol. xxxiv(1), 91-132. <https://www.cairn.info/revue-francaise-d-economie-2019-1-page-91.htm>.

(9) Quillian L., Heath A., Pager D., Midtbøen A.H., Fleischmann F. and Hexel O. (2019), "Do Some Countries Discriminate More than Others? Evidence From 97 Field Experiments of Racial Discrimination in Hiring", *Sociological Science*, No. 6, pp. 467-496. In these studies, assumed ethnic identity may be directly reported in countries that permit ethnic statistics or suggested by a foreign-sounding name, photo or country of origin.

(10) Riach, P.A. (2015), "A Field Experiment Investigating Age Discrimination in Four European Labour Markets", *International Review of Applied Economics*, 29(5), 608-619.

(11) Valfort M. A. (2020), "Anti-Muslim Discrimination in France: Evidence From a Field Experiment", *World Development*, 135, 105022. The callback rate for a job vacancy for applicants assumed to be Muslim (11.7%) is more than one-third lower than that for their assumed Christian counterparts (18.4%). This finding is largely attributable to male applicants: the callback rate for men assumed to be religious Muslims (4.7%) is nearly four times lower than the rate for their assumed Christian counterparts (17.9%). To suggest applicant religion, the study gave the applicants education backgrounds in schools of different religious denominations and membership of different scouting associations.

(12) Challe L., Chareyron S., l'Horty Y. and Petit P. (2020), *ibid*.

(13) "Discrimination à l'embauche selon le sexe : les enseignements d'un *testing* de grande ampleur", *Notes IPP* No. 67, May 2021, Dares-MAR, IPP researchers, ISM Corum.

of child-bearing age, where employers fear less availability by these women in positions of responsibility.¹⁴ An American study shows, moreover, that blind auditions for an orchestra increase the probability of female musicians being hired and advanced.¹⁵

These studies have a number of limitations. First, they are restricted to one town, one activity sector or one type of position and only identify discrimination at the stage of invitation to an interview. Second, they are expensive to conduct, which rules them out as large-scale discrimination measurement tools. Third, they cannot be used to establish a criminal offence under French law as it currently stands. Although judges are free to give the weight they see fit to the evidence provided (blind testing or otherwise),¹⁶ the Criminal Chamber of the French Supreme Court of Appeal ruling of 4 February 2015 barred the use of blind testing by the government.

2.2 The indirect approach: econometric studies

Another approach consists of identifying discrimination from a statistical measurement of the differences between two population groups. Representative surveys of the general population can be used to measure the difference in the rate of employment or pay gap between two groups, controlling for the effect of productive characteristics (level of education, work experience, etc.). The residual difference can then be interpreted as the result of discrimination between the two groups. Nevertheless, it is never entirely possible to neutralise the effect of all the observable individual characteristics (qualifications, work experience, recruitment test results, etc.). It cannot be ruled out that other variables absent from the survey might explain the residual difference.

In addition, past discrimination in education could influence learning outcomes¹⁷ and the type of job held.¹⁸ Controlling for the type of job held or qualifications erases all trace of this past discrimination and its effect on the labour market.

However, the econometric approach does present the advantage of providing insight into discrimination beyond the hiring process. A study by INSEE¹⁹ shows that, in 2017, women were being paid on average 5.3% less per hour, for equal characteristics, than men in the private sector.²⁰ Drawing on INSEE's Training and Vocational Skills Survey, Aeberhardt et al.²¹ show that half of the difference in employment on the French labour market between workers with both parents born French and workers with at least one parent born African cannot be explained by the usual variables (age, education, experience, etc.). Half of the 12.6 percentage-point difference in the rate of employment between these two groups could therefore be due to discrimination.

2.3 The subjective approach: surveys on the perception of discrimination

The last approach consists of asking individuals about their perceptions of discrimination. The 11th French Defender of Rights/ILO Barometer²² reports that 25% of the workers interviewed said they had experienced sexist, homophobic, racist, religious or disability-related harassment in the last five years, 5% of whom were the subject of "frequent" harassment. Exposure to such behaviour is comparable in the private sector (25%) and the public sector (27%). Sexist (14%) and racist (9%) harassment are the most frequent. The most affected by such harassment are people who cross-cut a number of "minority" categories.

(14) Petit P. (2007), "The Effects of Age and Family Constraints on Gender Hiring Discrimination: A Field Experiment in the French Financial Sector", *Labour Economics*, 14 (3), pp. 371-392.

(15) Goldin C. and Rouse C. (2000), "Orchestrating Impartiality: The Impact of 'Blind' Auditions on Female Musicians", *American Economic Review* 90.4, 715-741.

(16) Blind testing is a form of evidence provided for and defined by Article 225-3-1 of the French Criminal Code. The ruling on blind testing handed down by the French Supreme Court of Appeal on 4 February 2015 permits trial judges to base their decisions on evidence that is the product of an offence, as is the case with blind testing, but it bars the government from making use of it due to its unfair nature.

(17) Hanna R. and Linden L. (2009), "Measuring Discrimination in Education", *National Bureau of Economic Research*, No. w15057.

(18) Mechtenberg L. "Cheap Talk in the Classroom: How Biased Grading at School Explains Gender Differences in Achievements, Career Choices and Wages." *The Review of Economic Studies* 76.4 (2009): 1431-1459.

(19) Georges Kot, S. (2020). "Écarts de rémunération femmes-hommes : surtout l'effet du temps de travail and de l'emploi occupé", *INSEE Première*, No. 1803.

(20) For equal socioeconomic group and working hours.

(21) Aeberhardt R., Fougère D., Pouget J. and Rathelot R. (2010), "Wages and Employment of French Workers With African Origin", *Journal of Population Economics*, 23(3), 881-905.

(22) Findings of the French Defender of Rights' Access to Rights Survey of a sample of 5,117 people representative of the population of mainland France in terms of age, gender, socioeconomic group and level of education.

On the subject of job seeking, 15% of respondents said they had been discriminated against in the last five years on the basis of these criteria. These findings make the world of work the area where discrimination is the most prevalent, ahead of education (8%) and access to housing (5%).²³

Compared with econometric studies, and blind testing to a lesser extent, which capture discrimination at a specific moment, the subjective, qualitative approach

captures the accumulation of different phenomena that individuals may have experienced. However, these measurements remain non-objective, which complicates international comparisons. First, the composition of minorities in a given country may influence the perception of discrimination and expectations of action to prevent discrimination. Second, the categorisation and level of social acceptance of discriminated persons' situations may also differ.²⁴

3. Discrimination has clear socioeconomic costs, but they are hard to evaluate

Economic theory presents a number of mechanisms establishing the link between economic performance and labour market discrimination:

- At business level, discrimination in the hiring process undermines the quality of matching on the labour market when discriminated persons are employed in jobs below their skill level and jobs are not held by the most qualified individuals.²⁵
- Conversely, a socially similar workforce can sometimes facilitate group communication and cohesion, which tend to increase productivity.²⁶
- At macroeconomic level, labour market discrimination reduces the return on investment in human capital for those discriminated against. This can lead them to underinvest in education and training, which affects their productivity²⁷ and the general skill level of the labour force.
- Likewise, discrimination can reduce the participation rate of the populations experiencing labour market discrimination and the size of the labour force.

3.1 At microeconomic level, it is hard to establish a causal link between diversity and business performance

Discrimination in hiring on the labour market has the dual consequence of preventing the recruitment of certain workers who would make a positive contribution to business productivity and reducing the diversity of the workforce. Analysis of the effect of diversity (by age, origin, gender, etc.) on business performance captures the microeconomic effect of discrimination over and above its effects on pay inequalities and labour force participation.

A number of studies have looked into the correlation between parity and business performance. Across all sectors, businesses with a highly majority male or female workforce post lower levels of productivity on average than businesses with greater parity.²⁸ However, this correlation may be explained by structural effects: certain sectors may be both highly gendered and less productive than the average without there being a causal link between the two. Regarding the effect of diversity in senior management, an

(23) French Defender of Rights (March 2017). "10e Baromètre de la Perception des Discriminations dans l'Emploi"
https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/etudesresultats-oit-21.03.17-num_0.pdf

(24) For example, disabled worker status does not exist in some countries.

(25) Rothschild M. and Stiglitz J. (1982), "A Model of Employment Outcomes Illustrating the Effect of the Structure of Information on the Level and Distribution of Income", *Economics Letters* 10, pp. 231-236.

(26) Pfeffer J. (1985), "Organizational Demography: Implications for Management", *California Management Review*, 28(1), 67-81.

(27) Phelps E. (1972), "The Statistical Theory of Racism and Sexism", *American Economic Review*, Vol. 62, No. 4, pp. 659-661.

(28) Challe L. et al. (2021), "Explorer les liens entre mixité and performance des entreprises", *Note de Synthèse*, France Stratégie, June.

improvement in the representation of women in senior management positions would appear to go hand in hand with better financial performance for those businesses, yet the impact measured in France remains low.²⁹

However, the causal link between gender diversity and business performance is particularly hard to measure. A number of unobservable variables may be correlated with these two elements, such as corporate human resources policies, which affect both economic performance and the business's sensitivity to the gender balance of its staff, thereby complicating the interpretation of the link between the two variables. A firm's productivity may also have a direct effect on its policy regarding equality in the workplace.

The effects of other forms of diversity, such as age, have been studied.³⁰ Although some studies find that age diversity has a positive effect on total factor productivity,³¹ the majority conclude that it has more of a negative effect. In France, for example, greater age diversity in a firm is found to have a negative impact on the firm's productivity and wages.³² Similarly, a study based on Danish business data finds that age diversity has a negative effect on business value-added across all sectors.³³

Lastly, the findings of studies on how ethnic diversity contributes to business performance are ambivalent. Greater diversity of nationalities³⁴ can have a negative impact on performance, in particular due to language and cultural barriers that can hinder communication and knowledge transfer in the firm,³⁵ but also where manager bias reduces interaction with workers.³⁶ Other studies show, on the other hand, that ethnic diversity can help improve business performance as well as decision-making and problem solving.³⁷

3.2 At macroeconomic level, labour market discrimination depresses labour force participation, and thereby economic activity

The available macroeconomic studies are concordant regarding the existence of economic gains due to increased labour force participation when labour market discrimination is reduced.

*France Stratégie*³⁸ finds that reducing inequality associated with workplace discrimination on grounds of gender, geographic origin, place of residence and disability can generate significant gains in GDP. By way of illustration, the different potential discrimination reduction scenarios³⁹ tested by *France Stratégie* generate a long-run GDP effect ranging from a 3.6% increase (closing wage gaps between the different populations considered) to a 14.1% increase (closing wage gaps, increasing access to employment, boosting hours worked and reducing differences in education attained).

Likewise, an OECD report⁴⁰ published in 2017 shows the macroeconomic gain associated with a reduction in the gender gap in labour force participation rates. If the gap were reduced by 25% over the 2013-2025 period, it could add 1 percentage point to the projected average annual per capita GDP growth rate for all OECD countries over the period.

These estimates are based on strong assumptions and should be interpreted with caution, as they do not take into account the effect that an increase in the participation rate of discriminated persons, or their pay, could have on labour market equilibria or on the economy as a whole. Moreover, the speed of the dissemination of these effects is unknown.

(29) Breda T. (2015). *Féminisation and performances économiques and sociales des entreprises* (Doctoral dissertation, Institut des Politiques Publiques). The reported profitability of firms employing more than 20% women is approximately 0.3 standard deviations higher than the group of firms employing the fewest women.

(30) Depending on the studies, age diversity may be measured by the proportion of younger/older workers in the firm, a multiple age bracket variable or deviation from the sector average.

(31) See the working paper: Gilles C. et al. (2018), "Discrimination selon l'âge - Revue de la littérature and effet de l'âge sur les conditions d'emploi and de salaire à partir de l'enquête Emploi", Document de Travail No. 2018-05, France Stratégie, November.

(32) Garnero A. (2015), "Workforce Diversity, Productivity and Wages in France: The Role of Managers vs. the Proprietary Structure of the Firm", *Working Papers* CEB 15-039, Université Libre de Bruxelles.

(33) Parrotta P. et al. (2014), "Labor Diversity and Firm Productivity", *European Economic Review*, Vol. 66, pp. 144-179.

(34) Measured by a Herfindahl index of the diversity of the nationalities of staff in the firm. The index is interpreted as the probability that two randomly drawn individuals in a workplace will be the same nationality.

(35) Parrotta P. et al. (2014), "Labor Diversity and Firm Productivity", op. cit.

(36) Glover D., Pallais A. and Pariente W. (2017), "Discrimination as a Self-Fulfilling Prophecy: Evidence From French Grocery Stores", *The Quarterly Journal of Economics* 132.3, 1219-1260.

(37) Reynolds A. and Lewis D. (2017), "Teams Solve Problems Faster When They're More Cognitively Diverse", *Harvard Business Review*, 30.

(38) France Stratégie (2016). *Le coût économique des discriminations*.

(39) Potential discrimination is calculated by means of unexplained differences

(40) OECD (2017), "The Pursuit of Gender Equality: An Uphill Battle", *OECD Publishing*, Paris.

4. Economic policy instruments addressing labour market discrimination

Although labour market discrimination is largely prohibited by law, it is often hard to prove. Other public policy measures have therefore been implemented to actively promote workplace diversity. These measures can be classed in two categories.

The first category covers policies designed to reduce discrimination by requiring transparency of businesses and tackling stereotypes.

- The Career Choice Act of 5 September 2018 lays down a certain degree of pay transparency required of companies with over 50 employees. These firms are bound to publish their annual score on a gender equality in the workplace index. It is based on five quantified sub-indicators: gender pay gap, pay-rise gap, promotions gap,⁴¹ number of pay rises on return from maternity leave, and percentage of women among the company's highest earners. Firms scoring below a certain threshold are required to take corrective action to reach the threshold within three years, failing which the law provides for fines of up to 1% of payroll.
- Labour market policies are rounded out by balanced family policies. For example, the French government has extended paternity and settling-in leave to 25 days (from 11 days) to promote more balanced task-sharing in the household and a less gendered view of parenting. This measure could reduce discrimination against women of child-bearing age.
- In addition to regulatory measures, eradicating stereotypes upstream of the labour market calls for information campaigns. The 2019-2024 Interministerial Convention for the Equality of Girls and Boys provides in particular for all education staff to be trained in gender equality awareness to reduce gender stereotypes in the education system, which contribute to the disproportionately high percentage of women in the least well-paid occupations. The targeted outcome of this measure is to tackle discrimination upstream of the labour market,

primarily in the education system. Differences in stated preferences for sciences and self-confidence in mathematics have been found to largely explain the gender gap in science education.⁴²

The second category of public policy is designed to correct inequalities directly due to labour market discrimination. France has introduced many regulatory measures in recent years, establishing quotas to increase the proportion of groups underrepresented in the workplace. These measures include the following:

- The 2011 Copé-Zimmermann Act⁴³ promotes a balanced representation of women and men on boards of directors and supervisory boards in listed companies and mid-tier companies. It provides for the percentage of each gender to be no less than 40% on the boards of directors and supervisory boards, with sanctions for non-compliance with the quota.
- The Act of 11 February 2005 on the equal rights and opportunities, participation and citizenship of persons with disabilities requires establishments with 20 or more employees to have at least 6% disabled employees on their staff. Any establishments that do not comply with this obligation are bound to pay a financial contribution⁴⁴ to the Association for the Management of the Fund for the Professional Integration of Persons with Disabilities (AGEFIPH) if they are in the private sector or the Fund for the Professional Integration of Persons with Disabilities in the Civil Service (FIPHFP) if they are a public establishment.
- The Act of 6 June 2000 to advance gender parity in elected office provides for an obligation to present an equal number of women and men on electoral lists. The law provides for optional parity in legislative elections: the parties that do not present gender parity have their public funding reduced by a certain amount, which was doubled by the Act of 2 August 2014.

(41) Solely for firms with over 250 employees.

(42) Breda T et al. (2018), "Les filles and les garçons face aux sciences: les enseignements d'une enquête dans les lycées franciliens", *Éducation and Formations* 97, 1 35.

(43) Act. 2011-103 of 27 January 2011 on the balanced representation of women and men on boards of directors and supervisory boards and on gender equality in the workplace.

(44) The financial contribution to be paid to AGEFIPH depends on the difference between the number of persons with disabilities meant to be employed and the number actually employed, multiplied by a factor depending on the size of the company (ranging from 400 times the gross minimum wage in companies with between 20 and 250 employees to 600 times the gross minimum wage in companies with 750 or more employees).

- Financial incentives are also used to encourage businesses to diversify their recruitment, as in the case of hiring bonuses (in the form of exemptions from employer social security contributions, subsidies and fixed allowances). In France, they are generally short-term and based on socioeconomic criteria.

In addition to reducing inequalities due to discrimination, these measures increase the return on training and labour market participation for discriminated populations, thereby reducing the self-selection biases from which they suffer and improving the potential of the economy as a whole.

Publisher:

Ministère de l'Économie, des Finances, et de la Relance
Direction générale du Trésor
139, rue de Bercy
75575 Paris CEDEX 12

Publication manager:

Agnès Bénassy-Quéré

Editor in chief:

Jean-Luc Schneider
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English translation:

Centre de traduction
des ministères économique
et financier

Layout:

Maryse Dos Santos
ISSN 1962-400X
eISSN 2417-9698

Derniers numéros parus

November 2021

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October 2021

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This study was prepared under the authority of the Directorate General of the Treasury (DG Trésor) and does not necessarily reflect the position of the Ministry of Economy and Finance.