



## Response of the European Network against Racism (ENAR)

### Position on the Communication from the Commission “The Fundamental Rights Agency – Public Consultation Document” – COM (2004) 693

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*The European Network against Racism (ENAR) is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives. Further information is available at: [www.enar-eu.org](http://www.enar-eu.org)*

## ***Introduction***

The European Network against Racism (ENAR) welcomes the publication of the communication on the Fundamental Rights Agency as an initiative to clarify the scope, mandate and structure of this EU Agency. ENAR, as a network of anti-racist organisations, considers this process to be a crucial opportunity for civil society to contribute actively to the development of this Agency focusing on fundamental and human rights. ENAR therefore wishes to submit its views and opinions on the communication.

First of all ENAR would like to state that it welcomes the approach which puts the new Agency at the crossroads of facilitating contacts between the different players in the field of fundamental rights, in order to allow synergies and increased dialogue. ENAR appreciates the acknowledgement of the role of NGOs as true partners in a dialogue and as contributors to data collection in the broader sense and to full co-operation in the promotion of fundamental rights in the EU. Reserving an important role for NGOs in the communications strategy is a progressive step and promises to make full use of the expertise developed by civil society. ENAR is ready to contribute to further developments towards the establishment of this Agency. Once it is established, the network is keen to contribute to the findings and outputs of the Agency as appropriate.

However, ENAR feels bound to make a number of comments, with the aim of contributing towards the establishment of a coherent and well-designed fundamental and human rights agency, which will be able to deliver quality outputs supporting all stakeholders in the human rights sector in their efforts to ensure that fundamental rights are fully observed.

This position paper follows the structure of the communication. However, ENAR did not feel it was necessary to comment on all the proposals made in the document.

## ***The Agency's field of action***

In addition to national human rights institutions, the Council of Europe also works on these issues. A certain overlapping of remits might be difficult to avoid.

ENAR therefore concurs with the argumentation of the EC that the Agency should not aim to cover every issue in each member state. During times of limited funding, efforts should be made to avoid activities overlapping. Instead the focus should be on the development of synergies amongst institutions, whether they work at national, EU or Council of Europe level.

## ***Thematic areas of the agency***

Agreeing wholeheartedly that human and fundamental rights are indivisible and that any attempt to develop a hierarchical ranking of human and fundamental rights would be counterproductive, ENAR would argue that, from a pragmatic point of view, the Agency would need to focus on the roots of Human Rights violations. ENAR therefore supports the proposal of the Commission to continue to give priority to racism and xenophobia as one of the major challenges for the EU and a denial of

fundamental equality of human beings, that is the very basis of fundamental rights. The new Agency can benefit from the expertise gained by the EUMC over the past years.

The European Union has a duty to ensure that every person has full access to the exercise of human rights. ENAR therefore urges the new Agency to clearly set as a high rank priority that "*The enjoyment of any right set forth by law 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*" (Protocol No. 12 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms).

In this context ENAR is of the opinion that *institutional racism* so far did not receive the attention this phenomenon should receive. We therefore propose to include this topic into the Agency's tasks analysing this occurrence in a systematic manner. A crucial aspect could be also an impact assessment of political and legal tools to tackle discrimination on all the grounds listed in Art. 21 of the EU Charter of Fundamental Rights. The Agency could be therefore charged with the continuous task to assess EU policies and to evaluate the impact made.

### ***Geographic scope***

ENAR strongly believes that in the initial stage the Agency's work should be confined solely to the EU and that this need not undermine the importance of fundamental rights in other parts of the world. Once the Agency is firmly established and operating smoothly, and with appropriate funding, the geographical scope of the Agency might be widened.

### ***Tasks of the Agency***

The communication outlines data collection and analysis, as well as the drafting of opinions, as the core tasks of the Fundamental Rights Agency.

In order to give it the appropriate profile, ENAR suggests that the Agency also be tasked with developing and providing independent recommendations based on the analysis carried out. These recommendations might serve as guidance for EU institutions, such as the European Commission and Council, in shaping their fundamental rights policies. It is proposed that the Agency should also be responsible for the development of tools for *positive action* within the EU institutions and beyond.

- ***Data collection and analysis***

ENAR understands that, within the context of data collection, two areas need attention. Statistics (hard data) as well as other information such as media reports, material indicating breaches of fundamental rights, etc (soft data) are required to gain a fully comprehensive picture. The communication proposes two options (active collection undertaken by civil society and other stakeholders such as independent experts *or* passive collection done by governments and their institutions).

ENAR does not feel it is appropriate to opt for one or the other proposal. Instead we suggest combining both options, which will, from our point of view, guarantee both the objectivity and reliability of the collected information, taking into careful consideration the issue of data sensitivity and protection.

In the long term ENAR proposes the development of an EU-wide legal basis for the comprehensive collection of data, which would comply with a uniform set of criteria across all member states. This is the only way in which a European perspective on fundamental rights can be guaranteed and the Agency develop to its full scope. The Agency could be one of the vehicles in striving for such an objective – by using the expertise it gains through the data collection process to contribute to the development of such criteria.

- ***Communications strategy***

The communications strategy as presented in the communication foresees central tools such as publications, information bulletins, studies, a website and a database. These tools appear to be a one-way information channel. However, in order to make communications a major tool in the dialogue between the Agency and other actors working on fundamental rights, one crucial component is still lacking.

We are convinced that platforms for exchange and debate (such as brainstorming sessions, working groups, seminars, etc.) should be an integral aspect of the communications strategy.

As part of the communications strategy it is indicated that the Agency will play an important role in awareness raising and education policies on fundamental rights, which ENAR considers to be important aspects to guarantee fundamental rights.

However, in order to maintain consistency in the text we would suggest that awareness-raising and education activities be included explicitly in the tasks of the agency.

### ***Relations with civil society***

ENAR is convinced that only an independent Agency will be able to perform its tasks as outlined in the communication. Input from and relations with a variety of stakeholders in the civil society sector are crucial. The communication proposes that a network be set up with such stakeholders. However, it does not specify the concrete form this network should take.

We would like to invite the EC to discuss this specific aspect of a civil society network with due attention during the planned hearing in January 2005. Aspects of co-operation and possible overlaps between civil society and the network of independent experts and focal points (currently called RAXEN) should be explored in detail.

## *Structure of the Agency*

Understanding that fundamental rights represent a vast and vital field, ENAR is alarmed about the intention of having '*a lightweight structure in terms of staff and budget*'. The efficiency of the agency is to a large extent dependent on the available structural and financial means and should not be jeopardised by the inadequate allocation of resources.

Concerning the establishment of the management bodies, ENAR calls on the EC, as it drafts the regulation for the Agency, to consider that it should include not only representatives of the EC, EP, member states and CoE but also experts with an independent background. Furthermore, we would suggest a public appointment procedure for representatives of the management bodies of the Agency, bearing in mind that the bodies should be capable of making prompt decisions. In this context a lightweight structure would be beneficial.

ENAR fully supports the establishment of a scientific committee in addition to the management body, as we believe this will serve as a guarantee of uncompromised quality of information and the sustainable development of the data collection procedures. However, attention should be paid to the co-operation of the board, scientific committee, the experts group and other stakeholders, in order to design a smooth and fruitful partnership.