



**MEMORANDUM
TO THE CZECH PRESIDENCY OF THE EUROPEAN UNION**

**A EUROPE WITHOUT BARRIERS FOR ALL
MAKING A REAL DIFFERENCE ON NON DISCRIMINATION AND EQUALITY**

January - July 2009

ENAR'S FIVE POINTS CALL FOR ACTION

TO THE CZECH PRESIDENCY

FOR A EUROPE THAT IS FOUNDED ON THE VALUES OF RESPECT FOR HUMAN DIGNITY, FREEDOM, DEMOCRACY, EQUALITY, AND RESPECT FOR HUMAN RIGHTS, INCLUDING THE RIGHTS OF PERSONS BELONGING TO MINORITIES

I. BUILD A EUROPE WITHOUT BARRIERS FOR ALL

- *Ensure a dialogue on the Future of Europe that is founded on the values of respect for human dignity, freedom, democracy, equality, and respect for human rights, including the rights of persons belonging to minorities*

II. EQUAL PROTECTION FOR THE RIGHTS FOR ALL IN EUROPE

- *Enforce full compliance with the existing Article 13 Equality Directives in all Member States*
- *Continue the constructive dialogue on the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*

III. A SOCIAL EUROPE FOR ALL

- *Ensure that the EU Social Agenda develops targeted measures that ensures the well-being of ethnic minorities and migrants in a coherent and multidimensional way and that non-discrimination and equality is mainstreamed into all aspects of the renewed Social Agenda*
- *Use the opportunity of the preparations for the 2010 European Year combating Poverty and Social exclusion to design and implement policies that respond to the needs of particularly vulnerable groups who face multiple discrimination in many areas of life*
- *Address the social inclusion of the Roma by targeted actions and policies developed by the Integrated European Roma Platform. The Integrated European Roma Platform should seek to facilitate genuine policy exchange between Member States and all stakeholders and apply an analytical approach that should lead to developing a comprehensive EU Framework Strategy for Roma Inclusion*

IV. FUNDAMENTAL RIGHTS: THE CORNERSTONE OF JUSTICE, FREEDOM AND SECURITY

- *Ensure The Adoption Of A New Multi-Annual Programme For Justice And Home Affairs That Contributes To The Fight Against Racism*

- *Ensure An EU Approach To Migration And Asylum That Helps Build A Europe Free From Racism*
- *Pursue The Adoption Of European Tools That Ensure Equal Respect, Protection And Fulfilment Of Fundamental Rights For All, Including Third Country Nationals.*
- *Adopt A European Approach To The External Dimension Of Migration And Asylum Policy That Respects, Protects And Fulfils Fundamental Rights.*

V. THE EUROPEAN UNION IN THE WORLD: THE EU AS A CHAMPION OF HUMAN RIGHTS:

- *Lead the EU engagement in the Durban Review Conference in April 2009, ensuring a successful conference with full participation from civil society that the EU acts as a driver in laying the foundations for a successful Durban Review Conference in 2009.*

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. See: www.enar-eu.org.

I. BUILD A EUROPE WITHOUT BARRIERS FOR ALL

- *Ensure a dialogue on the Future of Europe that is founded on the values of respect for human dignity, freedom, democracy, equality, and respect for human rights, including the rights of persons belonging to minorities*

ENAR welcomes the Czech Republic as President of the European Union for the first time as part of the Trio Presidency. The Czech Presidency comes at a crucial time for Europe. It will take on the responsibility for strengthening the European Union's ability to respond to serious challenges that have been evoked by the financial crisis that resulted in an economic downturn with all its social, political and international consequences. It will be critical for the Presidency to set the foundations on which social and sustainable policies can be developed, and that guarantees social and green progress in the framework of a coherent EU agenda with the ambition of bringing quality of life while ensuring social justice and the promotion of human rights.

Leadership is needed to mitigate the impact of the economic crisis on vulnerable people and to prioritise social objectives at EU and national level in the current context of increasing inequalities and persistent discrimination. Social and demographic change is affecting the whole of Europe. These challenges need to be brought on the EU agenda more effectively than via the narrow and piecemeal approach developed in the renewed Social Agenda and a horizontal approach needs to be developed that ensures that a human-rights based approach is promoted via a clearer vision of what the EU promises to deliver for the well being of all people, including ethnic minorities and migrants living in Europe.

Racism remains a deep-rooted problem and with the increasing insecurity that people feel about their future it is likely to increase in the coming period. There is a commonality of experiences of racism across the European Union, even where manifestations may vary. ENAR's most recent Shadow Reports¹ particularly highlighted the situation of Roma, Traveller and Sinti communities; vulnerable migrant communities (including undocumented workers); asylum seekers; those who experience family reunification; and the diverse Muslim community. These are the communities who are also most likely to be deeply affected by the consequences of the economic crisis.

ENAR calls on the Czech Presidency to build a **Europe without Barriers for All**, including persons belonging to minority communities and to ensure that everyone shares our common goal to build a Union founded on the values of respect for human dignity, freedom, democracy, equality, and respect for human rights, including the rights of persons belonging to minorities.

The foundation on which such vigilance is built is effective legal protection for all. Thus we are asking the Czech Presidency to be a strong force in the fight against racism, in particular by ensuring that there is equal protection against discrimination by 'levelling up' the protection against discrimination, that a human-rights based approach is promoted in the future EU Programme for Freedom, Justice and Security and in the implementation of the European Immigration Pact, and that effective protection against racist hate crime is finally secured in Europe.

¹ The ENAR Shadow Report is an annual stock taking exercise on racism and religious discrimination in Europe, produced to fill the gaps in the official and academic data and to offer an NGO perspective on the realities of racism in the EU and its Member States: http://www.enar.eu.org/Page_Generale.asp?DocID=15294&la=1&langue=EN

Legislation alone however is insufficient in the fight against racism. Political dialogue must always respect the rights of all and must help to build a Europe free from racism. Building on the achievements of the 2007 European Year of Equal Opportunities for All, and of the 2008 European Year of Intercultural Dialogue, the Czech Presidency has a real opportunity to build and strengthen an open and effective dialogue between all stakeholders as a principle and as a working method in the debates about the future of Europe and on the adoption of the Lisbon Treaty and the campaign for the European Elections. This memorandum seeks to make a number of concrete recommendations in this regard and ENAR looks forward to working with the institutions of the European Union and with the Member States.

The Czech Presidency has identified the key priorities of building a **Europe without Barriers**, a Europe without internal economic, cultural and value barriers and a Europe open to the world. ENAR puts forward this memorandum and its Five Calls for Action as necessary steps in meeting these aspirations of the Presidency.

II. EQUAL PROTECTION FOR THE RIGHTS FOR ALL IN EUROPE

- *Enforce full compliance with the existing Article 13 Equality Directives in all Member States*
- *Continue the constructive dialogue on the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*

Enforce full compliance with the existing Article 13 Equality Directives in all Member States

In recent years much progress has been made towards the implementation of a comprehensive legislative framework and the **Race Equality and Framework Directive** have had a significant impact on the European anti-discrimination landscape. Nonetheless, the **quality of transposition and implementation remains problematic in most Member States**. The procedures launched by the European Commission for failure to adequately transpose the Race Equality Directive and the Framework Employment Directive are an illustration of that situation. ENAR urges the Czech Presidency to demand full compliance with existing Article 13 Equality Directives in all Member States.

Continue the constructive dialogue on the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

The existing Article 13 Directives provide a vital minimum level of protection but **gaps remain in the overall legal framework**, including as regards discrimination on grounds of religion and belief outside employment and protection against multiple discrimination.

ENAR has welcomed the proposal presented by the European Commission as an essential tool in filling these gaps and enabling a coherent and consistent legal framework that meets the need of those facing discrimination to real and effective protection.

The Member States have led the way in a constructive dialogue on this proposal, with many positive results and ENAR calls on the Czech Presidency to take a leadership role in ensuring that such constructive dialogue continues.

III. A SOCIAL EUROPE FOR ALL

- *Ensure that the EU Social Agenda develops targeted measures that ensures the well-being of ethnic minorities and migrants in a coherent and multidimensional way and that non-discrimination and equality is mainstreamed into all aspects of the renewed Social Agenda*
- *Use the opportunity of the preparations for the 2010 European Year combating Poverty and Social exclusion to design and implement policies that respond to the needs of particularly vulnerable groups who face multiple discrimination in many areas of life*
 - *Address the social inclusion of the Roma by targeted actions and policies developed by the Integrated European Roma Platform. The Integrated European Roma Platform should seek to facilitate genuine policy exchange between Member States and all stakeholders and apply an analytical approach that should lead to developing a comprehensive EU Framework Strategy for Roma Inclusion*

Ensure that the EU Social Agenda develops targeted measures that ensures the well-being of ethnic minorities and migrants in a coherent and multidimensional way and that non-discrimination and equality is mainstreamed into all aspects of the renewed Social Agenda

Europe's *raison d'être* is the creation of stable, peaceful and prosperous societies based on democracy, and respect for and protection of human rights.

Today's Europe however has undergone profound changes and faces many challenges at the backdrop of the economic crisis. The aging population contributes to the fears of an unsustainable Europe. Poverty and inequality persist, unemployment rates are rising and the social and economic inclusion of ethnic and religious minorities remains one of Europe's biggest challenges. Exclusion from employment, health, housing and education continue to undermine the everyday experiences of millions of ethnic minorities across Europe, including the continuous and persistent discrimination faced by Roma, Sinti and Travellers, new migrants, established minorities from immigrant origin and other minority groups. Not only are minorities more likely to experience exclusion but experiences of exclusion are often more severe and extreme. These experiences are already having a profound impact on the well-being of minorities, which are exacerbated by the economic downturn.

Therefore ENAR has welcomed the 'social packet' as presented by the Commission on 2nd of July² and believes that it makes important steps to live up to the fundamental social values and objectives of Europe, however has major concerns regarding the 'renewed' Social Agenda' lacking vision and long-term commitment on a sustainable and social Europe. ENAR supports the efforts to draw up a new social agenda that combines a series of policy instruments but calls on the Czech Presidency to ensure **that the current piecemeal approach is replaced by a strong long-term social vision appropriate to address current social realities with close cooperation of civil society.**

² See: <http://ec.europa.eu/social/main.jsp?catId=547&langId=en>

Legislation, policy strategies and instruments proposed in the framework of the **renewed Social Agenda will only be successful if they are coherent with these societal realities** – growing inequalities, structural discrimination, erosion of fundamental social rights – and recognise the general trend across Europe, which sees the need for interventions to enable those most disadvantaged to escape poverty and social exclusion, but links between discrimination and structural disadvantage as factors of continuing social exclusion are not established. **ENAR strongly believes that a new social vision of how best to advance the well-being of all in our diverse societies must take account of the needs and experiences of communities across Europe that are vulnerable to racism and discrimination.**

ENAR welcomes the proposal of the European Commission to reinforce the **Open Method of Coordination for Social Protection and Social Inclusion by putting it on a more equal basis with the revised Lisbon Strategy and by proposing agreed targets, recommendations and improved monitoring and evaluation.** The proposal of improving political commitment and visibility by setting quantitative targets and enhancing tools and evidence base corresponds with ENAR's continuous call for addressing the lack of disaggregated data by ethnic origin. Therefore ENAR strongly hopes that the Czech Presidency will see the proposed measures to be taken forward and establish targets and indicators that are able to capture the experiences that hinder the well-being of ethnic and religious minorities and migrants and that go beyond measuring GDP per capita.

The adoption of the 'common principles on **active inclusion**' under the French Presidency are welcome, including questions of adequacy of income support, access to affordable services and building stronger links to the labour market. ENAR emphasises however, that the Czech Presidency now has the major task of proposing plans on how to turn words into action and **implementing** the principles as **part of the broader social inclusion framework.** Policies and processes for implementation must be developed under the active inclusion strategy that effectively interact and complement social security and social inclusion policies under the OMC.

Consequently ENAR calls on the Czech Presidency to pay **particular attention to the distinctive needs and experiences of ethnic and religious minorities and migrants** building on and improving existing instruments and legislation under the Social Agenda with a view of **mainstreaming non-discrimination and equality** across traditional and related social policy domains and beyond, in the whole European project.

Use the opportunity of the preparations for the 2010 European Year combating Poverty and Social exclusion to design and implement policies that address the well-being of particularly vulnerable groups who face multiple discrimination in many areas of life

In line with the focus on equality and non-discrimination in the renewed Social agenda, ENAR strongly believes that if the 2010 European Year is to effectively follow-up the processes of the Lisbon Strategy and contribute to a decisive impact on eradicating poverty and social exclusion **it must address the link between exclusion and discrimination.**

Addressing the impact of **legal status on situations of exclusion** is also of key importance, particularly in the case of migrants, refugees/asylum-seekers and Roma, Travellers and Sinti who are most likely and vulnerable to face multiple discrimination. Finally, in order to accurately reflect the experiences of those most directly affected and to address their needs

in overcoming poverty and social exclusion, it is imperative that the Year is developed on the **principle of full and meaningful participation of civil society and inclusive national implementing bodies.**

ENAR calls on the Czech Presidency to consider these key messages in the run-up to the Year 2010, in the preparatory activities and planning phase.

Address the social inclusion of the Roma by targeted actions and policies developed by the Integrated European Roma Platform. The Integrated European Roma Platform should seek to facilitate genuine policy exchange between Member States and all stakeholders and apply an analytical approach that should lead to developing a comprehensive EU Framework Strategy for Roma Inclusion

The need for strong leadership from the EU with regard to improving the situation of Roma is urgent, as is the need for a more comprehensive and ambitious approach to Roma inclusion. This has been reiterated by the 2007 December and 2008 June Council Conclusions, and most recently by the 2008 December Council Conclusions, that called on the European Commission to establish an integrated European platform in order to stimulate cooperation and provide analytical support to Member States.

ENAR is urging the Czech Presidency to build on the momentum raised by the Council developments and by the Roma Summit last September and in close cooperation with the European Commission and civil society **establish a proactive and meaningful platform that will lead to the development of an ambitious EU Framework Strategy on Roma Inclusion**, with clear and measurable targets and effective coordination mechanisms.

IV. FUNDAMENTAL RIGHTS: THE CORNERSTONE OF JUSTICE, FREEDOM AND SECURITY III.

- *Ensure the adoption of a New Multi-Annual Programme for Justice and Home Affairs that contributes to the fight against racism*
- *Ensure an EU approach to migration and asylum that helps build a Europe free from racism*
- *Pursue the adoption of European Tools that ensure equal respect, protection and fulfilment of fundamental rights for all, including third country nationals.*
- *Adopt a European approach to the external dimension of migration and asylum policy that respects, protects and fulfils fundamental rights.*

Ensure the adoption of a New Multi-Annual Programme for Justice and Home Affairs that contributes to the fight against racism: Preparing the New Multi-Annual Programme for Justice and Home Affairs

ENAR has welcomed the debate on the shape of the future EU programme on justice and home affairs. This dialogue is an important opportunity to reshape the way in which the European Union approaches the exercise of its competencies and re-focus work where it is most needed. Dialogue with civil society must be a core mechanism of developing the future programme and a core feature of the programme itself.

For the Multi-annual programme to truly reflect the existing and future problems in the field of Justice and Home Affairs, the new situation in the European Union after its enlargement to

27 Member States and (possibly) the coming into force of the Lisbon Treaty Fundamental Rights must be the cornerstone of the new programme.

The European Union has a vital role in the promotion of fundamental rights and a significant responsibility to ensure that not only its own activities respect these standards but to actively respect, protect and fulfil fundamental rights through the standards that are set for the Union and for Member States.

The fight against racism requires respect for the universality and indivisibility of the fundamental human rights of all. Thus as well as ensuring that combatting racism and xenophobia are high priorities for the future Justice and Home Affairs programme, it is also crucial that the recognition of the rights of all is the foundation on which the future programme is built and the framework within which it operates.

Fundamental Rights as the Foundation and Framework of the future Justice and Home Affairs Programme:

ENAR believes that the work currently underway on building the future European programme on Justice and Home Affairs must not see fundamental rights as simply one aspect of the work to be done. Rather fundamental rights must be seen as the foundation stone and framework for the work of the EU, including as it relates to Justice and Home Affairs.

ENAR calls for the following Priorities to guide the setting of the goals of the New Multi-Annual Programme:

1. Developing a comprehensive approach to combating Racism and Xenophobia that sees the fight against racism mainstreamed into all relevant areas of work, including through police cooperation and work towards a coherent judicial area in civil and criminal matters, data protection (for example, protection against ethnic profiling) and the fight against terrorism.³
2. Ensuring the mainstreaming of fundamental rights, including the rights of ethnic and religious minorities, into all EU law and policy⁴
3. Promote the development of progressive migration and integration policies⁵
4. Ensure that Counter-terrorism is conducted in the framework of human rights and anti-discrimination⁶
5. Promoting the adoption and/or implementation of National Action Plans Against Racism implementing the commitments made at the World Conference Against Racism 2001 (and due to be renewed at the Durban Review Conference 2009) by individual Member States.⁷

ENAR further believes that the following actions must be incorporated as essential to achieving these goals:

³ ENAR General Policy Paper on Racism as a Crime, April 2006; European Strategies to combat racism and Xenophobia as a Crime, April 2003.

⁴ ENAR General Policy Papers on Racism as a Crime (2006), Third Country Nationals (2006), Counter-terrorism and Combating racism (2007), Education (2008);

⁵ ENAR General Policy Paper on Third Country Nationals (2006)

⁶ ENAR General Policy Paper on Counter-terrorism and combating racism (2007)

⁷ ENAR Memorandum to the French Presidency of the EU 2008; ENAR Extended Fact Sheet No. 29: Durban's Legacy: National Action Plans against Racism in the European Union (October 2006)

1. Build upon the foundation set by the Framework Decision on Combating Racism and Xenophobia as a Crime to build effective protection for victims of racist crime;⁸
2. Conduct an equality and human rights audit of the European Union Action Plan to combat terrorism;⁹
3. European institutions to fully implement and where needed revise relevant Community legislation to comply with the 1951 United Nations Convention Relating to the Status of Refugees, the 1954 United Nations Convention relating to the Status of Stateless Persons and CERD General Recommendation 30 on discrimination against non-citizens, as well as the relevant recommendations of the Council of Europe, the Conventions of the International Labour Organisation, and the Palermo Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Air and Sea;¹⁰
4. Extension of the protection against discrimination on the ground of nationality provided by the Treaties to every person living in the territory of the EU;¹¹
5. Extension of the protection Against Discrimination on grounds of racial or ethnic origin, religion or belief and nationality to all areas of EU competence, including Justice and Home Affairs.¹²

Ensure an EU approach to migration and asylum that helps build a Europe free from racism: Migration and the New Multi-Annual Programme for Justice and Home Affairs

It is clear that migration will be a core part of the new Multi-Annual Programme. ENAR calls for the following key principles to underpin the development of a positive approach to migration:

Principle 1: Promoting Positive Values, Conceptions and Principles

The underlying perceptions and assumptions surrounding migration and how the EU should respond must be tackled. Public perceptions often become political assumptions and these are more often than not based on the premise that migrants should be restricted from fully exercising their human rights, including free movement, and that they are easily replaceable and removable unless it is to the EU's economic benefit. Such an approach leads to an attempt to rationalise racism and xenophobia in the way we act as individuals or legislate at national or community level. It results in restrictive migration policies, discrimination and exploitation of third country nationals, subordinating the interests of the minority to the perceived interests of the majority.

Principle 2: Using Positive Terminology in the Political Discourse

Terminology must not perpetuate a negative image of migrants. Human beings cannot be illegal, and language must recognize this.

Principle 3: Taking a Human Rights Based Approach

⁸ ENAR General Policy Paper on Racism as a Crime, April 2006; European Strategies to combat racism and Xenophobia as a Crime, April 2003

⁹ ENAR General Policy Paper on Counter-terrorism and combating racism (2007)

¹⁰ ENAR General Policy Paper on Third Country Nationals (2006)

¹¹ ENAR General Policy Paper on Third Country Nationals (2006)

¹² ENAR General Policy Paper on Third Country Nationals (2006), ENAR General Policy Paper on Counter-terrorism and combating racism (2007), ENAR General Policy Paper on Racism as a Crime, April 2006; European Strategies to combat racism and Xenophobia as a Crime, April 2003, ENAR submission to the European Commission consultation on the need for new initiatives combating discrimination outside employment (October 2007), ENAR report of an ad Hoc Experts Group on Extending EU Anti-Discrimination Law (March 2008)

Europe has to acknowledge the responsibility that it has as a role model and standard setter and must therefore respect human rights in order that such standards of equality and human dignity can be part of the ideological standards exported by Europe to the wider world.

Principle 4: Compliance with Human Rights Instruments

The community should sign and ratify the international human rights conventions when these fall under shared competence with member states and ensure that all its actions, decisions, regulations, directive and measures are in line with international human rights standards.

Principle 5: Making use of Demographic data, challenging assumptions

Demographic and other statistics should be linked to all aspects of migration that need to be publicized - not only that we need migrants because we are an ageing population but also what migrants contribute socially, economically and culturally.

Principle 6: Anti-Discrimination for All

Emphasis must be placed on anti-discrimination for all, irrespective of status or nationality. It must be ensured that the positive impact of comprehensive and strong anti discrimination policies is made known to interested parties (such as businesses).

Principle 7: Anti-Discrimination, Migration, Integration and Social inclusion

Anti-discrimination is inextricably linked with social inclusion and integration. Integration must not be used as a means of restricting the exercise of human rights of migrants (for example, integration tests that infringe on the right to family life and/or are discriminatory) and must not exclude or discriminate on any ground, whether on the basis of race or nationality or social or any other status. To this end, special attention should be paid to legislation regarding family reunification, which currently jeopardises both non discrimination principles and children's rights, while disproportionately impacting on migrant women and older migrants.

Principle 8: Enforce Existing Labour Law

Strengthening the implementation and enforcement of existing labor laws under national and community law and under ILO conventions must be a priority for EU Institutions and Member States.

Principle 9: Protect Workers' rights

Fundamental Human Rights must cover all workers irrespective of legal status or skills, there must be no direct or indirect penalisation of those who face exploitation and the development of entry and/or employment policies that do not push migrants into the hands of smugglers and traffickers must be a priority.

Principle 10: Ensure Policy Coherence

Policy coherence with regards to EU migration policy vis-a-vis the rest of EU Policies such as the employment and social policy, Lisbon strategy and fundamental rights, is an essential prerequisite for effective policy making.

Principle 11: Promote Gender Sensitive and Age Sensitive Policy making

It is essential to ensure that migration policy is gender sensitive, and that the specific needs of migrant women are adequately addressed. Policy makers must consider the specific needs of unaccompanied minors, young people, elderly people and specifically young people in employment.

Principle 12: Ensure Participation and the Migrants Voice

The migrants' voice must be heard in decision making concerning migration policy. In this context the European Integration Forum, is a key mechanism to enable civil society and migrant input into the policy making process.

Principle 13. Ensure Equality in Education

It is important to pursue policies that promote the educational attainment of migrant children as well as the education needs of migrants more generally, including the second generation. In this context, the school system should go beyond the classroom and provide targeted support where needed.

Principle 14. Recognise the Global Context

An effective approach must tackle poverty and social exclusion, especially within the context of the global economic crisis.

Principle 15. Be Proactive Not Reactive!

The achievement of a positive approach to migration requires policy makers and civil society to be proactive in pursuing a rights based approach to migration.

Pursue the adoption of European Tools that ensure equal respect, protection and fulfilment of fundamental rights for all, including third country nationals: Finishing the Hague Programme: Legislation on migration

The European Commission has emphasised the importance of the protection of migrants' rights, including the existence of a 'rights gap', whereby the rights of third country nationals are not fully recognised in EU law and policy. Despite this, many of the recent developments in the broad agenda of migration policy, including the 'Returns Directive' and the proposed EU directive providing for sanctions against employers of irregular Third Country Nationals **(Employer Sanctions Directive)**¹³, have the potential of undermining the basic human rights of third country nationals and of promoting discrimination against racial and ethnic minorities within European society. Regarding the proposal for a Directive on Employer Sanctions, ENAR has highlighted that:

"The current proposal endangers...integration measures through the stigmatisation of employment of third country nationals and migrants, whereby third-country nationals are subject to procedures that question their right to reside in the country on a regular basis. At the most extreme end, the requirements may result in employers deciding it is 'too much trouble' to employ third-country nationals, resulting in nationality discrimination against which there is currently a lack of protection at European Union level for third country nationals.

...the current directive risks undercutting efforts to fight against discrimination on grounds of race or ethnic origin in the labour market more broadly. Placing the duty on employers to exercise immigration control functions will not only deter employers from hiring unauthorised workers, but is likely to create both intentional and unintentional racial discrimination whereby not only every third country national but also every 'foreign' looking worker is placed under suspicion and subjected to potentially repeated checks and scrutiny solely on the grounds of their actual or apparent race or ethnic origin. This could mean that

¹³Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals (COM (2007) 249 final) of May 2007

*implementation of the requirements placed on employers could create discrimination prohibited under the Race Equality Directive.*¹⁴

While the **Framework Directive on the basic socio-economic rights**¹⁵ for all third country workers aims to fill the rights gap, there are concerns that the priority given to immigration control in bringing forward proposals on regular and irregular migration distorts the framework. **Employment and broader socio-economic rights should be provided equally to every member of European societies, without any artificial division based on legal statuses.** The current proposal opens up the European Union to the accusation that the only rights recognised for migrants are those that enable efficient functioning as a worker, rather than equal respect as a human being.

ENAR urges the Czech Presidency to pay particular attention to the fundamental rights of third country nationals and **to follow a rights-based approach which ensures equal treatment of all third country nationals, including undocumented migrants.**

V. A EUROPE COMMITTED TO INTERCULTURAL DIALOGUE, DIVERSITY AND EQUAL TREATMENT IN EDUCATION

- *Promote positive dialogue between communities and cultures building on the outcomes of the 2008 European Year for Intercultural Dialogue*
- *Mainstream non-discrimination and equal treatment in the updated strategic framework for European cooperation in education and training and in the Green Paper on Migration and Mobility*

Promote positive dialogue between communities and cultures building on the outcomes of the 2008 European Year for Intercultural Dialogue

European societies are increasingly diverse in terms of cultures, ethnicities, religions, languages and acknowledging the very existence of this diversity. Parallel to that, under the pressure of globalisation and the absence of a clear common project for the future of Europe, fears of losing European societies' cohesiveness, of dilution of their identities are on the rise, while tensions, inequalities and discriminations are experienced by a growing number of individuals throughout Europe. Complementary to legislative efforts to be undertaken at EU and national levels and to the concrete implementation of anti-discrimination measures, the voluntarist development of soft tools like intercultural dialogue becomes one of the key factors to success. Intercultural dialogue allows us to understand the reality and authenticity of everyone's experience in a safe framework, but it requires a supportive framework, a true equal opportunities strategy, education and funding. The EU has to invest more in that important area to ensure the future of inclusive and cohesive European societies on the one hand, and promote the mainstreaming of intercultural dialogue in all relevant EU policy areas and programmes on the other hand, as two ways to foster the impact of intercultural dialogue from European policy developments down to grassroots local activities, where the dialogue really takes place.

¹⁴ Joint Position on the Employer Sanctions Directive, ENAR SOLIDAR & PICUM April 2008

¹⁵ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State COM(2007) 638 final

The Year also offers a concrete opportunity to **promote strategies of a vibrant dialogue between civil society, Member States and EU institutions** as the contribution of civil society has been proved to be crucial in developing, implementing and evaluating policies and legal instruments. ENAR encourages the EU presidency to give a **detailed consideration to 'The Rainbow Paper' of the Platform for Intercultural Europe**, which was launched on 18 November 2008 at the Closing Conference of the 2008 European Year in Paris. The Rainbow Platform brings together organisations from civil society to 'share effective Intercultural Dialogue practices and to engage with the political process under the European Year of Intercultural Dialogue 2008 and beyond'. To this end the rainbow paper puts forward principles of actions laying down common interests amongst Platform participants. These principles include managing, reducing or eliminating inequality and injustice; building on the intimate connection that exist between culture, diversity and democracy; the understanding and promotion of a participatory learning and decision-making model.

Mainstream non-discrimination and equal treatment in the updated strategic framework for European cooperation in education and training and in the Green Paper on Migration and Mobility

Education has a vital part to play in addressing the challenge of social cohesion and building a multicultural Europe free from racism and discrimination. It plays a critical role in preparing people for active participation in society, as well as in combating social exclusion and promoting solidarity and tolerance. In this context, young people and adults need to be equipped with the sensitivity and skills required to succeed in diverse societies.

ENAR considers the **creation of inclusive learning environments** as critical in achieving social cohesion and long term competitive growth, which stand at the core of the **revised Lisbon strategy**. Those objectives have been reflected in the Education and Training 2010 Work Programme and further elaborated upon in the 2006 Commission Communication on promoting efficiency and equity in educational systems.¹⁶

In the area of implementation however, unless there is a more conscious and overt statement of principle, and an equivalent conviction to take appropriate actions, key concerns remain regarding their capacity to address racism and offer equity to ethnic minorities in education and training. As discrimination is a key barrier to achieving equality of access to education and educational attainment, it is essential that **equal opportunities strategies are placed at the heart of all educational initiatives**; and that the **updated strategic framework for European cooperation in the fields of education and training beyond 2010** and the Green Paper 'Migration & mobility: challenges and opportunities for EU education systems'¹⁷ ensures the increase of achievement levels of migrants and disadvantaged groups as had been targeted in 2001.

Therefore ENAR calls on the Czech Presidency to ensure that these instruments, their follow-up and implementation, **build on the following key principles**¹⁸:

¹⁶ Communication from the Commission to the Council and to the European Parliament on Efficiency and equity in European education and training systems, COM (2006) 481.

¹⁷ See: http://ec.europa.eu/education/news/news490_en.htm

¹⁸ See ENAR's 5th General Policy **Paper** on Fighting racism and promoting equal rights in education and training:

- Education is central in addressing the challenge of social cohesion and promoting solidarity and non-discrimination in a more diverse Europe
- Education and training systems must instil values of respect, diversity and challenge prejudice. The systems themselves must be free of discrimination at all levels.
- Education and training systems must ensure access to quality education for all that adequately addresses underachievement and educational disadvantage
- Better partnership must be promoted between formal and non-formal education and training systems and civil society

V. THE EUROPEAN UNION IN THE WORLD: THE EU AS A CHAMPION OF HUMAN RIGHTS:

- *Lead the EU engagement in the Durban Review Conference in April 2009, ensuring a successful conference with full participation from civil society and that the EU acts as a driver in laying the foundations for a successful Durban Review Conference in 2009.*

ENAR urges the Czech Presidency to lead the EU engagement in the process of reviewing the follow up to the UN 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)¹⁹ on the basis of the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. (Article 2 TEU as amended by the Lisbon Treaty). ENAR believes that it is vital that EU Member States who have not yet fully developed and implemented National Action Plans Against Racism are held to account through the Review Process.

CONCLUSIONS

The European Union is at a crossroads. The foundations for the future of Social Europe are being built, key decisions on the European approach to migration and asylum are being made, action is being taken to combat terrorism, moves are being made to tackle Roma disadvantages, to provide effective redress against discrimination, and to promote educational success for migrant pupils. The Czech Presidency will set the frame from these discussions and it is vital that in doing so it is ensured that the rights of all are fully recognised, respected and fulfilled without discrimination.

¹⁹ At the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)¹, held from 31 August to 8 September 2001 in Durban, South Africa, the signatories agreed to a Declaration and Programme of Action that:

“Urges States to establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations.”