



European Network Against Racism
Réseau européen contre le racisme
Europäisches Netz gegen Rassismus

FRA 2009 Annual Report

Response of the European Network Against Racism to the
European Fundamental Rights Agency's consultation on its
2009 Annual Report

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The European Network against Racism (ENAR) is a network of some 600 NGOs working to combat racism in all EU Member States. ENAR is determined to fight racism, racial discrimination, xenophobia and related intolerance, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national and European initiatives.

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1. Appropriateness and assessment of methods used for data collection and reporting at national level

Methodology

Policy makers and human rights activists are becoming increasingly aware of the strategic importance of data collection in informing policies to combat racial discrimination and other form of fundamental rights abuses. Data collection is a key mechanism to document discrimination on the basis of racial and ethnic origin and religious belonging and through this contributes in several ways to the fight against discrimination. The following data categories can be identified in that regard:

- general monitoring on racial discrimination patterns and manifestations;
- situation of different groups with regard to specific sectors (employment, housing, education, etc.);
- targeted monitoring in narrowly defined settings in order to identify instances of structural discrimination and accelerate the adoption of remedial measures and forward looking policies aiming to redress disadvantage and promote positive measures to realise equality.

All of these mechanisms are strategic to the implementation of the existing EU anti-discrimination framework and statistical data is crucial in that regard. The EU Fundamental Rights Agency therefore has an important role to play in ensuring that data on fundamental rights is collected in the most effective way.

However, ENAR believes that the methodology used to assess the fundamental rights situation in the areas covered by FRA's mandate is unclear. A clear methodological framework is needed in order for FRALEX to conduct its data collection work in a coherent manner. Is the methodological framework the implementation of the human rights international legal framework and of EU legislation in the corresponding areas? This seems to be the case in the report, but such a framework is not sufficient to achieve a complete analysis of the state of play of the fundamental rights situation in the EU. FRA must work further to ensure that the data is collected and presented in a way that enables its use in policy making.

Alternative data sources

The scarcity of statistical data makes it important that other sources and techniques can be considered. ENAR therefore welcomes the fact that FRA is increasingly using victim-based surveys as a source of data. The data collected through its EU-MIDIS surveys of immigrant and ethnic minority groups' experiences of discrimination is a positive development and will prove useful in filling the gaps in data collection on discrimination experienced by ethnic minorities. However, ENAR regrets that there is no analysis of the results of these surveys, for instance in terms of the variations between member states.

In addition, FRA should ensure that a better balance is reached in its reporting between statistical and empirical data collection and the data resulting from the contribution of civil society experiential research. NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities suffering from racism on a daily basis. NGO reports such as the ENAR Shadow Reports and other reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its member states. This allows access to information which, while sometimes not backed up by the rigors of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research.

2. Issues covered by the report

The 2009 report is based on data collected under the broader mandate of fundamental rights. This presents an opportunity and a challenge. The opportunity is to bring the issues facing ethnic and religious minorities into the mainstream and consider their links with other thematic areas such as the rights of the child and compensation for victims. The challenge is to ensure that the vital work that has been undertaken to date of highlighting important rights issues in the thematic area of racism and xenophobia is not lost or reduced in doing so.

Racism and discrimination in the EU

ENAR welcomes FRA's continued effort to monitor racial discrimination as it prevails in the various economic and social areas of life. ENAR welcomes the fact that racism and discrimination are still a core part of the annual report and that a section is specifically devoted to these issues. However, we are concerned that data collection on key priority areas has been omitted, including in the areas of policing, access to goods and services and the media. The collection of data on these areas and the presentation of that data through the annual report would ensure that the issues covered had a high level of relevance for ethnic and religious minorities.

ENAR also regrets that the analysis of the Racial Equality Directive only focuses on the implementation of the provisions on equality bodies, but not on other important provisions. There should be a comprehensive assessment of the state of implementation of all key provisions of the Racial Equality Directive in the report.

We welcome the fact that the FRA report gives an overview of complaints mechanisms in the EU member states. However, there is no analysis of the effects of complaints on the actual implementation of the Racial Equality Directive, nor any mention of strategic litigation and its potential value in this respect.

In the section relating to racism and discrimination in employment, a number of indicators are missing in FRA's assessment of the state of play, including indicators relating to labour force participation and the concept of quality in employment for vulnerable groups such as ethnic and religious minorities. There is currently sufficient information and data on direct discrimination but an assessment of the presence of indirect and structural discrimination requires other economic indicators on disadvantage.

ENAR welcomes the fact that best practice examples are mentioned in some parts of the chapter on racism and discrimination. Good practices are important as they provide a framework for possibilities for action and for innovative means of combating discrimination. However, they are not systematically mentioned in all sections and best practices by civil society could also be highlighted more consistently.

Developments regarding fundamental rights issues in the EU

In terms of the other fundamental rights issues covered by the report, ENAR is concerned by the general lack of information on the state of play with regard to most of the 'new' issues covered by FRA, although we understand that reporting on the areas covered by FRA's new mandate is still in its early stages.

Both in the sections on national developments and on EU developments, the state of play provided lacks information and 'meat' on most issues. In the area of discrimination, in developments at national level, there is not much information on the separate Article 13 grounds and the problems of discrimination experienced by the groups of people covered by Article 13 (age, sexual orientation, disability, religion). In the asylum, immigration and integration section, there is no assessment of

member states' immigration policies and their potential negative impact on third country nationals and there is no mention of the situation of undocumented migrants. With regard to integration, the EU Common Basic Principles on Integration are mentioned nowhere, although they would be a useful indicator of the integration of third country nationals in the EU member states. There is also no critical analysis of the Return Directive or any mention of NGOs' criticism of the Directive. In addition, recent developments such as the proposals for a Blue Card Directive and for a directive on a common set of rights for third country workers are not referred to.

In the section on developments at EU level, there is a lack of clarity as to what legal concepts are referred to - sometimes reference is made to the Council of Europe mechanisms and other times to EU legislation. This is sometimes confusing and it would therefore be useful to have an introduction for each of the themes presenting the legal framework for assessing the developments.

Overall, an analysis of the extent to which the EU political and legal context has either (a) contributed to promoting the enjoyment of rights and/or (b) contributed to a reduced level or lack of protection is lacking, in particular in relation to immigration.

3. Structure and size of the report

In terms of the structure of Part I on key developments in 2008, it would be more coherent to move towards a structure that incorporates racism and discrimination (chapter 1) into the same structure used for other fundamental rights issues (chapter 2). In addition, it would be clearer to use a structure according to each fundamental rights issue, with sub-sections on national and EU developments, rather than according to national and EU developments.

The EU-MIDIS survey is mentioned transversally throughout the report but there is no explanation of the survey before Part II, which is confusing for readers. It would therefore be useful to include an introductory section on the EU-MIDIS survey at the beginning of the chapter on racism and discrimination in the EU.

With regard to the conclusions, ENAR believes that they could be further strengthened if:

- The recommendations are more clearly connected to the development of European policies and are more specific. They remain for the time being too general and further work is needed to enable their use in bringing the evidence of the Agency into EU policy development.
- Other recommendations could be defined in relation to certain groups, e.g. on the Roma, Sinti and Travellers; asylum seekers and irregular migrants in all areas covered by the report (employment, education etc.)
- Recommendations are needed on the empowerment of disadvantaged groups and their participation in developing and implementing policies. Best practices coming from civil society need to be systematic.

In addition, the executive summary should include a 'Conclusion' section which would analyse trends compared to previous years and put forward one or two major recommendations.

ENAR believes the size of the report is considerable and may deter readers from reading the whole document. ENAR proposes to reduce Part II on the main activities undertaken by FRA, which is useful but could be less detailed.

4. Suggestions for follow-up of the Annual Report

- Additional topics could be further researched including: social inclusion policies and their implications for ethnic minorities and migrants; the impact of counter-terrorism policies and ethnic profiling on ethnic and religious minorities; further data on migrants in the areas of employment, education, health, housing, access to goods and services, representation in and by the media. Multiple discrimination and its manifestations will also be an important theme that needs to be addressed across the range of topics.
- The launch of the annual report of the Agency is a key opportunity to raise awareness of the issues that are highlighted by the data and for the use of the data in advocacy work of civil society organisations. At the moment the potential for synergies between the awareness raising work of FRA and the role of civil society are underutilised and it is therefore unable to have the extent of impact or visibility that would otherwise be the case. In this context ENAR urges FRA to explore the possibility of working with key organisations, through FRA's Civil Society Platform, to develop joint strategies around the launch of the report.
- ENAR strongly feels that a greater link needs to be made between FRA's data and recommendations and the policy making of EU institutions. In this context we suggest that the FRA should share the findings and establish close working relations with DG EMPL as well as DG JLS as a priority, building towards a relationship with others that develop policy in key areas such as education. We would also recommend that a process is developed to monitor the extent to which EU institutions and the EU member states take into account the recommendations and opinions of the report and to report on this on an ongoing basis. While keeping the focus of responsibility for securing rights on the EU institutions and member states, it may also be useful to consider making sensible recommendations for the NGO sector, linked to the awareness raising and support activities and developed in close cooperation with the civil society platform, and in line with the role of NGOs, such as encouraging 'situation testing' done by research organisations.
- In terms of the consultation process, ENAR is concerned about the timeliness and actual impact of the consultation - i.e. whether NGO recommendations will be incorporated into the annual report at this final stage of drafting. We therefore suggest that consultation takes place at an earlier stage of the process in future, in order to maximise the impact of inputs by civil society and improve the quality of next year's annual report.

5. FRA Activity Report 2008

Although ENAR will not comment extensively on this activity report, we would nevertheless like to make some general comments:

- The report is very technical and difficult to read, which makes it inaccessible to the wider public.
- There is little information on FRA's networking activities with member states and other stakeholders or on its policy activities.
- There is no information on the establishment of the FRALEX network and its working methods or of what its relationship will be with the existing RAXEN network.