



## **ENAR position paper on the**

### **Council proposal for a directive implementing the principle of equal treatment between persons irrespective of their racial or ethnic origin**

**March 2000**

*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)*

The proposal for a Directive represents significant progress in that it allows a minimum level of legal protection to be guaranteed in the EU while authorising the Member States to maintain a higher level of protection, taking into account their individual circumstances and political and historical traditions.

## **ENAR has endorsed the Starting Line Proposal.**

### **1. A number of positive points should be noted, namely:**

1.1 The concept of equal treatment, which, in the Directive, signifies the absence of any discrimination, direct or indirect. The concept of harassment is added to the definitions of direct and indirect discrimination. The Directive recognises that harassment of a person or group of persons, based on racial or ethnic origin, which creates an intimidating, hostile, offensive or distressing environment, should be considered as discrimination.

1.2 Defending rights. The Directive advocates the idea that societies, organisations or legal persons may, with the agreement of the plaintiff, institute legal and/or administrative proceedings on his/her behalf.

1.3 The legal burden of proof. While the burden of proof is usually incumbent on the plaintiff, the Directive proposes instead to transfer the burden of proof to the defending party. It is the defending party who will have to prove that there has been no violation of the principle of equal treatment.

1.4 Protecting the victims. The Member States are obliged to integrate the necessary measures into their legal system in order to protect from retaliatory measures any person who lodges a complaint or who intends to bring legal action.

1.5 Independent bodies. The Member States must ensure the existence of an independent body charged with promoting the principle of equal treatment, receiving and dealing with complaints from persons who are victims of discrimination based on racial or ethnic origin, initiating surveys and studies of discrimination, publishing reports and issuing recommendations on these issues.

### **2. However, ENAR regrets the absence of other essential elements:**

2.1 Even though the Directive creating a general framework in favour of equal treatment in the field of work and employment includes religion and beliefs, these are not contained in the current race Directive. This is a weakness as, in practice it is often very difficult to define the boundary between discrimination based on racial or ethnic origin and that based on religion.

2.2 Incitement and pressure to discrimination, hatred or violence based on racial or ethnic origin is not included. It is essential that this concept be contained in the Directive, in order to create a basis which allows proceedings to be taken, for instance, against violent attacks on persons.

2.3 Provision should be made for the institution of legal proceedings against organised groups or societies which practise promote or finance racial or ethnic discrimination. As we are currently seeing the resurgence of extremist parties in various countries of the European

Union, the EU should prepare the means to combat this phenomenon in all the Member States.

2.4 Even though the directive covers discrimination by any person, mention should be made with regard to public officials, representatives of the authorities and the forces of law and order who, in the exercise of their duties, commit an act of discrimination based on racial or ethnic origin or who arbitrarily refuse to allow a right or freedom to be exercised.

2.5 It seems to us that the Directive should provide for more complete monitoring of the implementation of the Directive. This could be done, for example, by reporting at national level by the governments in close consultation with independent bodies or specialised agencies where they exist and with relevant NGOs. At the European level, the evaluation and monitoring could be done by the Commission and the European Monitoring Centre on Racism and Xenophobia in consultation with relevant anti-racist networks such as ENAR.