



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

Memorandum to the Spanish, Belgian and Hungarian Trio of Presidencies of the European Union

Building an equal Europe for all

January 2010 - June 2011

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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ENAR's Three-Point Call for Action to the Spanish Belgian and Hungarian Trio of Presidencies

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

Make a decisive step towards equal protection of rights for all in Europe

- ✓ Enforce full compliance with the existing Equality Directives in all Member States
- ✓ Ensure the adoption of the Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

Build a Strong Social Europe for All

- ✓ Ensure the adoption of a new strategy for the EU 2020 based on fundamental rights, with a strong social pillar that places the human being, equality, anti-discrimination, and social cohesion at its heart
- ✓ Use the opportunity of the 2010 European Year Against 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 and increased poverty
- ✓ Address the social and economic inclusion of the Roma by targeted actions and policies implementing the Common Basic Principles, and develop a comprehensive EU Framework Strategy for Roma Inclusion
- ✓ Develop indicators to monitor the effectiveness of national and European integration policies

Ensure full and effective application of the Lisbon Treaty to maximise its impact on fundamental rights and anti-racism policies

- ✓ Ensure rapid accession of the EU to the European Convention of Human rights and Fundamental Freedoms and take initiatives that strengthen and guarantee the rights contained in the European Union's Charter of Fundamental Rights
- ✓ Ensure the adoption of a 'Stockholm Programme' Action Plan for the European Area of Freedom, Security and Justice that contributes to the fight against racism and is founded on the protection of fundamental rights
- ✓ Put in place an EU approach to migration and asylum that helps build a Europe free from racism: Promote a positive approach to migration and ensure respect, protection and fulfillment of fundamental rights for third country nationals

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Introduction

The European Network Against Racism (ENAR) welcomes the Spanish, Belgian and Hungarian Trio of Presidencies of the European Union. The Trio has the responsibility to strengthen the European Union's ability to respond to the serious issues brought on by the financial crisis that has resulted in an economic downturn with all its social, political and international consequences. It will be critical for the Trio of Presidencies to set the foundations on which social and sustainable policies can be developed.

There is a need for 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. In that respect, the review of the EU's Lisbon Strategy can be instrumental in the fight against social exclusion. ENAR calls the Trio of Presidencies to ensure that the negotiations can pave the way for a new EU 2020 Strategy promoting a more cohesive European society free from discrimination.

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. ENAR's most recent Shadow Reports on racism in Europe¹ 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 communities who are deeply affected by the consequences of the economic crisis. In this context, ENAR is strongly concerned by the progress made by the far right in many EU Member States.

The entry into force of the Lisbon Treaty provides a number of new mechanisms and increased opportunities to combating racism and xenophobia². ENAR calls on the Trio of Presidencies to ensure full implementation of the Lisbon Treaty to maximise its impact on fundamental rights and anti-racism, 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. We therefore ask the Trio of Presidencies to ensure that a more forceful human-rights based approach is implemented in the 'Stockholm Programme' Action Plan for the European Area of Freedom, Security and Justice. Ensuring full and effective implementation of the Equality Directives 2000/43 and 2000/78 in all Member States is also crucial in this regard, as well as leading constructive debates on the new proposed directive that seeks to fill gaps in the existing anti-discrimination legislation.

Legislation alone however is insufficient in the fight against racism. Political dialogue and stakeholder engagement are important elements to move the non-discrimination and equality agenda forward. This memorandum seeks to make a number of concrete recommendations and ENAR looks forward to working with the Trio of Presidencies on the issues addressed.

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: www.enar-eu.org/Page_Generale.asp?DocID=15294&langue=EN

² See ENAR publication, The EU Lisbon Treaty: What implications for anti-racism?, 2009.

1. Equality legislation

The adoption of a new Equality Directive filling gaps in the legal framework

The existing Equality Directives³ 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.

Core values and principles of the EU have been reaffirmed with the entry into force of the Lisbon Treaty, with article 2 TEU providing that “The Union is founded on 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. These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, solidarity and equality between men and women prevail.” The EU needs to show consistency with its principles, and urgently address the gaps in current equality legislation.

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 for real and effective protection, in particular the following aspects of the proposed Directive:

- That it is a horizontal multi-ground Directive;
- That it uses the scope of the Race Equality Directive as a starting point;
- That it uses mostly the same concepts and definitions as the Race Equality Directive;
- The reference to the ‘Paris Principles’;
- The potential for enhanced legal standing for NGOs.

ENAR welcomes the intention of the Trio to give new political impetus in the area of non-discrimination, and **calls them to clarify and resolve issues of concern for some Member States and reach a political agreement on the proposal**. ENAR in particular calls on the Trio of Presidencies to build on the report adopted by the European Parliament on 2 April 2009 and to ensure that, in order to maximise the effectiveness of the proposal, the following aspects are taken forward during the discussions in the Council:

- The Directive is a tool for securing fundamental rights, and should be seen as such;
- Multiple discrimination must be provided for;
- Discrimination by association and by assumption should be explicitly covered;
- The use of ‘blanket exceptions’ should be avoided: exceptions relating to access to education on ground of religion or belief, the role of religion in the public sphere, nationality and legal status, public security and ‘commercial activity’ go beyond what is necessary and proportionate;
- Positive action needs to be recognised as a vital tool in securing the right to equal treatment;
- Effective access to justice for victims of discrimination requires independent legal standing for NGOs and independent National Equality Bodies.

³ Based on the former Article 13, now article 19 TFEU.

Full compliance with the existing Equality Directives

In recent years much progress has been made towards implementation of a comprehensive legislative framework and the Race Equality and Employment Equality Directives (2000/43 and 2000/78) 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 Trio of Presidencies to demand full compliance with existing Equality Directives in all Member States.

2. A strong social Europe for all

The adoption of a new 'EU2020' strategy

➤ Enhance labour market participation for all

The Presidencies will pursue the key objective of full employment and more inclusive labour markets as a cornerstone for the post-2010 Lisbon Strategy. The achievement of this objective will require a strong social dimension in all policy initiatives related to employment. To this end, a coordinated approach between social and employment policies with a strong anti-discrimination dimension will be needed. In defining how growth and employment are to be handled in the long term, the three Presidencies will seek to enhance labour market participation for vulnerable groups.

ENAR calls the Trio of Presidencies to build on the recommendations of the High level Advisory Group on the social integration of ethnic minorities in the labour market⁴ set up in 2007 by the European Commission to develop strategies to **address the issues and challenges related to better participation of ethnic minorities in the labour market**, in particular: the establishment of linkages between discrimination beyond and within the labour market and focusing specifically on the implementation of policies to improve the situation of members of minority groups at risk of multiple discrimination such as ethnic minority women, Roma and migrants⁵.

In addition, **ENAR recommends the following actions**, based on the European Employment Strategy (EES):

- Relevant targets and indicators, including those measuring progress against the European Benchmarks 2020, should be disaggregated on migration-related grounds and data that is already available, including from the Labour Force Survey (LFS) ad hoc module and the LIME Analytical Framework, should be used.
- Insight into the specific barriers migrants and ethnic & religious minorities face and strategies to overcome them should be offered in the EU integrated guidelines on employment.
- The issue of ethnic entrepreneurship, undocumented migrants in the informal economy, and the need to reduce early school leaving should be included in the revised Integrated Guidelines, as a review of the current National Reform Programmes indicates they are clearly important issues at the national level.
- Member States should collect data for monitoring the situation of migrants and ethnic & religious minorities. If this information is not being collected or reported by national governments, a national or EU shadow report should be produced in its absence.⁶

⁴ Report of the High Level Advisory Group of Experts on the Social Integration of Ethnic Minorities and their Full Participation in the Labour Market, 2007.

⁵ ENAR response to the European Commission Consultation on "Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market" COM (2007)620 final, 2008.

⁶ See ENAR publication, The social and employment dimensions of the EU's Lisbon strategy for growth and jobs, 2009.

➤ **Strengthen equity, social cohesion and citizenship in education to build a knowledge society**

Quality and inclusive education is crucial for the future of Europe, and the social elevator role of education should be re-created and prioritised. ENAR therefore welcomed the recognition of the need for a greater emphasis on vulnerable groups in the Commission's proposal for the 2020 Strategy. Making schools and training facilities more accessible to ethnic and religious minorities including migrants is fundamental in that respect, from pre-schools to vocational training ranging through higher education and university. Non-formal education and skills acquired in the work place should be better valued, to take account of the knowledge of all.

The recently adopted Council conclusions on the education of children with a migrant background⁷ are a step in the right direction, but the agreed principles need to be extended to vocational training and higher education, and also to other vulnerable groups such as the Roma and other ethnic and religious minorities. Strong links must be defined between the strategic framework for European cooperation in education and training (E&T 2020) and the post-2010 EU strategy. ENAR welcomes the decision of the Trio of Presidencies to focus on promoting equity, social cohesion and active citizenship.

In order to drive and support the elimination of racial discrimination, promote inclusion and diversity in education and training systems, and enhance the educational attainment of ethnic minority and migrant pupils across Europe, **ENAR proposes the following four key principles which should underpin all actions:**

1. Education is central in addressing the challenge of social cohesion and promoting solidarity and non-discrimination in a more diverse Europe.
2. Education and training systems must instil values of respect, diversity and challenge prejudice. The systems themselves must be free of discrimination at all levels.
3. Education and training systems must ensure access to quality education for all that adequately addresses underachievement and educational disadvantage.
4. Better partnership must be promoted between formal and non-formal education and training systems and civil society⁸.

ENAR recommends in particular the following actions to ensure equitable access to education and inclusive education policies:

- Amend Directive 77/486/EEC so that it applies to the children of third country nationals and that it includes an anti-discrimination clause. The provisions of the Directive should include the encouragement of positive action measures and a broad range of curriculum initiatives.
- Mainstream the specific educational needs and issues of ethnic & religious minorities and migrants into current and future Open Methods of Coordination through the development of targets and indicators disaggregated by ethnic origin and migrant status.
- **Promote and adopt a transparent mechanism for the assessment, certification and recognition of skills, including prior learning and previous experience, irrespective of the countries where they were acquired and whether they were acquired formally or informally.**

⁷ Council of the European Union, Council conclusions on the education of children with a migrant background, 26 November 2009.

⁸ ENAR General Policy Paper n. 5, Fighting Racism and Promoting Equal Rights in Education and Training, November 2008.

➤ **Strengthen the Social Pillar of the EU strategy**

Social inclusion should be a much stronger dimension of the new EU strategy. The Commission's consultation paper solely focused on skills and jobs, failing to present a comprehensive and sustainable strategy to reduce inequalities and social exclusion. ENAR welcomed the 'social package' presented by the Commission on 2 July 2008⁹ and believes that it makes important steps to live up to the fundamental social values and objectives of the European Union, however we have major concerns regarding the 'renewed Social Agenda' lacking vision and long-term commitment on a sustainable and social Europe.

The EU 2020 strategy presents a key opportunity to ensure that the current piecemeal approach is replaced by a strong long-term social vision able to address current social realities with close cooperation of civil society. Social and sustainable development, fundamental rights and equality should be essential pillars of the new strategy. Legislation, policy strategies and instruments proposed in the framework of the EU 2020 strategy 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. 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 urges the European institutions to ensure that the reflection on the establishment of targets and indicators continues and addresses the impediments that hinder the well-being of ethnic and religious minorities including migrants within the EU.

Based on the Social Inclusion and Social Protection Strategy, **ENAR recommends in particular:**

- Member States should reflect on the fact that the social integration of migrants needs to be given more attention in selecting key objectives and design appropriate remedies.
- Member States should include migrants and ethnic & religious minorities in National Action Plans on Social Inclusion as a specific target group.
- If Member States agree to proposals to introduce target-setting into the Social OMC, they should ensure that targets are disaggregated, where possible, to examine the situation of migrants and ethnic & religious minorities.
- The Social OMC should give consideration to a number of data sources that can provide a better understanding of the situation of migrants and ethnic & religious minorities, and which provide the potential for a wider range of indicators that can be disaggregated on migration-related grounds, or which directly capture migration-related dimensions¹⁰.

⁹ See <http://ec.europa.eu/social/main.jsp?catId=547&langId=en>

¹⁰ See ENAR publication, The social and employment dimensions of the EU's Lisbon strategy for growth and jobs, 2009.

➤ **Put the human being at the centre of policy making**

ENAR is concerned that the European Commission's consultation paper fails to articulate policies based on the well-being and respect of the human being as a core principle, and instead develops a utilitarian approach to inclusive societies, focusing solely on growth, skills and jobs, where the human being is a tool to economic development rather than the contrary. While gender equality is mentioned in the document, other core values of the EU such as diversity, non-discrimination, equal opportunities and equal treatment of minorities does not figure at all in the paper, nor does the broader fundamental rights agenda. This omission is all the more blatant following the recent entry into force of the Lisbon Treaty, which is very clear on the values and objectives that are said to characterise and underpin the framework of the Union. The Treaty refers to "universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law" and to the "rights of each individuals", and gives legal status to the EU Charter of Fundamental Rights.

A lack of focus on anti-discrimination in the EU strategy presents a real danger for social inclusion and equality policies in many European countries. A lack of understanding and implementation of the EU's anti-discrimination legislation continues to be observed, particularly in some Eastern European countries, but not only. While the EU guidelines are implemented in the framework of the Social OMC, the need for equality policies is not always fully understood and much progress remains to be made to ensure the mainstreaming of anti-discrimination in all relevant policies. Removing the focus on anti-discrimination and other related policies consequently increases the risk that they will be dropped off a number of Member States' agendas, which will understand such a move as a decreasing concern for equality for all in the Union.

At a time of growing influence of the far right, xenophobia, and nationalism in Europe, racism and related discrimination and intolerance are the most important hurdles on the road to equality and social cohesion. **ENAR urges the European Institutions to prioritise and materialise a Europe free from discrimination in the EU 2020 strategy.**

The 2010 European Year for Combating Poverty and Social Exclusion

ENAR strongly believes that if the 2010 European Year is to effectively contribute to a decisive impact on eradicating poverty and social exclusion, it must **address the link between discrimination and exclusion** as well the impact of legal status on situations of exclusion, particularly in the case of migrants, refugees/asylum-seekers and Roma, Travellers and Sinti.

ENAR calls on the Trio of Presidencies to consider the following messages for the legacy of the 2010 year:

- **Reaffirm that poverty and social exclusion are also caused by structural inequalities and discrimination**, particularly in the fields of employment, education, housing and communication infrastructures. The year should promote equal treatment in education, employment, access to basic services and social assistance for all, irrespective of legal status. An **awareness raising campaign about the socio-economic rights of all persons residing in Europe** should be integrated in the year.
- **Raise awareness of the situation of disadvantaged ethnic and religious minorities and migrants experiencing poverty and social exclusion**. There should be a clear understanding and recognition that ethnic minorities are at a more serious risk of becoming socially excluded. However, victimisation should be avoided, and poverty should not be seen as an ethnic problem. Awareness raising should also focus on social solidarity, highlighting good practice examples of creative initiatives developed by migrant communities to get out of poverty.
- Address the **impact of legal status on situations of exclusion**, particularly in the case of migrants, refugees/asylum-seekers and Roma, Travellers and Sinti who are most likely to face multiple discrimination.
- Develop the Year on the **principle of full and meaningful participation of civil society** and inclusive national implementing bodies.
- Use the Year to undertake in-depth studies on the exploitation and trafficking of children from ethnic and religious minority background in situation of poverty and promote effective recommendations for European wide co-ordinated responses

The EU and its Member States will have to **ensure that the objectives of inclusion of ethnic & religious minorities including migrants and non-discrimination are mainstreamed in all relevant EU policies**, including in health, housing, and education. The year 2010 will also provide an opportunity to develop specific policies to address the needs of ethnic and religious minority and migrant communities experiencing poverty and social exclusion, with particular attention to those vulnerable to intersectional discrimination, and especially women, children and the elderly.

Specific policy actions should include:

- De-linking migration control procedures to the access of basic social services
- Increasing diversity in the staff of public authorities and social services to help getting closer to minorities, better integrate their needs, and fight against their exclusion
- Strengthening migrants and minorities' organisations, and consult them for policy making on matters pertaining to them
- Financing research and projects on the link between discrimination and poverty

The social and economic inclusion of the Roma

The need for strong leadership from the EU with regard to improving the situation of the Roma is urgent, as is the need for a more comprehensive and ambitious approach to Roma inclusion. The European Platform for Roma inclusion was launched on 24 April 2009 with the aim to stimulate cooperation and provide analytical support to Member States. Unfortunately, there has been no place so far for meaningful discussion or agreement on the mandate of the Platform and the principles of its operation.

ENAR urges the Trio of Presidencies to strengthen the process of the Platform to achieve real policy results. ENAR believes that the growing anti-Romani sentiment and Romaphobia in Europe should be one of the core concerns of the Roma Platform as they are indicative of the levels of discrimination and exclusion still faced by the Roma. Therefore, any kind of **anti-Roma attacks, murders and brutality by groups or even states should be systematically condemned** by the Roma Platform itself, and by the EU Presidency.

ENAR urges the Trio of Presidencies to **use the opportunity of the 2nd Roma Summit to work out an action plan that can lead to the development of an ambitious EU Framework Strategy on Roma Inclusion**, with clear and measurable targets and effective co-ordination mechanisms. Stakeholder engagement and the role of civil society will be crucial in that regard.

In June 2009, the EPSCO Council adopted ten Common Basic Principles on Roma Inclusion. ENAR welcomed this initiative, while pointing out that these principles remain very general at this stage. They will need to be translated into concrete initiatives, targeted actions and policies for the Roma.

ENAR calls for the establishment of mechanisms that ensure the accountability of Member States in the implementation of the ten Common Basic Principles on Roma inclusion.

Indicators to monitor the effectiveness of national and European integration policies

The Trio of Presidencies has expressed its intention to continue efforts in sharing best practices of integration policies. Integration of migrants is a key response to the challenges and opportunities facing diverse societies, and articulated policies should provide an opportunity to respond to needs arising in a structured and coordinated manner. However, ENAR has expressed concerns that the debate on integration has not been adequately connected with broader social inclusion and anti-discrimination policies. It is important that EU integration policies not only focus on new migrants, but on the social inclusion of all migrants and minorities, irrespective of when they arrived in the EU. A welcomed development was the launch of the European Integration Forum, an essential mechanism that can be instrumental in giving life to the EU common basic principles on integration adopted in 2004. It can make the migrants' voice more audible in the debate by broadening knowledge and exchange of experience among civil society actors. The forum can also play a decisive role in fostering better policy coherence.

ENAR hopes that the **European Integration Forum** will be allocated sufficient resources to fully play this role. **ENAR would also welcome the possibility for the forum to feed in the debates of the third inter-ministerial conference on integration to take place during the Spanish Presidency.**

In the Stockholm Programme adopted on 11 December 2009, the European Council invites the European Commission to support the efforts of Member States towards the development of comparable indicators at European level to monitor the results of integration policies.

ENAR calls on the Trio of Presidencies to **adopt indicators that build on the EU common basic principles on integration** and recognise that anti-discrimination is both a pre-requisite for, and modus operandi of, successful integration. The indicators should therefore **reflect the values of diversity, equality and non-discrimination¹¹ as cross-cutting issues**. ENAR recommends using the Council of Europe "Social Cohesion indicators" as a framework for the debate.

¹¹ See ENAR preliminary remarks on 'A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union', March 2006

3. Fundamental rights and anti-racism policies

Initiatives that strengthen and guarantee fundamental rights

One essential priority of the Trio of Presidencies will be the full and effective application of the Lisbon Treaty. Initiatives guaranteeing full exercise of the rights contained in the EU's Charter of Fundamental Rights for all people residing in the EU should be an important part of this effort, following the entry into force of the Charter. The Presidencies must also make full use of the incorporation of the equality mainstreaming clause in the Lisbon Treaty (Article 10 TFEU), including the mainstreaming of anti-racism in policy making.

ENAR calls on the Trio of Presidencies **to create new mechanisms for implementation of the rights contained in the Lisbon Treaty.**

➤ **Ratification of key human rights instruments**

The Lisbon Treaty now gives the EU legal personality, presenting a key opportunity for the EU to accede to the European Convention of Human Rights and ratify other international treaties. The commitment of the EU to ratify the UN Convention on the rights of people with disabilities sets an important precedent that can be followed for other International standards, such as the UN Convention on the Elimination of All forms of Racial Discrimination and the UN Convention on the Elimination of Discrimination against Women. This possibility should be further explored in the development of the future EU justice and home affairs priorities as a core action enabling a human rights based approach to the EU's work in this and other areas.

ENAR sees the future accession of the EU to the European Convention of Human Rights as an important step, and calls for a rapid initiation of the process.

'Stockholm Programme' Action Plan

Another challenge for the Trio of Presidencies will be the adoption of a Stockholm Programme Action Plan for the European Area of Freedom, Security and Justice. The European Union has a vital role in the promotion of fundamental rights and a significant responsibility 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 combating 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.

ENAR calls on the Trio of Presidencies to take into account the following six principles in framing the Action Plan:

1. **Fundamental rights should be the foundation and framework of the Action Plan:** Protecting fundamental rights of each individual must be seen as the foundation stone and framework for work that must be pursued in all areas of Justice and Home Affairs covered by the Action Plan.

Mainstreaming fundamental rights across all policy areas should be rigorously carried out through fundamental rights review of existing legislation and fundamental rights impact assessments.

2. **The fight against racism and xenophobia must be pursued as a horizontal objective:** The future Action Plan must develop mechanisms to ensure that the fight against racism and xenophobia is pursued throughout the work of the European Union, 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.

The Presidencies should ensure that the European Commission reports during the period of the Stockholm Programme on the transposition of the 2008 Framework Decision on racism and xenophobia, and, if appropriate, make proposals for improving it.

3. **Discrimination and the violation of fundamental rights need to be addressed as key obstacles to the free movement of EU citizens:** As ENAR has pointed out, the right to free movement for ethnic and religious minorities in Europe is curtailed by a series of barriers linked to racism and discrimination. There is evidence that the free movement rights of certain ethnic minorities are regularly violated regardless of their legal status. Thus enforcement of the legal rights to free movement must take particular account of the right to non-discrimination and must be undertaken swiftly in order to ensure an effective remedy for those subject to illegal deportation or other violations of the right to free movement. Furthermore, and corresponding to the general approach of the Programme,

consideration is not given to the most effective way to ensure the free movement for third country nationals.

The EU in exercising its competence on legal migration must give serious consideration to actions needed to ensure free movement rights to third country nationals.

- 4. Security concerns should not negate the respect for the right of non-discrimination and the right to privacy:** The Stockholm Programme has a strong focus on data collection with the aim to create 'an EU Information Management Strategy (Chapter 4)'. This must be carefully balanced with the protection of civil rights including the right to privacy as well as the protection of vulnerable groups. Low priority is given to mainstreaming protection of fundamental rights and the links between racist crime, anti-Semitism, xenophobia and human trafficking, cybercrime and exploitation of children and women.

Mechanisms should be developed to ensure protection against ethnic and religious profiling and discrimination in the fight against terrorism¹².

- 5. A positive and evidence-based approach to migration must be promoted:** Assertions relating to migratory movements and pressures remain uncertain assertions that are lacking evidence. The initial European Commission Communication 'An area of freedom, security and justice serving the citizen' estimates that there are about '8 million illegal immigrants in the Union, many of whom work in the informal economy'¹³ but whether this figure is backed up by accurate evidence and quantitative research remains unclear.

ENAR calls on the Trio of Presidencies to build policies on robust research evidence that draws a clearer picture on the numbers of immigrants and trends over the years. This would allow to form policies that are reflecting reality and thus enable appropriate responses, but also to develop a more positive approach to the migration debate, that acknowledges and informs citizens about the benefits of immigration for meeting the needs of the economy, labour markets and the ageing population, and beyond.

- 6. Fair and equal treatment must guide integration measures:** Integration measures need to be implemented in a manner which is compatible with the rule of law and fundamental rights.

ENAR calls on the presidencies to ensure that Member States do not use the integration policies as a means for legitimising and practising restrictive immigration policies (i.e. limiting the number of legal entries and residence permits by compulsory tests abroad and language requirements or probationary citizenship models, and limiting immigrants' access to fundamental rights such as the right to family life).

¹² ENAR General Policy Paper No 4 "Counter terrorism and combating racism", November 2007.

¹³ Commission Communication 'An area of freedom, security and justice serving the citizen', p.4.

An EU approach to migration that helps build a Europe free from racism

➤ **Promote a positive approach to migration**

ENAR believes that the development of a common immigration policy and a Common European Asylum System are an important part of the justice and home affairs work and must continue. However, there are serious concerns that the current approach pays insufficient attention to the potential for actions taken in this area to undermine the vision of a Europe free from racism. Migration is seen as a threat, or at best, as a purely economic solution, and the focus is predominantly on border control, control of 'illegal' immigration and return policies. Migration is seen as a utilitarian solution to labour shortages in the EU Member States. Such a vision is in contradiction with an approach that allows for mutual benefits of migrant and host communities and views migrants as individuals with rights that are to be valued and protected

The EU needs a vision of hope in which diversity is an asset for our common future by challenging the underlying perceptions and assumptions surrounding migration which are increasingly enhanced by the negative discourse by politicians, policy-makers and through the mass media. Migrants should be perceived as bridges between societies and should be recognised as rich contributors to host societies, both socially and culturally. An approach framed by the respect for human rights and recognition of the positive nature of diversity in Europe needs to be upheld.

ENAR calls on the Trio of Presidencies to ensure:

The promotion of positive values, conceptions, and principles about migration.

- An approach that is consistent with European 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 must be promoted;
- Policies and practices related to migration and asylum must not undermine the vision of a Europe without racism;
- Migrants must be considered and treated as human beings and not as mere economic units;
- The economic, social and cultural importance and contribution of migrants to European society - whether "highly skilled" or not - and their participation in civic, political, social, cultural and economic life must be recognised;
- The Stockholm Programme Action Plan for the area of Freedom, Security and Justice must revisit its approach to immigration and asylum, framing it within a positive approach that combats racism and xenophobia and promotes the rights of all.

The use of positive terminology in the political discourse

- Terminology must not perpetuate a negative image of migrants (e.g. human beings cannot be 'illegal' and language must recognise this);
- Politicians, policy makers and the media must bring attention to and overtly condemn racist incidents and promote positive images of migrants;
- Terminology likely to incite xenophobia, racism, anti-Semitism, Islamophobia or other forms of discrimination towards migrants should have no place in the media or political discourse;
- Ethnic minorities and people with a migrant background must be hired within the media to help present an ethnically diverse picture of society and avoid negative portrayal of migrants and ethnic minorities.

➤ **Ensure respect, protection and fulfilment of fundamental rights for third country nationals**

The European Commission has emphasised the importance of protection of the rights of migrants, 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, ENAR has expressed concern that some recent developments, including the adoption of the ‘Return Directive’ and the EU Directive providing for sanctions against employers of irregular third country nationals (Employer Sanctions Directive), have the potential to negatively affect the basic human rights of third country nationals.

The Framework Directive on the basic socio-economic rights¹⁴ of all third country workers has the potential to fill the rights gap. However, ENAR is concerned 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 society, without any artificial division based on legal status.

ENAR has warmly welcomed the vital recognition of the right to equal treatment in a range of important areas including working conditions, health and safety in the workplace, education, vocational training, recognition of qualifications and social security. While ENAR recognises that rights can, in certain instances, be limited, blanket exceptions or provisions that enable Member States to make broad limitations on rights without regard to individual circumstances are not compatible with the human rights framework. The current proposal exposes 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 sees the restrictions proposed in the following areas as most problematic:

- language proficiency and educational qualifications;
- access to public housing;
- working conditions;
- freedom of association and trade union membership;
- the exclusion of third country nationals who are admitted for purposes other than work.

¹⁴ 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.

While ENAR recognises the legal complexities of EU competence in this area and the subsequent challenge this would present in bringing forward a Directive that covers all third country nationals, including those who are undocumented, this must be the ultimate goal if the aim of fair treatment for all third country nationals is to be achieved.

ENAR urges the Trio of Presidencies to move forward on reaching an agreement on the Framework Directive on the basic socio-economic rights of all third country workers. ENAR urges the Trio of Presidencies to take action to address the shortfalls in the scope of the proposed Directive on the basic socio-economic rights of third country workers. It should also ensure that European immigration and asylum policies respect all international human rights instruments and standards and take positive steps to ensure equal access to, and the effective enjoyment of, fundamental rights by third country nationals.

In addition, the Lisbon Treaty now gives the EU legal personality, presenting a key opportunity for the EU to ratify the Convention on the Rights of Migrant Workers and other international human rights conventions. So far, none of the EU Member States have ratified the Convention. The reality in most EU countries is that migrants increasingly face racism and discrimination. Too many migrants are treated as second class persons, socially excluded and subject to various forms of discrimination with regard to access to rights, employment, education, and social services. The Convention protects the human rights of all migrant workers and their families and is a vital tool to combat discrimination, abuse and exploitation of migrants.

ENAR urges the Trio of Presidencies to ensure the ratification of the Convention on the Rights of Migrant Workers by the European Union happens as soon as possible.

Conclusions

The European Union is at a crossroads, with a new Treaty, a new Parliament and a new Commission. Furthermore, the Trio of Presidencies will have the opportunity to lay down the foundations for a post-Lisbon strategy that can pave the way for a more socially inclusive European society. A holistic approach is vital to respond to the challenges of creating a fairer Europe where equality is a reality and the rights of all are fully recognised, respected and fulfilled without discrimination. ENAR is confident that the Trio of Presidencies will show the necessary leadership to mainstream this vision when setting the framework of the above mentioned issues.