



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

# **MEMORANDUM TO THE SWEDISH PRESIDENCY OF THE EUROPEAN UNION**

## **“TAKING ON THE CHALLENGE” BUILDING A FAIRER EUROPE AND REAFFIRMING NON- DISCRIMINATION AND EQUALITY FOR ALL**

July - December 2009

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 FOUR-POINT CALL FOR ACTION  
TO THE SWEDISH 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. 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 Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*

**II. A SOCIAL EUROPE FOR ALL**

*Ensure that non-discrimination and equality is mainstreamed into all aspects of the future post-Lisbon Strategy and that the EU Social Agenda develops targeted measures that ensures the well-being of ethnic minorities and migrants*

*Use the opportunity of the preparations for 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*

*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 help to develop a comprehensive EU Framework Strategy for Roma Inclusion*

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

*Ensure the adoption of a new strategic work programme for justice and home affairs ('Stockholm Programme') that contributes to the fight against racism and is founded on the protection of fundamental rights*

*Ensure an EU approach to migration and asylum that helps build a Europe free from racism:  
Promote a positive approach to migration*

*Pursue the adoption of directives that ensure respect, protection and fulfilment of fundamental rights for third country nationals, including asylum seekers*

*Promote effective national and European integration policies*

**IV. A EUROPE COMMITTED TO DIVERSITY AND EQUAL TREATMENT IN EDUCATION**

*Mainstream non-discrimination and equal treatment in the implementation of the updated strategic framework for European cooperation in the fields of education and training "ET 2020" and in the follow up to the Green Paper on Migration and Mobility*

The European Network Against Racism (ENAR) welcomes the Swedish Presidency of the European Union as the last holder of the trio of presidencies. Building on the French and Czech Presidencies, Sweden 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 Presidency to set the foundations on which social and sustainable policies can be developed, and that it guarantees social progress in the framework of a coherent EU agenda ensuring social justice and the promotion of human rights. In that respect, several important challenges will be facing the Presidency in the months to come.

Leadership will continue to be 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. The Swedish Presidency will give priority to measures in the labour market to limit unemployment and reduce exclusion. The challenges in responding to the economic crisis should also be used as an opportunity to tackle the structural barriers which continue to exclude ethnic and religious minorities from fully participating in the labour market. Social and demographic change is affecting the whole of Europe. These challenges need to be met by the EU more effectively than via the narrow and piecemeal approach developed in the renewed Social Agenda. 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 Swedish Presidency to ensure that the negotiations can pave the way for a new 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 Europe<sup>1</sup> 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. In this context, ENAR is strongly concerned by the progress made by the far right in many EU member states during the European elections. Far right parties have gained seats in Austria, Denmark, Finland, Greece, Hungary, Italy, the Netherlands, Romania and the UK. This development is an extremely concerning indicator of the current state of racism in Europe.

ENAR calls on the Swedish Presidency to build a more secure and open Europe for all 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 Swedish Presidency to ensure that a more forceful human-rights based approach is promoted in the new strategic work programme for justice and home affairs that should be adopted during its Presidency. 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. Building on the achievements of the 2007 European Year of Equal Opportunities for All and of the 2008 European Year of Intercultural Dialogue, the Swedish Presidency has a real chance to build and strengthen an open and effective dialogue between all stakeholders as a principle and as a working

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<sup>1</sup> 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&la=1&langue=EN](http://www.enar-eu.org/Page_Generale.asp?DocID=15294&la=1&langue=EN)

method and the forthcoming Equality Summit will be an opportunity in that regard. This memorandum seeks to make a number of concrete recommendations and ENAR looks forward to working with the Presidency on the issues addressed.

### ***I. 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 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 implementation of a comprehensive legislative framework and the **Race Equality and Employment Equality Directives** 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 Swedish Presidency to demand full compliance with existing Article 13 Equality Directives in all Member States.

#### ***Continue the constructive dialogue on the proposal for a 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 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 ambition of the Swedish Presidency to move the debates on the proposal forward and to clarify and resolve issues of concern for some member states. ENAR in particular calls on the Swedish Presidency 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.

ENAR looks forward to continuing to engage with the Presidency, member states and stakeholders on important issues relating to equality and on the proposed and existing anti-discrimination legislation in the framework of the Equality Summit, which provides a real opportunity for the Swedish Presidency to achieve effective protection for Europe's numerous and multi-faceted victims of discrimination as a core part of its legacy.

## **II. A SOCIAL EUROPE FOR ALL**

***Ensure that non-discrimination and equality is mainstreamed into all aspects of the future post-Lisbon Strategy and that the EU Social Agenda develops targeted measures that ensures the well-being of ethnic minorities and migrants***

***Use the opportunity of the preparations for 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***

***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 help to develop a comprehensive EU Framework Strategy for Roma Inclusion***

***Ensure that non-discrimination and equality is mainstreamed into all aspects of the future post-Lisbon Strategy and that the EU Social Agenda develops targeted measures that ensures the well-being of ethnic minorities and migrants***

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 against the backdrop of the economic crisis. The ageing population contributes to 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.

- **Taking on the challenge of employment for all**

In line with the guidelines adopted by the Employment summit, the Presidency will pursue the objective of **full employment and more inclusive labour markets as a cornerstone for the post-Lisbon strategy on growth and jobs**. 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 Council will seek to improve the way the labour markets function. ENAR calls the Swedish presidency to take on the challenge of **ensuring access to employment for all**. This means not only addressing the needs of recently unemployed workers affected by the financial crisis but also addressing the situation of

vulnerable groups particularly affected by structural unemployment. ENAR's most recent Shadow Reports highlight that in many Member States ethnic minorities are disproportionately affected by unemployment. Issues in the area of employment are multi-layered and, in addition to underemployment, include access, progression, the non-recognition of foreign qualifications, overrepresentation in the informal economy, poorer and sometimes dangerous working conditions. The post-Lisbon strategy should focus on the most excluded, inter alia by combating discrimination in access to employment, investing in life-long learning for vulnerable groups and by supporting social economy initiatives.<sup>2</sup>

ENAR calls the Swedish Presidency to build on the recommendations of the High level Advisory Group on the social integration of ethnic minorities in the labour market<sup>3</sup> 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, the Roma and undocumented migrants<sup>4</sup>.

- **Taking on the challenge of social inclusion and ensure a long-term social vision for Europe**

Social inclusion will also be an important dimension of the post-Lisbon strategy. ENAR has welcomed the 'social package' presented by the Commission on 2 July 2008<sup>5</sup> and believes that it makes important steps to live up to the fundamental social values and objectives of Europe, however we have major concerns regarding the 'renewed Social Agenda' lacking vision and long-term commitment on a sustainable and social Europe.

The negotiations to lay the foundation for the next strategy (post-Lisbon) will be a good opportunity for the Swedish Presidency 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 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. **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 European Commission's proposal 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 to improve political commitment and visibility by setting quantitative targets and enhancing evidence based tools is consistent with ENAR's continuous call for addressing the lack of disaggregated data by ethnic origin. ENAR hopes that the Swedish Presidency will ensure that a reflection on the establishment of targets and indicators continues and addresses the impediments that hinder the well-being of ethnic minorities and migrants within the EU.

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<sup>2</sup> ENAR supports the Social Platform contribution to the EPSCO informal meeting, July 2009.

<sup>3</sup> 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.

<sup>44</sup> Response of ENAR 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.

<sup>5</sup> See <http://ec.europa.eu/social/main.jsp?catId=547&langId=en>

*Use the opportunity of the preparations for the 2010 European Year Against 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 objectives outlined 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 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 Swedish Presidency to consider these messages in the run-up to the 2010 Year and 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 help to develop 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.

The EU Integrated Roma Platform was launched on 24 April and hosted by the Czech Presidency in Prague. Unfortunately, there was no place for meaningful discussion or agreement on the mandate of the Platform and the principles of its operation. ENAR urges the Swedish Presidency to ensure that **an action plan is worked out within the framework of the platform that can lead to the development of an ambitious EU Framework Strategy on Roma Inclusion**, with clear and measurable targets and effective coordination 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 for the Roma and ENAR is calling for the establishment of mechanisms that ensure the accountability of member states in the implementation of those principles.

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

***Ensure the adoption of a new strategic work programme for justice and home affairs ('Stockholm Programme') that contributes to the fight against racism and is founded on the protection of fundamental rights***

***Ensure an EU approach to migration and asylum that helps build a Europe free from racism: Promote a positive approach to migration***

***Pursue the adoption of directives that ensure respect, protection and fulfilment of fundamental rights for third country nationals, including asylum seekers***

***Promote effective national and European integration policies***

***Ensure the adoption of a new strategic work programme for justice and home affairs ('Stockholm Programme') that contributes to the fight against racism and is founded on the protection of fundamental rights***

Another challenge for the Swedish presidency will be the adoption of a **new strategic work programme for justice and home affairs**. 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**.

The European Commission adopted two communications on 10 June 2009 analysing the EU's work on justice and home affairs in recent years and setting out its priorities for the future. ENAR believes that the Commission's proposed framework suffers from a lack of a clear vision, particularly on fundamental rights. There is an imbalance between the protection of fundamental rights and security concerns, with a strong emphasis on border control. ENAR calls the Swedish Presidency to remedy to the lack of reference to fair treatment and to the approximation of rights, in line with the Tampere goals. While the Commission expressed its vision for 'building a citizens' Europe', ENAR welcomes the intention of the Presidency to develop a framework that **safeguards the rights of individuals**, and not only of European citizens. ENAR has welcomed the reference to racism, discrimination, anti-Semitism, xenophobia and homophobia and to vulnerable groups including Roma but believes that Islamophobia should also be addressed and measures vigorously pursued to tackle these phenomena.

ENAR reiterates its call that the Stockholm programme 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.

#### **Fundamental rights review of existing legislation:**

ENAR has called for a review of relevant legislation in the field of justice and home affairs for compliance with fundamental rights standards. As a network we believe that this review should pay particular attention to the rights of third country nationals and to protection against discrimination in the areas of policing and counter-terrorism.

#### **Fundamental rights impact assessment:**

We believe that the process of fundamental rights impact assessment should be improved so as to not only ensure that proposals comply with fundamental rights standards but to also explore ways in which proposals can enhance the enjoyment of fundamental rights.

**Ratification of key Human Rights instruments:**

Like the Commission, ENAR sees the future accession of the EU to the European Convention of Human Rights as important. However, the ratification of other international treaties is also essential. 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.

**The fight against racism and xenophobia as a core part of EU competence in justice and home affairs:**

Preventing and combating racism and xenophobia are core parts of EU competence under Title VI of the EU Treaties. As such, the fight against racism and xenophobia is not restricted to the adoption or improvement of a particular instrument, as welcome as that is. The new strategic work programme for justice and home affairs must develop mechanisms to ensure that the fight against racism and xenophobia is pursued throughout the work of the European Union in this area, 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.

**ENAR calls for the following priorities to guide the setting of the goals of the Stockholm programme:**

1. Develop 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.<sup>6</sup>
2. Ensure the mainstreaming of fundamental rights, including the rights of ethnic and religious minorities, into all EU law and policy.<sup>7</sup>
3. Promote the development of progressive migration and integration policies<sup>8</sup>. The new strategic work programme should include provisions for equal opportunities and protection from discrimination for migrants, a dimension absent from the Commission's proposal.
4. Ensure that counter-terrorism is conducted in the framework of human rights and anti-discrimination.<sup>9</sup>
5. Promote the adoption and/or implementation of National Action Plans Against Racism implementing the commitments made at the World Conference Against Racism 2001 (and renewed at the 2009 Durban Review Conference) by individual Member States.<sup>10</sup>

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

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.<sup>11</sup>
2. Seek to enhance cooperation to combat racist crime across national borders. In this respect, ENAR encourages the presidency to explore further with Member States the ways to combat "cyber hate". Racism on the internet remains a pervasive phenomenon that has been difficult to control.

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<sup>6</sup> ENAR General Policy Paper on Racism as a Crime, April 2006; European Strategies to combat racism and Xenophobia as a Crime, April 2003.

<sup>7</sup> ENAR General Policy Papers on Racism as a Crime (2006), Third Country Nationals (2006), Counter-terrorism and Combating racism (2007), Education (2008)

<sup>8</sup> ENAR General Policy Paper on Third Country Nationals (2006)

<sup>9</sup> ENAR General Policy Paper on Counter-terrorism and combating racism (2007)

<sup>10</sup> 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)

<sup>11</sup> ENAR General Policy Paper on Racism as a Crime, April 2006; European Strategies to combat racism and Xenophobia as a Crime, April 2003

ENAR urges all EU Member States to ratify the Council of Europe Convention on Cybercrime and its Additional Protocol making any publication of racist and xenophobic propaganda via computer networks a criminal offence.

3. Conduct an equality and human rights audit of the European Union Action Plan to combat terrorism.<sup>12</sup>
4. 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.<sup>13</sup>
5. Extend the protection against discrimination on the ground of nationality provided by the Treaties to every person living in the territory of the EU.<sup>14</sup>
6. Extend 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.<sup>15</sup>

***Ensure an EU approach to migration and asylum 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. A more positive approach to migration must be promoted that respects the rights of all and ensures that anti-racism is a core value against which all action is tested. In this context, ENAR welcomes the Swedish Presidency's intention to promote the positive effects of migration on development in the countries of both destination and origin and on migrants themselves.

**ENAR has called the trio of presidencies for the following key principles to underpin the development of the EU's future operational approaches to the debate on 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.

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<sup>12</sup> ENAR General Policy Paper on Counter-terrorism and combating racism (2007)

<sup>13</sup> ENAR General Policy Paper on Third Country Nationals (2006)

<sup>14</sup> ENAR General Policy Paper on Third Country Nationals (2006)

<sup>15</sup> 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)

***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 recognise this. 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 with 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 of the implementation and enforcement of existing labour 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-à-vis the rest of the EU policies such as the employment and social policy, Lisbon strategy and fundamental rights, is an essential pre-requisite 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 human rights based approach to migration.

***Pursue the adoption of directives that ensure equal respect, protection and fulfilment of fundamental rights for third country nationals, including asylum seekers***

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 expressed concern that some recent developments, including the adoption of the ‘Returns Directive’ and the EU directive providing for sanctions against employers of irregular third country nationals (Employer Sanctions Directive)<sup>16</sup>, have the potential to negatively affect the basic human rights of third country nationals.

While the **Framework Directive on the basic socio-economic rights<sup>17</sup> of 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 status.** 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. The link with economic rather than human rights goals is explicit in the proposal.

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. 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

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<sup>16</sup>Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals (COM (2007) 249 final) of May 2007

<sup>17</sup> 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.

In the meantime, it is a basic principle that when a Member State accepts that a person has the right to work, they must also accept that that person must be treated with dignity. In this context, **ENAR urges the Swedish Presidency to take action to address the shortfalls in the scope of the proposed Directive on the basic socio-economic rights of third country workers, and to ensure that European immigration and asylum policies respect all international human rights instruments and take positive steps to ensure equal access to, and the effective enjoyment of, fundamental rights by third country nationals.**

The Swedish Presidency will also contribute to **further harmonisation of the asylum legislation**, notably by negotiating on the Commission proposal to amend the Reception Conditions Directive. Asylum seekers currently face widespread discrimination both in terms of the legal framework and the practice followed in Member States.<sup>18</sup> The Reception Conditions Directive currently provides only for minimum reception conditions that do not live up to the basic principles and values of the European Union, including the principle of equal treatment. Member states are allowed too wide a margin of discretion to derogate from the basic rights provided for in the Directive, leaving asylum seekers more vulnerable to racism, discrimination and exploitation rather than supporting their integration. Therefore, amendments to the directive are needed for the adoption of **common standards on reception conditions that will be applicable to all Member States without the possibility of derogations**. These standards should be in line with the principle of equal treatment and there should be no limitations on access to fundamental rights. ENAR therefore welcomes the amendments proposed by the Commission to facilitate access to labour market, to ensure material reception conditions guaranteeing subsistence and protecting health, and to facilitate access to education. Integration measures for asylum seekers are important both for those who are finally granted protection but also for those who return to their countries of origin as they develop skills and competencies that may be useful in their countries of origin<sup>19</sup>. ENAR calls on the Swedish Presidency to ensure the adoption of these amendments.

### *Promote effective national and European integration policies*

The Swedish Presidency has expressed its intention to **strengthen the debate on integration through exchange of knowledge and experience**. 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. A welcomed development was the recent launch of the **European Integration Forum** as a follow up to the Commission's Communication of 2005<sup>20</sup>. The **integration forum** is 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 integration forum will be allocated sufficient resources to fully play this role. ENAR would also welcome the

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<sup>18</sup> ENAR Shadow Report 2006

<sup>19</sup> Comments of ENAR on the European Commission Green Paper on the Future of the Common European Asylum System, August 2007

<sup>20</sup> European Commission Communication ["A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union"](#), 2005

possibility for the forum to feed in the debates of the third inter-ministerial conference on integration to take place during the second half of the Swedish Presidency.

ENAR welcomes the Swedish Presidency's intention to work on **identifying comparable indicators at European level to monitor the results of integration policies**, building on the EU common basic principles for integration. In identifying indicators, it is important to recognise that anti-discrimination is both a pre-requisite for, and modus operandi of, successful integration. The indicators developed should therefore **reflect the values of diversity, equality and non-discrimination<sup>21</sup> as cross-cutting issues**. ENAR recommends using the Council of Europe "Social Cohesion indicators" as a framework for the debate.

#### **IV. A EUROPE COMMITTED TO DIVERSITY AND EQUAL TREATMENT IN EDUCATION**

***Mainstream non-discrimination and equal treatment in the implementation of the updated strategic framework for European cooperation in the fields of education and training "ET 2020" and in the follow up to the Green Paper on Migration and Mobility***

***Mainstream non-discrimination and equal treatment in the implementation of the updated strategic framework for European cooperation in the fields of education and training "ET 2020" and in the follow up to 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.

The Swedish Presidency will start implementing **the updated strategic framework for European cooperation in the fields of education and training "ET 2020"**. This framework includes the promotion of equity, social cohesion and active citizenship as a strategic objective. ENAR believes that its follow-up and implementation should **build on the following key principles<sup>22</sup>**:

- 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.

Within the framework of the priorities of 'Education and Training 2020', the Swedish Presidency will give priority to the professional development of teachers and the role and responsibilities of school management in achieving this. In that respect, it is key that professional educators and school management staff receive intercultural skills training and are involved in awareness raising.<sup>23</sup>

ENAR welcomes the Swedish Presidency's initiative to launch a discussion at European level on several issues related to the **role of education in enabling the integration of migrants**. The Council conclusions will build on the Commission's Green Paper 'Migration & mobility: challenges and

<sup>21</sup>See ENAR *preliminary remarks* on A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union, March 2006

<sup>22</sup> See ENAR's 5<sup>th</sup> General Policy Paper on Fighting racism and promoting equal rights in education and training:

<sup>23</sup> Platform for Intercultural Europe, Rainbow Paper, 2008.

opportunities for EU education systems<sup>24</sup>. ENAR's key concern about the Green Paper was the lack of reference to **policy coherence and anti-discrimination**. Only a coherent, horizontal approach that addresses all related legal, social, cultural and economic impediments to access to education and good educational performance will be successful in the long term<sup>25</sup>. ENAR calls the Swedish Presidency and Member States to take into account in particular the following elements in the discussion

**a. Create a balanced mix of legislative and policy instruments**

ENAR recommends that Directive 77/486/EEC should be amended 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. The specific educational needs and issues of ethnic minorities and migrants should also be mainstreamed into current and future Open Methods of Coordination through the development of targets and indicators disaggregated by ethnic origin and migrant status.

**b. Take actions to adjust European education and training systems to the increased diversity in European schools. Examples:**

Taking the measures necessary for the training of the teachers, including making further opportunities and funding for training in the areas of race equality and intercultural education. Creating a physical environment that visually reflects and validates multiculturalism and religious diversity through cultural and professional diversity among staff. Incorporating a broad range of curriculum initiatives starting in pre-school education - these could include second and native language programmes, citizenship and human rights education, intercultural educational activities, conflict resolution, intercultural arts projects.

**c. Prevent segregation, ensure equal opportunities and avoid discrimination**

- Implementing the Race Equality Directive in the field of education by adopting national legislation and policies to address all forms of direct and indirect discrimination.<sup>26</sup>
- Developing and implementing positive action to promote equality and tackle discrimination in education, including desegregation measures.
- Establishing instruments that incorporate ethnic monitoring at all levels.
- Informing national policies to address underachievement and educational disadvantage by research studies and consultation exercises.<sup>27</sup>

## CONCLUSIONS

The European Union is at a crossroads. Meaningful responses to the financial and economic crisis could provide an 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 Swedish Presidency will take on the challenge and show the necessary leadership to mainstream this vision when setting the framework of the above mentioned debates.

<sup>24</sup> See [http://ec.europa.eu/education/news/news490\\_en.htm](http://ec.europa.eu/education/news/news490_en.htm)

<sup>25</sup> ENAR comments on the Green Paper the Green Paper 'Migration & mobility: challenges and opportunities for EU education systems', December 2008.

<sup>26</sup> See Case D.H. and others vs. The Czech Republic, in which the European Court of Human Rights held the Czech Republic in violation of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. <http://cmiskp.echr.coe.int/tkp197/viewhbk.asp?skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=66048&highlight>

<sup>27</sup> ENAR comments on the Green Paper the Green Paper 'Migration & mobility: challenges and opportunities for EU education systems', December 2008.