



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



RESPONSE OF THE EUROPEAN NETWORK AGAINST RACISM (ENAR)

EUROPEAN UNION FUNDAMENTAL RIGHTS AGENCY CONSULTATION: FRA's 2009 WORK PROGRAMME

(August 2008)

1. **Name of organisation:** European Network Against Racism (ENAR)
2. **Policy area and main activities:** The European Network against Racism (ENAR) is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives. Further information is available at: www.enar-eu.org
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Introduction

ENAR welcomes the initiative of the Agency to gather the views of civil society on its upcoming 2009 work programme. Such a proactive approach is to be welcomed as a core part of an ongoing and constructive dialogue, and we look forward to commenting again on the draft work programme.

ENAR has welcomed the broader mandate of the Fundamental Rights Agency, and in particular that the Agency *“offers a unique opportunity to bring together the human rights and anti-discrimination imperatives, building on the work of the European Union Monitoring Centre on Racism and Xenophobia (EUMC), anti-racism can act as bridge in releasing its objective of ensuring ‘full respect for fundamental rights’.*¹ The multi-annual framework provides the basis for FRA’s annual work programme, but it is the Work Programme itself that brings the thematic areas to life and has the potential to have a positive impact on fundamental rights in the EU.

Priorities for Fundamental Rights and Anti-Racism in 2009

ENAR’s work cuts across most of the Agency’s priorities and we are keen to work in close partnership with the Agency to use the broad and inclusive lens of fundamental rights to build on the work undertaken by its predecessor the EUMC. ENAR understands the fight against racism as going beyond simply securing anti-discrimination laws, extending, among other things, to ensuring effective access to the right to non-discrimination in practice, combating institutional discrimination, promoting social inclusion of ethnic and religious minorities, seeking the development of progressive migration policies that positively contribute to a Europe without racism and working to ensure that policies and legislation developed in counter terrorism fully understand the central role of anti-racism in achieving the goal of security.

2009 will be an important year for the EU in a number of areas, providing a challenge to both civil society and the Fundamental Rights Agency to take effect action to ensure that fundamental rights are at the heart of developments. We will see not only a political renewal of the EU with parliamentary elections and a newly appointed Commission, but also key developments toward a new programme on Justice and Home Affairs, the so-called ‘post – Hague’ or ‘Stockholm’ programme. In parallel, the EU is working to put in place a renewed Social Agenda, with key implications for the rights of ethnic and religious minorities, combating discrimination on a range of grounds, the rights of the child, the rights of migrants, integration and other key areas in the Multi-Annual Framework. 2009 will also see major negotiations on the proposed new Article 13 Directive prohibiting discrimination outside employment as well as important follow up activities on the European Year of Equal Opportunities for All, as outlined in the Commission Communication of the 2nd July. In a similar vein, the European Commission has initiated vital work on Roma Inclusion, and 2008 will see the first ‘EU Roma Summit’. 2009 will be important in following up these activities and ensuring that they provide a real outcome for the rights of the Roma. Finally, ENAR hopes to see the formalisation of the adoption of the Framework Decision on combating racism and xenophobia, and work will be needed to ensure that the Framework Decision can be implemented effectively by Member States.

¹ ENAR response to the EU Agency for Fundamental Rights Consultation with Civil Society May 2007

These are just a taster of some of the key concerns and developments to which FRAs workprogramme will need to contribute to ensure an effective implementation of the strategic themes in the Multi-Annual Framework. It will also be important for the FRA to be forward looking, and the ENAR response therefore also highlights the areas where we believe objective and reliable data and the broader work of FRA will be important.

Methodology of approach of FRA work programme 2009

The response below outlines the key areas in which we believe the FRA's work in the production of objective data could have a critical impact and should therefore be a priority. However, in developing the workprogramme ENAR also urges the FRA to consider how such work can contribute more broadly to the promotion of respect for fundamental rights in the EU. Thus ENAR urges the FRA to consider **how its important expertise can feed into the EU institutions' policy work during 2009 and beyond**. FRA will need to ensure that its valuable research is translated into results in terms of policy outputs at EU level.

Additionally, the FRA is ideally placed to support **the promotion of a better understanding of fundamental rights** within the EU, amongst all actors, government, political, civil society etc and ENAR urges that this should be a priority action for the FRA in each of the thematic areas and as a cross-cutting theme.

Key proposals for the FRA Workprogramme 2009

ENAR's response to this consultation follows the structure of the thematic areas as defined in FRA's multiannual framework, whilst also taking into account some overarching and cross-cutting themes.

1. Racism, xenophobia and related intolerance

The overall objective of the Agency is to "collect, record, analyse and disseminate relevant, objective, reliable and comparable information and data". ENAR would welcome a continued focus on the production of comprehensive research reports which provide a systematic analysis of the situation of racism, and broader human rights, in the European Union. In order to have enhanced impact of the policy and political context in the European Union, it is crucial that the Agency provide concrete and credible analysis and suggestion for policy change at the European level.

The experience of the EUMC provides an opportunity to build on the work of the Agency in the context of its experience of working on racism and xenophobia. In the context of the fight against racism ENAR would particularly emphasise the need to continue work in the fields of:

- **Racial profiling and policing:** Capitalise on the good practice guide on ethnic profiling practices foreseen in the 2008 work programme to inform policy developments in this field. The ENAR Shadow Report 2007 has continued to confirm the trends related to the existence of racial profiling in the work of the police in nearly all countries in Europe. Groups that appear to be the main targets of racial profiling include Muslims, Roma, and youths from ethnic and religious minority groups.
- **Racist crime:** Undertake a study on how criminal sanctions (provided for by national laws on hate crime) are implemented, bringing in the perspective of victims,

and highlighting good practices in this area, in order to raise awareness on the necessity of the development of legal measures to combat hate crime and violence on the grounds of ethnic origin or religion at the EU level.

- **Impact of counter-terrorism measures on minority communities:** Undertake a research study on the impact of counter-terrorism measures on minority communities. ENAR members have noted that counter-terrorism measures have had a negative impact on minority communities, and in particular Muslim communities. Such a study would help to raise awareness of this negative impact and inform counter-terrorism policies in order to ensure that it is carried out within the context of the international human rights framework and in a non-discriminatory manner.

- **The situation of Roma, Sinti and Travellers:** The foreseen comparative report on the housing situation of Roma and Travellers in the EU foreseen in the 2008 work programme should be followed up during the 2009 work programme in order to inform EU policy developments in relation to the Roma. In addition, in view of the scarcity of hard data relating to the Roma community in Europe and of the concerns mentioned in the conclusions of the December European Council, the structured process of data collection with regard to the Roma should be continued in the areas where Roma face exclusion in 2009 and beyond.

2. Discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination)

Data collection on the other discrimination grounds is necessary, capitalising on the previous EUMC's methodology and mechanisms used to collect data on race. Whilst research has started in 2008 with a report on discrimination on grounds of sexual orientation, this should continue in 2009 on the other discrimination grounds, and from ENAR's perspective, in particular on **discrimination based on religion or belief, including specifically access to the right to education by religious minorities.** ENAR members consistently highlight a lack of data in this area. Such studies should include a specific consideration of multiple discrimination from the perspective of the specific ground that is the subject of the report.

ENAR would also welcome **a specific research project on multiple discrimination in 2009**, based on the feasibility study undertaken in 2008. However this research should not only include multiple discrimination on the grounds of gender, age and ethnicity, but also on religion. Indeed, discrimination on the grounds of religion and belief are often inextricably linked to racism and racial prejudice; frequently it is not possible to distinguish between these forms of oppression. In addition there are crossovers between gender, race and religious discrimination. Thus not only is there discrimination faced by, for example, Asian Muslims, which is not adequately recognised by the law, but also the law has difficulty in recognising and finding appropriate responses to, for example, an Asian Muslim woman who wears the hijab and the specific form of discrimination that she faces. FRA should also consider extending consideration to other grounds, such as disability and sexual orientation. In this context, FRA could capitalise on the report published by the European Commission in November 2007 "Tackling multiple discrimination - practices, policies and laws", by specifically addressing the gaps in data and research put forward in this report and responding to its recommendations. FRA's research could also examine legal

mechanisms to address multiple discrimination, an area in which research is currently lacking.

In addition, FRA could undertake a **data collection research project on the Employment Equality Directive** in order to complement FRA's 2008 data collection project on the impact of the Race Equality Directive. This project could follow the same pattern as the research on the impact of the Race Equality Directive.

3. Compensation of victims

FRA could undertake in 2009 a **study on compensation to victims, and more specifically on how the provisions related to civil sanctions in the Race Equality Directive and the Employment Equality Directive are implemented in the EU member states**. ENAR members have reported that sanctions for unlawful discrimination and harassment rarely, if ever, meet the standard of "effective, proportionate and dissuasive". In addition, FRA's Annual Report 2008 underlines that no sanctions and/or awards related to cases of ethnic or racial discrimination could be detected during 2006-2007 in 12 Member States. It also underlines that sanctions are seen as crucial to improve the bargaining position of victims of discrimination and that there is a loss of the educative function of awareness-raising in the general public and amongst employers that stems from the threat and application of credible and dissuasive sanctions. In this context the study should also consider the extent to which victims of discrimination have adequate means of legal protection such as access to a Court or Tribunal as a necessary pre-requisite to access to compensation.

FRA's EU-wide survey to collect **comparable data on selected immigrant and minority groups' experiences of discrimination in access to goods and services**, including experiences of criminal victimisation launched in 2008 should inform policy makers during 2009 about respondents' experiences of discrimination and victimisation so that these problems can be addressed more effectively.

4. The rights of the child, including the protection of children

The European Commission's Annual Policy Strategy for 2009 puts a particular focus on youth and cross-border mobility of young people. The body of evidence developed in the comparative report on the situation regarding the protection, respect and promotion of the rights of the child in the EU, due to be issued in 2009, must be put to use to inform EU policy developments in the youth field, in particular by supporting European youth and education programmes so that they take a human rights perspective to opportunities offered to children and young people in this field. In this context **the FRA should further develop its work to see that its expertise is further utilised in policy making**. In addition, **the rights of the child must be considered in other areas, such as data on discrimination in schools, access to rights of migrant children, including undocumented migrants, etc.**

5. Asylum, immigration and integration of migrants

During 2007 and 2008 the European Commission has proposed a number of legislative instruments under its Policy Plans on legal and irregular migration, with the intentions of completing the legislative programme flowing from the Hague Programme. Work on many of these proposals will continue in 2009 and work will also progress on the follow up to the Hague programme with the EU committed to developing a 'renewed political

commitment' to a common immigration policy. It would therefore be opportune that FRA's 2009 work programme includes the publication of **a briefing paper informing EU immigration policy**. This briefing paper could focus on developing the rationale for a rights-based approach to migration in the light of the EU Charter of fundamental rights. In addition, the FRA could make an important contribution to the ongoing debate on the future of EU migration policy. In this context, ENAR believes that it will be important to consider areas such as **integration strategies and human rights of migrants, asylum and refugee protection, the EU and the UN Charter of the Rights of Migrant Workers and their Families** and the **impact of EU policies on irregular migration on access to fundamental rights**.

In 2002 the EUMC produced a report on "**Racism and Cultural Diversity in the Mass media**". ENAR believes that **an updated version of the report, with a particular focus on the treatment of migrants in the mass media** would be a positive contribution to the debate.

6. Participation of the EU citizens in the Union's democratic functioning

Participation of those affected by rights violations in the formulation of policy is at the core of a rights based approach. FRA is in a key position to mainstream this approach into its research and recommendations and ENAR urges that the FRA includes such participation as a routine consideration in examining how human rights standards are met in the EU.

2009 will be an important year for the European Union. It will bring forward a new European Parliament and a new European Commission. Depending on the completion of national ratification processes, 2009 should also see the entry into force of the Lisbon Treaty. Within that framework FRA should take this opportunity to **raise awareness about the importance of EP elections for EU citizens**, and the important role that the EP plays in reflecting EU citizens' concerns at EU level. FRA could also take this opportunity to **promote the Charter of European political parties for a non-racist society**, which calls on democratic political parties in the European Union to act responsibly when dealing with issues related to race, ethnic and national origin and religion and to work towards fair representation of racial, ethnic, national and religious minorities within and at all levels of their party system. 2009 would also be a key year to emphasise the importance of the rights proclaimed in **the EU Charter of Fundamental Rights as a key part of the Unions democratic functioning**.

With regard to relations with civil society, the activities of FRA's civil society platform will be very important. The broad remit of the Platform should not be narrowed in line with the work programme, as this will undermine the capacity of the Platform to identify new and emerging fundamental rights concerns, which may not yet appear on the agenda of the Agency. It would be useful to provide **structured space for considering specific issues of relevance to the work of the Agency**, particularly when it comes to developing policy recommendations. In addition, given the particular emphasis the Agency will have on racism and xenophobia, it is important that it have a specific structure to address these issues. **To this end ENAR would recommend the establishment of a standing working group on racism.**

7. Information society and, in particular, respect for private life and protection of personal data

FRA's 2008 work programme includes a comparative assessment of data protection measures in the EU. ENAR believes it would be appropriate **to continue work on the protection on personal data in 2009**, for instance by compiling best practices or guidelines which can be applied in this area. It is also necessary **to tie the work in this area into the work on ethnic profiling carried out under the thematic area of combating racism and xenophobia**. This is particularly relevant in light of the recent decision by the Italian government to undertake an ethnic census of Roma children. FRA could work in cooperation with the Council of Europe, given the important work it is doing on this issue. Such a guide could include guidelines with regard to the fair and lawful collection and automatic processing of data, storage for specified legitimate purposes, the 'proportionality' test, the confidentiality of sensitive data, and the data subject's right of access and rectification, in a number of relevant sectors, such as social security, employment, medical care, police.

8. Access to efficient and independent justice

Assessments of the Race Equality Directive and the Employment Equality Directive by both the European Commission and ENAR members show that problems of access to the right of redress persist. In reality many of the victims of discrimination in Europe continue to find it difficult or impossible to pursue legal action and support to victims in achieving an effective remedy is inadequate. There is also still a lot of work to be done in enabling NGOs to undertake their key role in supporting victims.

As stated above in section 3 "Compensation of victims", which is closely linked to access to efficient justice, FRA could undertake in 2009 **a study on how the provisions related to civil sanctions and access to justice in the Race Equality Directive and the Employment Equality Directive are implemented in the EU member states**, moving beyond the analysis of the legal provisions, such as those undertaken by the Network of Independent Legal Experts, to using the FRAs expertise to examine the extent of actual access by victims of discrimination and the reasons why legal redress is under-utilised by victims of discrimination. This would help policy makers identify the gaps in implementation and transposition and develop mechanisms to overcome the barriers facing victims of discrimination who seek to pursue their claim in the courts.

In addition, the project 'Mapping and capacity assessment of national human rights institutions', which assesses their capacity in terms of their remit, resources, and powers could be capitalised upon in 2009 to ensure that national equality bodies play their important role in support to victims to access justice.

9. Cross-cutting themes

Social inclusion:

One of the biggest challenges facing the European Union is to promote the social and economic inclusion of ethnic minority communities and so-called 'vulnerable groups', including the continuing and persistent discrimination faced by Roma, Sinti and Travellers, new migrants, established minorities of immigrant origin and other minority groups. Ethnic and religious minorities and migrants across Europe are still amongst the groups most vulnerable to poverty and social exclusion. Not only are minorities

more likely to experience exclusion but experiences of exclusion are often more severe or extreme.

FRA could undertake in 2009 **a study on the social inclusion and integration of so-called 'vulnerable groups' which include minorities, children, migrants, etc.** This research, in addition to informing EU policy developments in the field of social inclusion so that they address the specific needs of minorities, could also be valuable in terms of preparatory research in view of the 2010 European Year against Poverty.

This work **would cut across many of the thematic areas of the Multi-Annual Framework**, including Racism, xenophobia and related intolerance; Discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination); The rights of the child, including the protection of children; Asylum, immigration and integration of migrants and Participation of the EU citizens in the Union's democratic functioning.

Fundamental rights in the EU:

Awareness raising of civil society and citizens on the EU Charter of fundamental rights, and fundamental rights education more generally, is essential for citizens to be able to know and use their rights, all the more so as in 2009, if the Lisbon Treaty is ratified by all EU member states, the EU Charter will become legally binding.

Similarly, **policy makers at both EU and national levels need to be fully aware of the implications of the EU Charter of Fundamental Rights** when carrying out their responsibilities. Not only is this necessary for the effective mainstreaming of fundamental rights, it is also necessary to ensure that EU legislation and policy will be upheld by the European Court of Justice, which has shown itself to be willing to review EU legislation for compliance with, among other standards, the provisions of the Charter of Fundamental Rights, European Convention on Human Rights, the UN Convention on the Rights of the Child and the UN Covenant on Civil and Political Rights. Guidance from the FRA can assist EU policy makers in ensuring they meet these standards, and in supporting Member States in implementing EU law.

FRA should therefore undertake in 2009 **a report on the state of play as to how the EU Charter of fundamental rights is applied in the EU.** This report would raise the visibility of the Charter contribute to re-enforcing the Charter of Fundamental Rights as a key reference and guiding document for all EU policies and actions.

Conclusion

ENAR re-iterates its warm welcome for the proactive approach by the FRA of requesting submissions on its work programme that can be taken into account in the formative stages. This is indicative of a desire to build a culture of dialogue and cooperation and we look forward to working with the FRA in the coming months to further refine the work programme for 2009.