



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

The EU Stockholm Programme for Justice and Home Affairs

ENAR Briefing on the European Commission Communication
COM (2009) 262 final
'An area of freedom, security and justice serving the citizen'

In the coming period the EU will debate the priorities of the future EU programme on justice and home affairs on the basis of the recently published EC Communication 'An area of Freedom, security and justice serving the citizen'. The dialogue that will take place between now and the adoption of the new programme at the end of 2009 is an important opportunity to reshape the way in which the EU approaches the exercise of its competences and re-focus work where most needed.

ENAR has contributed to this dialogue through a submission to the public consultation 'Freedom, Security and Justice: what will be the future?' launched by the European Commission in December 2008 and aims to play an active role in the negotiations in the coming months.

ENAR believes that dialogue with civil society must be a core mechanism of developing and implementing the future programme and a core feature of the programme itself.

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

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**Next steps for the [EC Communication COM \(2009\) 262 final](#)
[‘An area of freedom, security and justice serving the citizen’](#)**

- ⇒ The Swedish Presidency of the EU devoted an informal ministerial meeting in Stockholm (15-17 July 2009) entirely to the Stockholm Programme
- ⇒ On the basis of the EC Communication the Programme will then be dealt with in the JHA Council on 30 November to 1 December 2009
- ⇒ The Programme will then be discussed in the General Affairs and External Relations Council (GAERC) on 7-8 December 2009
- ⇒ The Programme will then be adopted at the European Council on 10-11 December 2009

On the basis of the [ENAR’s submission to the consultation](#) this briefing analyses the EC Communication from the anti-racism and human rights perspective in order to equip ENAR members and other civil society actors with the tools needed for a constructive dialogue. The briefing follows the structure of the Communication and comments on the text under each heading (Towards a citizen’s Europe in an area of freedom, security and justice; Promoting citizens’ rights: a Europe of rights; Making people’s lives easier: a Europe of law and justice; A Europe that protects; Promoting a more integrated society: a Europe that displays responsibility and solidarity in immigration and asylum matters).

Chapter 1. Introduction

Towards a citizen’s Europe in an area of freedom, security and justice

The challenges ahead

A new multiannual programme

⇒ **An unbalanced approach between protection and security**

The proposed Stockholm Programme sets out the ambitious goal of establishing ‘*wider freedom in a safer environment*’ acknowledging that ‘*people want to live in a European Union that is prosperous and peaceful, where their rights are respected and their security protected*’. Building an Area of Freedom, Security and Justice over the next five years that strengthens the rights and security of the individual and reaffirms EU’s contribution to prosperity and peace is to be greatly welcomed. The proposals however entail serious limitations to this ambition by adopting an unbalanced approach that favours security concerns over human rights protection and restricts its application to ‘citizens’.

⇒ **A narrow focus on citizens**

[Goals of the Tampere Programme](#) that set out provisions on the fair treatment of third country nationals (TCNs), on the approximation of rights and the opportunity of naturalisation seem to have been lost; despite references to the [EU Charter of Fundamental Rights](#) and the case law of the Court of Justice of the European Communities and the European Court of Human Rights, which have strong emphasis on the rights belonging to *persons*, the emphasis in the proposed programme is clearly put on the rights of *citizens*. Building a **citizen’s** Europe, promoting **citizens’** rights, protecting **citizens**, promoting a more integrated society for the **citizen**: as the Communication states, ‘*all action taken in future should be centred on citizens*’. Rights of third country nationals are not addressed; three out of four priorities are apparently restricting the enjoyment of fundamental rights to citizens only, leaving Europe’s many migrants and ethnic and religious minorities unprotected.

⇒ **The role of civil society in implementing the Programme is not addressed consequently**

Civil society is referred to inconsistently through the document, for example in the section on integrating vulnerable groups, in particular the Roma community (page 8) and on human trafficking (page 21), but the Programme lacks a clear vision of how civil society support and engagement will be established during the implementation of the Programme. Indeed, civil society cooperation is not mentioned among the implementation tools (page 6). Further concerns relate to the role that civil society is being given in the consultation processes leading to the adoption of the Programme and in the implementation of the Programme: has civil society been consulted on this role, is this a role it is content to assume?

Chapter 2. Promoting citizens' rights: a Europe of rights

⇒ **Fundamental rights as the foundation and framework of the future Stockholm Programme must be strengthened**

The Communication affirms that *'respect for the individual and for human dignity, referred to in the Charter, is a core value in the area of freedom, security and justice'* (page 7), which is greatly welcomed. In light of the Programme's focus on 'citizens' however, the next sentence already seems to put this statement in the narrow focus of the Programme: *'In this area without internal borders citizens can move freely and enjoy their rights fully.'* ENAR believes that the European Union has a vital role to play in the promotion of fundamental rights and a significant responsibility to ensure not only that its own activities respect these standards but also that it takes action to actively respect, protect and fulfil fundamental rights of *all persons*. Furthermore, the work currently underway on building the future European programme on Justice and Home Affairs must not see fundamental rights as simply one aspect of the work to be done. 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 Programme.

⇒ **Exploring the possibility of accessing further key Human rights instruments is not envisaged**

The future accession to the European Convention of Human Rights is crucial in developing a strong legislative framework and reassuring political commitment towards protection of fundamental rights. The EU's accession to additional key human rights instruments should however also be explored in the coming five years as a core action that can enable a rights based approach to frame the work of the EU in this and other areas. The commitment of the EU to ratify the UN Convention on the Rights of People with Disabilities sets an important precedent that could 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.

⇒ **Discrimination and the violation of fundamental rights are not addressed as key obstacles to the free movement of EU citizens**

The Communication considers the full exercise of the right to free movement and the barriers people are faced when they decide to live or travel in a Member State other than to one of their nationality but runs short of addressing key barriers that people face, i.e. discrimination and the violation of fundamental rights. 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 Communication, consideration is not given to the most effective way of ensuring 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.

⇒ **The fight against racism and xenophobia must be pursued as a horizontal objective throughout the Programme**

Reference to the importance of pursuing measures to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia (page 7) is greatly welcomed. Nonetheless, further consideration is not given to how this will be implemented and mainstreamed in important Justice and Home Affairs dossiers, and how, for example it will be ensured that existing legislation, including the Framework Decision on racism and xenophobia, will be enforced. The future Programme 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.

⇒ **Reference to vulnerable groups must not be defined in a narrow manner**

The Communication foresees greater protection for three particularly vulnerable groups: children (in particular in the context of immigration policy, i.e. unaccompanied minors, victims of trafficking), women victims of violence and dependent persons and Roma. The acknowledgement of persons and groups in particularly vulnerable situations is an important step towards developing and implementing special protection mechanisms, using legislative, policy and financial tools. Nevertheless, protection of 'vulnerable groups' must not be defined in a narrow manner focusing only on those groups emphasized in the Programme, and protection mechanisms should be explored that consider and cover all migrants and ethnic and religious minorities vulnerable to racism, discrimination and other human rights abuses.

⇒ **Consistent implementation of legislation must be ensured; mainstreaming fundamental rights across all policy areas should be rigorously carried out through fundamental rights review of existing legislation and fundamental rights impact assessments**

The Communication does not address the question of how existing legislation will be implemented consistently across the 27 EU Member States. ENAR has called for a review of relevant legislation in the field of Justice and Home Affairs for compliance with fundamental rights standards, paying particular attention to the rights of third country nationals and to protection against discrimination in the areas of policing and counter-terrorism. The process of fundamental rights impact assessments should be given a thorough consideration 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 for all people residing within the territory of the EU.

Chapter 3. Making people's lives easier: a Europe of law and justice

⇒ **A series of policy, legal and administrative provisions to remove remaining restrictions on the exercise of rights of citizens but a lack of vision of a Europe at the forefront of protecting human rights for all**

The absence of clear vision of a Europe that is founded on the values of respect for human dignity, freedom, democracy and respect for human rights, including the rights of persons belonging to minorities is apparent in Chapter 3 of the Programme. This section puts forward a series of purely administrative, legislative and policy provisions that aim at making people's lives easier but fail to address protection human rights of peoples who are not 'citizens' of the EU but live and move within the territory of Europe. Nor does it not put forward guarantees for ensuring that enjoyment of human rights will not be endangered in the efforts of strengthening cooperation in the fields covered.

Chapter 4. A Europe that protects

⇒ Security concerns should not negate the respect for the right to non-discrimination and the right to privacy

The chapter 'A Europe that protects' deals with a series of security issues from an operational perspective but does not consider human rights safeguards, such as the right to non-discrimination when pursuing security policies.

The Programme has a strong focus on data collection with the aim of creating '*an information system architecture*' (page 16). 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 mainstream protection of fundamental rights and the links between racist crime, anti-Semitism, xenophobia and human trafficking, cybercrime and exploitation of children and women. Furthermore, ethnic profiling is not mentioned throughout the Programme. Evidence from ENAR members has indicated that the official sanctioning of racial profiling,¹ and the de facto implementation of such approaches, particularly in the context of counter-terrorism measures, is increasingly problematic for ethnic and religious minority communities.

⇒ Reducing the terrorist threat must not be separated from the effective implementation of the right to equal treatment and from building cohesive communities

As ENAR has pointed out, the challenge facing the European Union is to secure the effectiveness of its counter-terrorism strategy by ensuring that it is carried out within the context of the international human rights framework and in a non-discriminatory manner. Counter-terrorism is both dependent on effective implementation of the rights to equality and non-discrimination, as well as a potential barrier to their full realisation. The dialogue on counter-terrorism too often falls into the trap of placing the protection of the majority in opposition to the rights of the minority. This analysis is a false start. Undermining the rights of the minority undermines society as a whole and, rather than contributing to security, reduces community cohesion that is necessary for the effectiveness of counter-terrorism measures. This view has not been pursued by the Programme, which sees the role of civil society foremost in contributing to the understanding of the factors leading to radicalisation.

Chapter 5. Promoting a more integrated society: a Europe that displays responsibility and solidarity in immigration and asylum matters

⇒ A positive and evidence-based approach to migration must be promoted

ENAR believes that the development of a common immigration policy and a Common European Asylum System are important parts of the work on Justice and Home Affairs and must continue. However, there are serious concerns that the approach of the Programme pays insufficient attention to the potential for actions taken in this area to undermine the vision of a Europe free from racism and discrimination.

'Migratory pressures' that '*can be expected to grow*' (page 4) and '*family reunification is one of the main reasons for immigration and accounts for a large proportion of legal immigration*' (page 25) remain uncertain assertions that lack evidence base. The Programme estimates that there are about '*8 million illegal immigrants in the Union, many of whom work in the informal economy*' (page 4), but

¹ For example a [European Council Recommendation of 28 November 2002](#) on the development of terrorist profiles, while explicitly excluding the use of race or ethnicity, includes criteria such as nationality, travel document, and place of birth.

whether this figure is backed up by accurate figures and quantitative research remains unclear. Furthermore, there is often an information gap between research commissioned by the European Commission on irregular migration and the policies and measures proposed by DG Justice, Freedom and Security. For example, the [Clandestino project](#) funded by DG Research has shown a rather different picture on the number of irregular migrants living in the EU, putting the numbers between 2.8 and 6 million. Building on robust research evidence that draws a clearer picture on the numbers of immigrants and trends over the years would not only allow to develop policies that reflect reality and thus enable appropriate responses, but also to develop a more positive approach to the migration debate, that acknowledges benefits of immigration beyond meeting the needs of the economy, the labour market and ageing population.

⇒ **The use of the language that defines ‘illegal’ and ‘legal’ migrants must be abolished**

Tackling illegal immigration is a key challenge seen by the Programme. ENAR has long argued for ceasing to use the terminology of ‘illegal’ migration and ‘illegal’ migrants. People are not illegal. The fact that they are residing without proper or authorised documentation on the territory of the EU does not render their mere existence illegal. The term ‘irregular migrant’ is commonly used in international fora and was reinforced by the European Parliament, which called on the EU institutions to stop using the term and instead refer to irregular/undocumented workers/migrants.² Furthermore, ENAR members have warned that the practice of some Member States that are termed ‘*effective policy on removal and return*’ (page 26) may be in fact enforcement of expulsions, extension of administrative detention and the push-back of potential immigrants regardless of their fundamental rights.

On a more positive note, the introduction of an ‘*Immigration Code*’ that ensures a ‘*uniform level of rights for legal immigrants comparable with that of Community citizens*’ (page 25) is a welcome proposal; it only remains to be seen how it will be implemented coherently across 27 Member States.

⇒ **Fair and equal treatment must guide integration measures**

The Programme recognises that ‘*the potential cultural as well as economic enrichment offered by immigration can be unleashed only by improving integration in the host country*’ (page 26) and proposes a mix of measures including positive initiatives: joint coordination mechanisms between Member States, identification of joint practices, introductory and language classes, strong commitment of host society and the active participation of immigrants in all aspects of collective life, common indicators, educational models and improved involvement of civil society. ENAR and other civil society organisations should pay particular attention in the coming period that these measures will be implemented in a manner which is compatible with the rule of law and fundamental rights, and that Member States will not use integration policies as a means to legitimise and practise 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).

⇒ **The global approach to migration must not leave aside the fundamental rights, civil liberties and protection of the individual subject to these new EU processes**

The Programme refers to the concept of ‘solidarity’, however it is explicit that it is understood as solidarity amongst Member States in the ‘*effective management of migratory flows*’ (page 23) and not solidarity towards immigrants and asylum seekers and people seeking protection. Mobility partnerships and readmission agreements potentially endanger the respect of fundamental rights (and as ENAR Italy has warned it was actually the case in the Italy-Libya agreement), including the

² [European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008](#)

right to leave a country. The proposed Programme fails to ensure that both readmission agreements and mobility partnership are compliant with the protection of fundamental rights. Moreover, the emphasis on readmission, partnerships, repatriation, circular and 'flexible' immigration seem to push back EU policies towards an idea of migration as a temporary phenomenon that could lead to weaken policies aimed at improving the condition of settled migrants.

⇒ **The Common European Asylum System must pursue the protection of refugees and asylum-seekers**

The Programme fails to give orientations about the mechanism of identification of the responsible Member State, while the current mechanism seems to have increased the differences of treatment among the Member States, as it allows that asylum-seekers of the same nationality receive unequal protection in different EU countries. Moreover, a variety of tools used by Member States to prevent entry, i.e. visa requirements, strict border controls, agreements with third countries etc. makes it increasingly difficult for refugees to come to Europe and seek protection. The lack of provisions to facilitate the access of refugees to the labour market or education endangers their positive integration. The Programme also fails to address the abolition, or at least reduction, of those 'special categories' (safe third countries, safe countries of origin etc.) that weaken the EU asylum system compliance to international human rights standards.

⇒ **A human rights based approach to migration must be pursued**

ENAR's long-standing concern about the EU's short-term and utilitarian approach to migration is confirmed by the Programme, which sets out that '*the Union needs a common framework for a flexible admission system for migrants that will enable it to adapt to increased mobility and the needs of national labour markets*' (page 34). Member States are to determine the numbers of non-EU nationals to be admitted for employment purposes, but the EC warns that intra-European mobility and the consequences of validity of residence permits are key issues that need to be considered in case immigrants lose their jobs. Further elaboration however is not given about what this could mean in practice and how protection of immigrants would be ensured should this be the case.

ENAR strongly believes that 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. Mainstreaming equality and non-discrimination across the future Stockholm programme is essential. Applying a rights-based approach to EU migration, integration and asylum policy implies explicitly linking all relevant policy areas and setting the achievement of human rights as an objective across the board. EU migration policy must move beyond considerations of demographics and economics alone, towards developing a dynamic perspective on migration that allows for mutual benefits of migrant and host communities and views migrants as individuals with rights that are to be valued and protected.