



Comments of the European Network against Racism (ENAR)

European Commission Green Paper on the Future of the Common European Asylum System

August 2007

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

1. Introduction

As a network concerned with the rights of all ethnic and religious minorities in the EU, ENAR is concerned that equality and non-discrimination are mainstreamed into European Asylum Policy, and are fully reflected in the Common European Asylum system.

In this context, we have chosen to focus on the issue of integration of asylum-seekers and beneficiaries of international protection.

This does not mean that other areas of the Green Paper do not have serious implications for the rights of ethnic and religious minorities. The principles and concerns set out below apply equally to other areas, in particular the concerns relating to the lack of protection against discrimination on ground of nationality, racial or ethnic origin.

ENAR has also contributed to the response produced by the European Council on Refugees and Exiles (ECRE), and supports the positions set out in that response.

2. Question 17: What further legal measures could be taken to further enhance the integration of asylum seekers and beneficiaries of international protection, including their integration into the labour market?

Many of the policy approaches to date have recognised that anti-racism and the fight against discrimination are an important element of an integration strategy. However ENAR believes that they have failed to recognise that *anti-discrimination is both a prerequisite for, and modus operandi of, successful integration*. All dimensions of integration policy including economic, social, cultural and political aspects must be underpinned by anti-discrimination. Across the social spectrum integration strategies are undermined by experiences of either direct or indirect discrimination. Consequently it is essential that integration is linked to both the anti-discrimination and social inclusion strategies at the European and national levels.

Racism, discrimination and inequality undermine any integration policies related to third country nationals, including asylum seekers and persons under international protection. ENAR is convinced that in the second stage of the Common European Asylum System (CEAS) the anti-discrimination laws and policies of the EU should be fully incorporated and mainstreamed into the asylum policies and legislation of the EU without any exceptions or derogations. Moreover, the antidiscrimination clause of the 1951 Geneva Convention on the Status of Refugees, which provides that “The Contracting parties shall apply the provisions of the Geneva Convention to refugees without discrimination as to race, religion or country of origin.” should be adapted and fully implemented in the context of a common European asylum area without internal borders.

ENAR is concerned that the current proposals do not sufficiently address the need to ensure equal treatment and non-discrimination of asylum seekers and beneficiaries of international protection. In November 2006 ENAR published a General Policy Paper on Third Country Nationals, which included consideration of the situation of asylum seekers and beneficiaries of international protection.

The General Policy Paper found that:

“Although, in principle, every person is entitled to the right to equality and non-discrimination regardless of his/her legal status, the effective exercise of rights can be, and is, undermined by differential treatment based on citizenship or immigration status. According to the UN Committee on the Elimination of Racial Discrimination this “constitutes [racial] discrimination if the criteria for such differentiation... are not applied pursuant to a legitimate aim, and are not proportional”.¹ Xenophobia against non-nationals was recognised as one of the main sources of contemporary racism by the UN World Conference against Racism.²

In the European Union, equal treatment of Third Country Nationals is both an obligation, under the general principle of respect for fundamental rights, and a political commitment. The Tampere Presidency conclusions in 1999 stated that: “The European Union *must* ensure fair treatment of third country nationals who reside legally on the territory of its Member States.”³ The same commitment was reaffirmed in the Common Basic Principles on Integration adopted by the European Council in 2004, which provide a clear, though implicit, indication of the link between equal treatment of Third Country Nationals and protection against racial and ethnic discrimination:

“If immigrants are to be allowed to participate fully within the host society, they must be treated equally and fairly and be protected from discrimination. EU law prohibits discrimination on the grounds of racial or ethnic origin in employment, education, social security, healthcare, access to goods and services, and housing.”⁴

EU Agencies, such as the European Monitoring Centre on Racism and Xenophobia (EUMC), and anti-racist civil society recognise immigration and asylum policies as one of the key priorities in the ambition to make the EU an area free from racism.⁵

Third Country Nationals tend to suffer multiple discrimination, which can blur the distinction between ‘lawful’ differential treatment based on citizenship status and unlawful discrimination on the grounds prohibited by the European treaties. Member States often find justification for differential treatment on the basis of citizenship status; yet it is undeniable that real or presumed belonging to certain ethnic, ‘racial’ or religious groups plays a crucial role in the identification of groups that can be ‘legally’ discriminated against. The experience of ENAR members demonstrates that asylum and immigration legislation has become a manifestation of institutional discrimination,⁶ often failing to meet the basic principle of equality before the law. In Europe today ‘immigrants’ are popularly identified as a homogenous group, different and incompatible with European societies, which represent a threat, justifying the violation of their fundamental rights and the values of the EU.⁷

¹ CERD (2004) General recommendation No. 30 on discrimination against non-citizens.

² UN (2001) World Conference against Racism, Declaration and Programme of Action.

³ Presidency Conclusions, 15-16 December 1999 (emphasis added).

⁴ Presidency Conclusions, 19 November 2004.

⁵ See for example ENAR (2006) Shadow Report 2005; EUMC (2004) Comparative Report: Migrants, Minorities and Legislation.

⁶ ENAR (2006) Shadow Report 2005, p. 9.

⁷ ENAR General Policy Paper No.3: Third Country Nationals, November 2006

In addition, the ENAR Policy Seminar ‘Promoting Integration: Migration, integration, social inclusion and non-discrimination’ held in March 2007 clearly identified a need to make anti-discrimination measures more visible in European Policy on migration and integration. As Jan Jařab, Member of the Cabinet of Commissioner Vladimir řpidla, said at the seminar:

“The anti-discrimination element needs to be more visible...these issues are not linked with other policy areas but are separate. This is even more so with refugees/asylum seekers as many anti-discrimination laws do not apply to them because of their legal status.”⁸

3. Conclusions and recommendations

Based on the above analysis ENAR believes that the following legal measures should be taken to further enhance the integration of asylum seekers and beneficiaries of international protection:

- a. The approach to the Common European Asylum System should be firmly grounded in a rights-based approach. This means that measures adopted must be consistent with and meet Member State Human Rights obligations, including under the antidiscrimination clause of the 1951 Geneva Convention on the Status of Refugees and General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination.
- b. The extension of the Long Term Residence Directive to cover beneficiaries of international protection is welcomed and, as is stated in the Green Paper itself, will facilitate the integration of the persons concerned. However, ENAR believes the rights of beneficiaries of international protection to equal treatment should be further enhanced by **including in the proposal a general antidiscrimination clause prohibiting any discrimination on grounds of nationality or race or ethnic origin in respect of the rights protected under international and community law.** Moreover, the rights of E.U. nationals to **freedom of movement and establishment** in an area without internal borders should be granted also to beneficiaries of international protection. ENAR is also concerned to see that current restrictions and limitations on the rights of the long term third country nationals either in the member state of residence or with regard to freedom of movement, do not apply to beneficiaries of international protection.
- c. Beneficiaries of international protection should have a **uniform status irrespective of the reasons and grounds for the protection.** Legal status is irrelevant when it comes to equal treatment and respect of fundamental rights. Therefore, further harmonization is needed in order for beneficiaries of international protection to enjoy equal treatment irrespective of nationality, race or ethnic origin with regard to all the rights provided under international and community law including access to employment, housing, education, health, social protection and access to goods and services. **Member states should not be left any discretion to derogate from ensuring access to fundamental rights on the basis of their national laws or policies.** The integration of beneficiaries of

⁸ Results of an ENAR Policy Seminar, Promoting Integration: migration, integration, social inclusion and non-discrimination. Brussels, 1 & 2 March 2007.

international protection currently is and will continue to be seriously hampered if the persons concerned are not recognized the basic right to equal treatment.

- d. Asylum seekers currently face widespread discrimination both in terms of the legal framework and the practice followed in the member states.⁹ The reception conditions Directive 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 in the Directive leaving asylum seekers more vulnerable to racism, discrimination and exploitation rather than supporting their integration. Further harmonization is needed for the adoption of **common standards on reception conditions that will be applicable to all member states without the possibility of derogations in order to facilitate integration**. 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 suggests that in the future legal framework asylum seekers should have **equal access to fundamental rights including equal access to the labour market, vocational training, housing, education (irrespective of age), healthcare and access to goods and services**. Integration measures for asylum seekers are important both for those who are finally granted protection but also for those who return back to their countries of origin as they develop skills and competencies that may be useful in their countries of origin.
- e. Asylum instruments should include the possibility for member states to take **positive actions measures**. ENAR believes that beneficiaries of international protection as well as, particularly, asylum seekers are more vulnerable to racism and discrimination on grounds of race or ethnic origin. Positive action measures are thus necessary for true equality to be achieved.

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⁹ ENAR Shadow Report 2006