



## **Response of the European Network against Racism (ENAR)**

### **Framework Decision on Racism and Xenophobia: Europe cannot afford to fail a third time**

**February 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](http://www.enar-eu.org)*

## **Introduction**

For too long the failure to adopt the proposed Framework Decision on Racism and Xenophobia, has undermined the fight against racism in Europe. After five years of negotiations Europe can no longer afford to ignore its commitment to ‘step up the fight against racism and xenophobia’.

While the European Council has spent years discussing the detailed provisions of the proposed Framework Decision introduced by the European Commission in 2001,<sup>1</sup> ethnic minorities across Europe have been inadequately protected against racial and religious hatred. Racism continues to be the most serious abuse of fundamental rights in Europe, in particular there have been worrying developments in relation to extremist groups and organisations,<sup>2</sup> and the dissemination of hate on the internet.<sup>3</sup> Now more than ever Europe must respond to the most abhorrent expression of the prejudice which exists in our societies.

While most Member States have some legal protections in place to combat racist crime and violence, the scope of the legislation and remedies varies considerable. It remains true that minorities enjoy patchy and inconsistent protection of their fundamental rights across the European Union. There have also been many problems in the realisation of the objective of protection laid down in national law. The law on its own is never enough but must be accompanied by complementary measures, including training and awareness raising with the police and the broader judicial system.

ENAR is concerned that some Member States are not taking the challenge of racism in their societies as seriously as they need to. Consequently it is critical that Europe demonstrates leadership on this issue. We believe that a third failed attempt to agree this instrument would send a disastrous message to the victims of racism, as well as to the perpetrators; and would have the potential to foster a growing sense of impunity for racist hate in Europe.

ENAR has welcomed the commitment of the German Presidency to place this issue back on the European agenda, and we believe that all EU Member States must now step up to their responsibilities and agree this instrument in the coming months.

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<sup>1</sup> On 28 November 2001 the European Commission introduced a proposal for a Council Framework Decision on combating racism and xenophobia, COM (2001) 664 final.

<sup>2</sup> In its report on racism in Europe in 2005, ENAR noted “A rise of right-wing extremism, as well as other forms of nationalism, is evident in a number of countries, such as Denmark, Sweden, Germany, Latvia, Malta and the Slovak Republic”.

<sup>3</sup> In its report on racism in Europe in 2005, ENAR noted “The use of the internet as a tool for the dissemination of racist sentiment, crime and propaganda is particular worrying given that internet crime is not often recorded and the legal difficulties that have been experienced in challenging internet-based criminal activity”.

## **A limited but important step forward**

In ENAR's view the watered down proposal is far from ideal, and we have been disappointed by sustained attempts to weaken its provision in the last five years. When compared to the European Commission Proposal of 2001, ENAR believes that the current discussions run the risk of failing to take sufficient action in a number of key areas, such as:

- Participation in groups and organisations which are involved in promoting racial hatred and violence (as covered by the 1996 Joint Action of 15 July 1996 concerning action to combat racism and xenophobia).
- Public insults and threats of a racist nature (as called for in General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance, of the Council of Europe).
- The need for effective, proportionate and dissuasive sanctions.

ENAR has also been dismayed by efforts to limit the impact of the Framework Directive by introducing exemptions, and in particular an overemphasis on the need to limit its scope in the context of freedom of speech, a fundamental right which is strongly protected in Europe. As well as the exemption introduced for conduct directed at individuals on the basis of their religion.

Recognising the political constraints facing the German Presidency in realising this tool, and given the limitations introduced during the negotiations, ENAR calls for the inclusion of two additional **implementation provisions**, which would enhance the potential of the proposal:

1. The proposal must include a *non-regression clause*, to ensure that its implementation does not lead to the watering down of existing protections, such as that contained in Article 6 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.<sup>4</sup>
2. The Framework Directive should include a provision that its implementation shall not affect any obligation under the *International Convention on the Elimination of All Forms of Racism Discrimination*, as contained in the 1996 Joint Action of 15 July 1996 concerning action to combat racism and xenophobia.<sup>5</sup>

The addition of these two provisions would enhance implementation and provide tools for monitoring the impact of the Framework Decision.

Recognising the limits of the current proposal, ENAR supports the instrument as an important step forward on the road to fully protecting the fundamental rights of ethnic and religious minorities in Europe.

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<sup>4</sup> Article 6 of Directive 2000/43/EC reads "the implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive".

<sup>5</sup> The 1996 Joint Action reads: "Nothing in this Joint Action may be interpreted as affecting any obligations which Member States may have under the international instruments listed below... the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966".

## **The potential to change lives**

The real value of the proposed Framework Decision will be in the actions taken to implement the letter and spirit of its provisions. The *implementation phase* will provide opportunities to respond to the realities facing ethnic and religious minorities in each of the Member States. Key to the successful implementation of the provisions of the Framework Decision is the need to enhance monitoring of racist violence and crime. Despite numerous calls to improve data collection by the European Union Monitoring Centre on Racism and Xenophobia (EUMC)<sup>6</sup> the vast majority of Member States have consistently failed to put in place adequate procedures. Without understanding racist crime and violence it is impossible to put in place effective policies and to evaluate their success.<sup>7</sup> It is essential that the new European Fundamental Rights Agency continue the work of the EUMC in this regard, both on the general subject of racist crime and policing, but also with regard to specifically monitoring the implementation of the proposed Framework Directive.

ENAR is calling on all Member States of the European Union to establish effective mechanisms of *consultation and partnership with NGOs* and broader civil society in the implementation of the proposed Framework Directive to ensure that its provisions respond to the specificities facing ethnic and religious minorities at local and national level. It is crucial that governments engage with those organisations working with the victims of racist crime and violence in order to enhance understanding of how to respond to it, this engagement should be consistent, ongoing and structured.

## **Conclusion**

ENAR urges all the Member States of the European Union to move the fight against racism forward by adopting the proposed Framework Decision on Racism and Xenophobia under the auspices of the German Presidency. ENAR believes that despite the inherent weaknesses of this instrument, the addition of the two implementation clauses would enhance the potential of the implementation of the instrument, a process in which NGOs have a key role to play.

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<sup>6</sup> EUMC (2005) Racist Violence in 15 EU Member States, available at:

<http://eumc.europa.eu/eumc/material/pub/comparativestudy/CS-RV-main.pdf>

<sup>7</sup> In report on racism in Europe in 2005, ENAR noted “Lack of data is an obstacle although there is some evidence that methods of data collection and recording of racist crime are improving... Under-reporting is also an issue affecting the reliability of data collection”.