



MEMORANDUM TO THE GERMAN PRESIDENCY OF THE EUROPEAN UNION

50TH ANNIVERSARY OF THE TREATY OF ROME – A TIME FOR REFLECTION AND ACTION

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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. See: www.enar-eu.org.

INTRODUCTION

“A presidency is an opportunity. Some things you can initiate, some thing you inherit, and some things you pass on”.¹

The 12th German Presidency of the European Union comes at an exciting time for Europe. On the eve of the 50th anniversary of the Treaty of Rome, Europe faces many challenges, not least the ongoing struggle to overcome racism and discrimination experienced by ethnic and religious minorities across the European Union. Much progress has been made in recent years, not least the emergence of a comprehensive European framework to combat discrimination, however racism remains a problem. One that is persistent and evolving. The analysis of ENAR members demonstrates that there is a commonality of experiences of racism across the European Union, even where manifestations may vary. ENAR’s 2005 Shadow Reports particularly highlight 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.²

As Anastasia Crickley, Chairperson of the European Union Monitoring Centre on Racism and Xenophobia(EUMC) recently stated:

While discrimination against ethnic minorities persists across the EU, at the same time more and more initiatives emerge to combat discrimination and racism, both from the public and private sectors. We have come some way, but we still have a long way to go. More targeted policies, the full implementation of EU anti-discrimination law and better data collection systems are necessary.³

The incoming German Presidency of the European Union, has a key role to play in moving Europe forward on the journey towards a Europe free from racism and discrimination. This memorandum seeks to make a number of concrete recommendations in this regard. ENAR looks forward to work with the Presidency in the coming months.

The memo is divided into five broad areas: (1) Equality and anti-discrimination; (2) Fundamental rights and criminal justice; (3) Migration and Integration; (4) Employment and social policy; and (5) Education, culture and youth; and (6) Mainstreaming anti-racism, equality and human rights.

1. EQUALITY AND ANTI-DISCRIMINATION

The German Presidency takes place at a watershed moment in the fight against discrimination in Europe. Ten years after the 1997 European Year against Racism, 2007 is the European Year of Equal Opportunities for All. In recent years much progress has been made towards implementation of a comprehensive legislative framework. However racism and discrimination remain a problem. As outlined by the European Commission in its five year report on the Race Directive (2000/43/EC), while it is still too early to comprehensively assess the new legislation, gaps have emerged in transposition. ENAR members have for many years pointed to the failure of the Directives to address key sites of discrimination, not least in the areas of policing, immigration, and nationality discrimination.

¹ Interview with Chancellor Angela Merkel, Süddeutsche Zeitung, 06.11.2006

² ENAR (2006) European Shadow Report, available at: http://www.enar-eu.org/en/publication/shadow_reports/index.shtml

³ EUMC, Media Release, 28 November 2006, available at: http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp_cat_content&catid=43d8bc25bc89d&contentid=45792815e25f6

The Race Directive has had a significant impact on the European anti-discrimination landscape, however legislation on its own is never enough and must be complemented by awareness raising and capacity building instruments. Europe has a significant contribution to make, consequently ENAR calls on the German Presidency to:

- Ensure that the first Equality Summit to be held in Berlin on 30 and 31 January 2007 sets a high standard for subsequent summits. In particular the Summit should pave the way for new European action in the field of anti-discrimination.
- Ensure that the outcomes of the Summit feed into the Berlin Declaration in recognition of the progress which has been made following the adoption of Article 13 of the Amsterdam Treaty.
- Call on the European Commission to complete the feasibility study on future EU anti-discrimination law as quickly as possible.
- Call on all Member States to ensure that NGOs are actively involved on both the implementation and the evaluation of the 2007 Year.
- Demonstrate leadership by using the Year as a concrete opportunity to raise awareness concerning the rights and obligations of the new German anti-discrimination law in line with Article 10 of Directive 2000/43/EC.
- Discuss the results of the High Level Advisory Group on the social and economic inclusion of ethnic minorities in the Council, if the results are not yet available invite the Chair of the Group Rita Sussmuth to present their preliminary findings at the conference on integration to be held in Potsdam in May 2007.

2. FUNDAMENTAL RIGHTS AND CRIMINAL JUSTICE

Human rights principles are among the core values guiding policy in the European Union. Recent instruments have sought to enhance the implementation of these principles by articulating a focus on fundamental rights; the right to non-discrimination being key among these. These instruments include annual parliamentary reports, a network of independent experts and a fundamental rights agency; all established to protect and promote rights laid out in the Charter of Fundamental Rights of the European Union.

Too often the anti-discrimination and **fundamental rights agendas** are articulated separately in the European context. This institutional reality fails to acknowledge anti-discrimination and freedom from racism as core fundamental rights, as articulated in Article 21 of the European Charter of Fundamental Rights.

ENAR calls on the German Presidency to:

- Offer its full political support to the transitional arrangements for the EUMC which will begin under its Presidency. The emergence of a strong and effective fundamental rights agency is essential.
- Ensure that the views of civil society actors are sought in the adoption of the Fundamental Rights Agency's first multi-annual framework which will be agreed by the Council.
- Ask the Agency to facilitate a preparatory dialogue with civil society in order to explore structures and ideas for the establishment of the 'Fundamental Rights Platform' to ensure an effective body is put in place as quickly as possible.
- In the context of an active foreign policy provide a leadership role in the follow-up to the Durban World Conference against Racism (WCAR), and take a

proactive stance in the discussions for the next world conference against racism in 2009.⁴

ENAR warmly welcomes the indications that the German Presidency will seek to finalise the negotiations on the **Framework Decision on Racism and Xenophobia** in the coming months. ENAR has long advocated for the adoption of an effective European instrument on racism as a crime, and believes that such an instrument is essential in the European context. Consequently ENAR hopes that:

- The German Presidency will secure the adoption of an effective instrument on racist crime, which will facilitate enhanced protections for ethnic and religious minorities in all EU Member States.

Since the 11 September 2001 terror attacks in the USA, and then the London and Madrid bombings, **counter-terrorism** measures have shot up the international and European agendas. For some time concerns have been expressed regarding the link between racism and counter-terrorism measures. The German Presidency has expressed its commitment to increase security in Europe. ENAR welcomes the reminder of the incoming Presidency that ‘we must not lose sight of the need to respect human rights and personal freedoms’. In the context of respecting human rights, ENAR calls on the German Presidency to:

- Pay particular attention to emerging concerns regarding the use of racial and religious profiling in the implementation of counter-terrorism and general policing strategies. According to research conducted by ENAR members across 20 EU Member States: “Racial Profiling is evident in the work of the police” in nearly all Member States of the European Union.

Consequently ENAR calls on the German Presidency to:

- Recognise racism, and in particular Islamophobia, as a source of exclusion and to promote the rights of all ethnic minority communities, as a key element of any strategy aimed at preventing radicalisation.
- Promote active measures and standards to prevent the ‘racialisation’ of the European security agenda, including adopting common standards on preventing the use of racial profiling on counter-terrorism and mainstream policing.

3. MIGRATION AND INTEGRATION

Equal treatment is an integral part of the fundamental right to non-discrimination. Although, in principle, every person is entitled to this right 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”. Xenophobia against non-nationals was recognised as one of the main sources of contemporary racism by the UN World Conference against Racism.

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

⁴ ENAR has recently completed an analysis of the implementation of the Durban Programme of action in the European Union, in particular examining the commitment to implementation a National Action Plan against Racism, half of the European Union Member States have approached their obligations in this regard. For the full analysis see: <http://www.enar-eu.org/en/factsheets/FS29%20-%20NPAR%20-%20October%202006%20EN.pdf>

ensure fair treatment of third country nationals who reside legally on the territory of its Member States.” The same commitment was reaffirmed implicitly in the Common Basic Principles on Integration adopted by the European Council in 2004.

ENAR urges the German Presidency in its work on integration, to pay particular attention to the fundamental rights of third country nationals, and to the principle of integration as a ‘two way’ process as defined by the first Common Basic Principle. Specifically ENAR urges the German Presidency to:

- Ensure participation of migrants themselves in the conference on integration in Potsdam in May 2007.
- Undertake a review in the European Council of the implementation of the 11 Common Basic Principles on Integration.
- Ensure the effective protection of the fundamental rights of undocumented migrants in all initiatives aimed at responding to ‘irregular migration’.
- Demonstrate leadership by signing the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

4. EMPLOYMENT AND SOCIAL POLICY

As the German Labour Minister Franz Müntefering has recently underscored Europe’s social dimension is critical to its overall success, in his words “People expect to get something out of it (Europe)”. Tackling discrimination and the exclusion of all groups who experience discrimination, is essential in order to achieve social cohesion and growth. As such, equality and non-discrimination need to be integrated as crosscutting issues in the Lisbon Strategy and the new Social Agenda. The economic growth needed across the European Union will not be realisable while significant proportions of the population remain excluded or underutilised for arbitrary reasons, such as discrimination

ENAR welcomes the specific focus of the German Presidency on creating opportunities for young people. Frequently young people from ethnic and religious minorities experience multiple forms of discrimination, in effect resulting in compounded disadvantage. It is essential that all policies targeting the effective inclusion of young people, have the capacity to respond to the specific issues facing young people from ethnic minority communities.

Consequently ENAR calls on the German Presidency to:

- Ensure that key social messages from the Open Method of Coordination on Social Protection and Social Inclusion, are fed into the conclusions of the Spring Summit. In particular the conclusions should emphasise the need to overcome racism and discrimination in order to realise the objectives of a social Europe.
- Use the outcomes of the consultation launched on the European social reality to reassess the priorities identified in the ‘growth and jobs’ revised strategy.

5. EDUCATION, CULTURE AND YOUTH

Education is central to many of the policies and priorities identified by the German Presidency, and ENAR welcomes the emphasis which the Presidency has placed on education, particularly in the context of integration strategies. As discrimination is a key barrier to achieving equality of educational outcomes, it is essential that equal opportunities strategies are placed at the heart of all educational initiatives.

The German Presidency comes at a pivotal time in the preparations for the 2008 European Year of Intercultural Dialogue. The Year offers a concrete opportunity to promote

strategies of intercultural dialogue across the European Union; ENAR is convinced that the Year should be closely linked to broader anti-racist strategies, and should be an opportunity to ‘do intercultural dialogue, rather than talk about it’.

ENAR calls on the German Presidency of the European Union to:

- Provide a strong political momentum for the 2008 Year, and enhance the link between the 2008 Year and the 2007 European Year for Equal Opportunities, by including a focus on intercultural dialogue in the Equality Summit in Berlin in January 2007.
- Ensure that the discussion on the forthcoming proposal for a recommendation on a European Qualifications Framework, reflects in particular the concerns and issues which face third country nationals.

6. MAINSTREAMING ANTI-RACISM, EQUALITY AND HUMAN RIGHTS

Many of the big debates facing Europe today do and will continue to have a significant impact on the fight against racism and the situation of ethnic and religious minorities. In recent years there has been increasing recognition that in order to fully realise the fundamental principles of equality and equal opportunities it is necessary to mainstream anti-racism across the policy agenda, at both national and European levels. ENAR encourages the German Presidency to adopt a fully integrated approach to the fight against racism, and to recognise the significance of broader developments on ethnic and religious communities.

In particular the German Presidency has signalled its intention to ‘move the constitutional process forward’. It is essential that the positive ‘acquis’ will not be lost in future negotiations on the future of Europe, and in particular the incorporation of the EU Charter of Fundamental Rights, the reference is minority rights in Article I-2, the article on participatory democracy, and the social and equality mainstreaming clause in part III.

ENAR calls on the German Presidency to:

- Include a specific reference to the importance of the fight against racism and xenophobia as a core value and objective of the European Union, in the context of the ‘Berlin Declaration’ to be issued by the heads of state and government on 25 March 2007.
- The report of the Presidency on the future of the constitution in June must specifically refer to the key aspects of the Constitutional Treaty which must be maintained, and in particular the Charter on Fundamental Rights

The debate on EU **enlargement** has proved contentious in recent times. It remains essential that both the general debate on “integration capacity” and in particular the specific debate on Turkey is conducted in a manner which constructive and contributes to a positive dialogue on diversity in Europe. ENAR is concerned that in some quarters the debate on Turkish membership has fuelled islamophobic, anti-immigrant and racist sentiments. Political leadership and political parties have a key role to play in ensuring that this debate is an open and constructive one. ENAR urges the German Presidency to demonstrate leadership in this regard.