



MEMORANDUM TO THE PORTUGUESE PRESIDENCY OF THE EUROPEAN UNION

REAFFIRMING EUROPE'S VALUES AND AMBITIONS: A TIME FOR ACTION ON EQUALITY

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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

The Portuguese Presidency of the European Union comes at a pivotal point for the EU and for the Trio of presidencies. The Presidency will take the baton of constitutional reform from the German Presidency, taking responsibility for action following the reaffirmation by EU leaders of their commitment to Europe's values and ambitions, including the commitment to the fight against racism, in the Berlin Declaration.

The Presidency faces many important challenges, not least the ongoing struggle to overcome racism and discrimination experienced by ethnic and religious minorities across the European Union. The Berlin Declaration of March 2007 stated that "Racism and xenophobia must never again be given any rein". Much progress has been made in recent years, not least the emergence of a comprehensive European framework to combat discrimination. Nevertheless, 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 most recent Shadow Reports particularly highlighted 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.¹

The second half of the European Year of Equal Opportunities for All 2007 will be the key time for action on equal opportunities and non-discrimination. Legislation is important, but alone it cannot effect change. Policy and practice must follow. The incoming Portuguese 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 and ENAR looks forward to working with the Presidency in the coming months.

The memorandum is divided into seven broad areas: (1) The constitutional/institutional reform process and enlargement (2) Equality and anti-discrimination; (3) Fundamental rights and criminal justice; (4) Migration and Integration; (5) Employment and social policy; (6) Education, culture and youth; and (7) Mainstreaming anti-racism, equality and human rights.

¹ ENAR (2006) European Shadow Report, available at: http://www.enar-eu.org/en/publication/shadow_reports/index.shtml

1. THE FUTURE OF EUROPE: THE CONSTITUTIONAL/INSTITUTIONAL REFORM PROCESS & ENLARGEMENT

The Process of institutional reform of the EU is at a key point. The reflection period is coming to an end and the Troika presidencies have committed to taking forward the reform process. ENAR has followed the debate on the Future of Europe over the last few years and has made key policy interventions aimed to support a democratic union based on fundamental rights with equality not just as a competence, but as a value and objective of the EU.

In a recent speech Frank-Walter Steinmeier representing the German EU Presidency said: “European foreign policy and European defence policy, European solidarity and the social dimension – I have raised these topics because I believe they must be part of every discussion on Europe's future. Because these are topics that will largely determine the success or failure of European policy in the eyes of its citizens.

That is precisely why these issues also feature prominently in the envisaged treaty reform.”²

The Portuguese Presidency will be charged with taking forward the conclusions of the June European Council on the reform process right at the start of its term. ENAR believes that the process must be placed into the context of the promotion of a Europe of “inclusion” and of respect for the fundamental values of equality, fundamental rights and respect for diversity. **The process of institutional reform must be taken forward in a way that sees European Solidarity and the social dimension work for everybody.**

Whatever form the institutional reforms take, 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 to 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 Portuguese Presidency to promote the need for:

- A **specific reference to the importance of the fight against racism and xenophobia** as a core value and objective of the European Union;
- **The full text of the EU Charter on Fundamental Rights** as an integral part of the treaty. Full incorporation is essential for the development of a culture of Human Rights that can contribute to the achievement of “...peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity” (Berlin Declaration, March 2007);

² Speech by Frank-Walter Steinmeier, Federal Minister for Foreign Affairs, on the occasion of the 3rd Joint Parliamentary Meeting on the Future of Europe.
http://www.eu2007.de/en/News/Speeches_Interviews/Juni/0612SteinmeierZukunftEuropa.html

- Article I.47 on **participatory democracy** to be maintained as a crucial instrument in promoting people and civil society's support and involvement in the European construction;
- Safeguarding progress made: By keeping the horizontal clauses on gender equality (III-116), social objectives (III-117), **non-discrimination (III-118)** and services of general interest (III. 122);
- A social protocol/chapter: The idea of adding a social protocol (or chapter) is welcomed. To go beyond mere window-dressing, such a protocol has to incorporate equal opportunities and non-discrimination as central aspects of achieving greater social cohesion and inclusion. There needs to be a **specific focus on anti-racism and integration** as well as recognition that the legal status of third country nationals offers a major barrier to social inclusion and equality.

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 is 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 Islamophobia, 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 Portuguese Presidency to demonstrate leadership in this regard.

2. EQUALITY AND ANTI-DISCRIMINATION

The Portuguese Presidency takes place at an important 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**. The 1997 year produced important actions and outcomes in the fight against racism. The Presidency comes during the second half of the 2007 Year, a time for action on the commitments made. The Presidency has an opportunity to create a legacy through support and engagement in the practical implementation of the Year and in overseeing the production of tangible, real outputs that can make a difference in the lives of those facing discrimination on a daily basis.

In recent years much progress has been made towards implementation of a comprehensive legislative framework and the Race Directive has had a significant impact on the European anti-discrimination landscape. However racism and discrimination remain a problem and there are **gaps in the scope of legislative protection**, including as regards **discrimination on grounds of religion** and belief outside employment and protection against **multiple discrimination**. ENAR is also concerned that the lack of coverage of nationality discrimination, immigration and policing also reduces the coherence of the legislative protection on non-discrimination.³

³ FROM RACISM TO EQUALITY? REALISING THE POTENTIAL OF EUROPEAN ANTI-DISCRIMINATION LAW available at <http://www.enar-eu.org/en/events/directives/index.shtml>

Additionally, legislation on its own is never enough and must be complemented by awareness raising and capacity building instruments. Problems regarding the transposition of the existing provisions are of concern. As outlined by the European Commission in its communication of the 30th October 2006 on the Race Directive (2000/43/EC), **gaps have emerged in transposition** including problems relating to the right to redress for violations, the legal standing of NGOs, lack of sufficient awareness raising activity, and a clear need for more effective data collection. Europe still has a significant contribution to make in moving from European legislation to eradicating discrimination on the ground; consequently ENAR calls on the Portuguese Presidency to:

- Build on the statement in the Berlin declaration that “Racism and xenophobia must never again be given any rein.” and ensure that **tackling racism and xenophobia has a high priority in all Presidency activities**.
- Call on the European Commission to complete the **feasibility study** on future EU anti-discrimination law as quickly as possible and bring forward proposals to address the gaps in the legislative framework, including on the protection of religious minorities and the multiple discrimination of ethnic minorities.
- Call on all Member States to ensure that **NGOs are actively involved** on both the implementation and the evaluation of the 2007 Year, including the closing conference planned for November 2007.
- Demonstrate leadership by using the Year as a concrete opportunity to raise awareness of **non-discrimination and equality as a Human Right**;
- Discuss the results of the **High Level Advisory Group on the social and economic inclusion of ethnic minorities** in the Council with a view to bringing forward concrete recommendations for action.

3. 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.

A Group of Commissioners on fundamental rights was established in 2004 to “drive policy and ensure the coherence of Commission initiatives in the areas of fundamental rights, anti-discrimination, equal opportunities and the social

integration of minority groups.”⁴ **ENAR call on the Portuguese Presidency to make Fundamental Rights impact assessment and the mainstreaming of fundamental rights a priority.**

A key development in the field of fundamental rights and criminal justice has been the adoption by the European Council of a text for a **Framework Decision on Racism and xenophobia**. 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. Despite the weaknesses in the text of the current proposal, ENAR believes that the adoption of this instrument is crucial for the fight against racism and xenophobia in the EU. ENAR will continue to monitor the implementation of the text and advocate for an effective instrument. The Portuguese Presidency will have the responsibility of taking forward this important document and seeing it adopted by all Member States.

ENAR therefore calls upon the Portuguese Presidency to:

- Hold Member States to their commitments to **adopt the Framework Decision** without further delay;
- Urge **consideration of the report of the European Parliament** on the Framework Decision, in particular the insertion of a non-regression clause and provision to ensure that implementation does not affect existing obligations of Member States under the ICERD;
- Ensure **effectiveness of the legislation** following adoption, in particular by:
 - Ensuring sufficient **data collection** on racist crime in Europe through the new Fundamental Right agency;
 - Ensuring effective **dialogue with NGOs** at both EU and national levels in the transposition and implementation of the minimum legal standards;
 - Encouraging Member States to go beyond the minimum standards in the text and build on best practice developed in different countries, especially as regards ensuring the proper investigation and prosecution of racist crime and the prevention of racial profiling;
 - Put in place the mechanism for a comprehensive review within three years, which should involve consultation with NGOs, the European Parliament and the European Fundamental Rights Agency.

Another key change that will take place during the Portuguese Presidency is the completion of the **transformation of the EUMC into the Fundamental Rights Agency**. The emergence of a strong and effective fundamental rights agency, that is able to continue the important work on racism and xenophobia carried out by the EUMC in a broader Fundamental rights framework, is essential.

⁴ Speech of Vice President of the Commission Franco Frattini on the occasion of the opening of the public hearing on the fundamental rights agency. January 2005.

ENAR calls on the Portuguese Presidency to:

- Offer its full **political support** to the transitional arrangements and the new Fundamental Rights Agency that will be fully in place by the end of the year.
- Ensure that the views of civil society actors are incorporated into the Fundamental Rights Agency's first **multi-annual framework** which will be agreed by the Council.
- Urge the Agency to facilitate a **continued dialogue with civil society** in order to ensure adequate and effective structures for the establishment of the 'Fundamental Rights Platform' to ensure an effective body that can enable a constructive and ongoing dialogue 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 2009.⁵

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 dominant rhetoric has a disturbing tendency to link terrorism and illegal immigration leading to **stereotyping and racism**. In the context of respecting human rights, ENAR calls on the Portuguese 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.⁶ In this regard, the forthcoming research by the Open Society Institute Justice Initiative⁷ and the forthcoming General Recommendation No 11 of ECRI⁸ should inform the work of the EU in ensuring the avoidance of ethnic profiling in policing and, in particular, in counter-terrorism measures.

Additionally ENAR calls on the Portuguese 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.

⁵ 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>

⁶ Racism in Europe - ENAR Shadow Report 2005

⁷ The report is due to be published later in the year and will contain an expert analysis of the problem along with recommendations for solutions.

⁸ The consultation on the General Recommendation closed in June and the recommendation is due to be published in 2007

- 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.
- Provide **political leadership** by avoiding the conflation of counter-terrorism and illegal immigration and challenging the linkages, explicit or implicit, that are made between these two distinct areas.

4. MIGRATION AND INTEGRATION

It is a fundamental principle of Human Rights that they apply to “Everyone... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social group, property, birth or other status.”⁹

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”.¹⁰ 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 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 Portuguese 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 Portuguese Presidency to:

- Ensure that all legislative proposals and policies on labour migration and the right to asylum are based on the need to secure fundamental rights and are developed in dialogue with those directly affected, including the conduct of detailed assessment of the impact of proposals on fundamental rights under the **fundamental rights impact assessment procedure**;
- Give political support to the mainstreaming of equality and non-discrimination in measures aimed at integration;

⁹ Article 2 of the Universal Declaration of Human Rights

¹⁰ ICERD General Recommendation number 30

- Establish a properly funded Open Method of Coordination on anti-discrimination, integration and migrant issues enabling **benchmarking** and a **holistic approach**;
- 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.

5. EMPLOYMENT AND SOCIAL POLICY

The social dimension is critical to the overall success of the 'European Project'. It is this that gives the Union its legitimacy among the population. Put simply, "People expect to get something out of it"¹¹. In this context, ENAR very much welcomes the commitment of the Portuguese Presidency to promote a political discussion on the priority and visibility given to combating poverty in the EU. We also welcome the inclusion of a focus on migration and ethnic minorities as part of the **6th Roundtable on Poverty and Social Inclusion**.

The Presidency comes at a key point for the implementation of the **revised Lisbon Strategy**. Member States' second implementation reports on their National Reform Programmes are to be submitted in autumn 2007 and these will be key to inform the updating of the Broad Economic Policy Guidelines. The ENAR ad hoc expert group on social and economic inclusion of disadvantaged ethnic and religious minorities held in March 2007 reflected that:

"...it could be argued that the success of inclusion policies should be measured by their impact on the situation of the most vulnerable groups in society, in other words if a society's public housing policy does not positively impact the situation of Roma, Sinti and Traveller communities, then that policy is not meeting its societal objectives to secure an adequate standard of accommodation."¹²

The report also found that "Disadvantaged groups are often excluded due to structural and systematic discrimination, where individuals are treated differently exactly because they belong to certain groups. The social inclusion agenda runs the danger of leaving the structural foundations of exclusion intact". ENAR's experience is that the National Reports do not sufficiently address issues of discrimination and integration, despite the inclusion of this as one of the seven priorities in the 2005 and 2006 Joint Reports.

¹¹ German Labour Minister Franz Münterfering.

¹² ENAR ad hoc expert group on social and economic inclusion of disadvantaged ethnic and religious minorities. Report published March 2007 available at: http://www.enar-eu.org/en/events/SOCIAL_INCLUSION/final_report.pdf

Consequently ENAR calls on the Portuguese Presidency to:

- Use the occasion of the **6th European Roundtable on Poverty and Social Inclusion** to shape the discussions on addressing poverty and social inclusion of ethnic minorities to reflect the fact that discrimination and structural inequality are both causes and effects of poverty and social inclusion;
- Ensure that the **social inclusion of ethnic and religious minorities**, including the need to overcome racism and discrimination, are given a high priority in the review of the renewed Lisbon Strategy, including in the preparation for the appraisal of the country reports by the European Council;
- Ensure the **inclusion of discrimination and inequality** as part of the social reality stock taking and use the outcomes of the consultation launched on the European social reality to reassess the priorities identified in the 'growth and jobs' revised strategy.

6. EDUCATION, CULTURE AND YOUTH

Education has a vital part to play in addressing the challenge of social cohesion and building a multicultural Europe free from racism and discrimination. It plays a critical role in preparing people for active participation in society, as well as in combating social exclusion and promoting solidarity and tolerance. In this context, young people and adults need to be equipped with the sensitivity and skills required to succeed in diverse societies.

The **Lisbon Strategy and Education and Training 2010** are now key drivers for the education and training systems and provision of member states for the foreseeable future. The priority focus of these on the European Social Model of equity, citizenship and social inclusion is to be greatly welcomed and offers great potential in addressing inequality and racism in the field of education. In the area of implementation however, unless there is a more conscious and overt statement of principle, and an equivalent conviction to take appropriate actions, key concerns remain regarding their capacity to address racism and offer equity to ethnic minorities in education and training.

ENAR will shortly issue a publication on fighting racism and promoting equal rights in the field of education. Key recommendations that the Portuguese Presidency will need to consider will cover:

- The effective use of Community tools to tackle inequality in education for ethnic minority children and young people.
- Mainstreaming race equality in education;
- The importance of Data collection, monitoring and evaluation.

In the context of the report, the crucial work on life-long learning and the proposal for a recommendation on a **European Qualifications Framework** we urge the Portuguese Presidency to ensure full participation of civil society and to ensure that these measures reflect in particular the concerns and issues which face third country nationals as regards access to lifelong learning and recognition of qualifications.

7. 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 Portuguese 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 this context we urge the Presidency to ensure that race equality and the fundamental rights of ethnic and religious minorities are mainstreamed into all areas of policy making, including through the **promotion of the more effective use of the impact assessment procedure.**

CONCLUSIONS

Europe is at a key stage in its development. The 50th Anniversary of the Treaty of Rome has just passed, and the Member States are reaffirming their commitment to and understanding of Europe's values and ambitions. ENAR believes Europe can and will have an important role in the fight against racism for many years to come and this must be reflected in the way in which the Union moves forward. ENAR looks forward to working with the Portuguese Presidency in taking forward the work on these key priority areas in the coming months.