



**MEMORANDUM TO THE SLOVENIAN PRESIDENCY
OF THE EUROPEAN UNION**

SYNERGY BETWEEN ALL MEMBERS OF SOCIETY IN EUROPE

January-June 2008

ENAR'S SEVEN POINTS CALL FOR ACTION FOR THE SLOVENIAN PRESIDENCY

1. On the Future of Europe

Promote successful ratification in all Member States

2. On Equality and Non-Discrimination

*Enforce full compliance with the Article 13 Equality Directives in all Member States
Address gaps in existing anti-discrimination legislation and bring forward effective legislation to
address discrimination beyond employment*

3. On Fundamental Rights

*Establish the power of the EU Charter of Fundamental Rights
Reinforce the effective use of the human rights impact assessment procedure
Ensure that fundamental rights are mainstreamed into all areas of policy making*

4. On Employment and Social Policy

Act upon the systemic links between racial discrimination and social exclusion

5. On Education, culture and youth

*Promote positive dialogue between communities and cultures through the 2008 European Year
for Intercultural Dialogue
Mainstream non-discrimination and equal treatment in the field of education*

6. On Migration and Integration

*Promote a 'rights based approach' within and through the EU agenda on regular and irregular
migration including the European common asylum policy
Apply the principle which sees integration as a 'two way process' in all integration strategies*

7. On Criminal Justice

*Ensure the formalisation of the adoption of the Framework Decision on combating certain forms
and expressions of racism and xenophobia by means of criminal law
Prevent the 'racialisation' of the European security agenda*

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

ENAR welcomes Slovenia as President of the European Union for the first time and as part of the Trio Presidency, which has achieved great results in the last 12 months. The Slovenian Presidency will take on responsibility for deepening the integration process and lay down the new foundations for the Union. The Lisbon Treaty is the first treaty signed by 27 Member States and is now up to a new Member State to take the lead on finishing the process and holding EU leaders to 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 deep-rooted problem. The incidents in Italy in November 2007 and the consequent reaction of the Italian government issuing a decree amending laws on the expulsion of EU citizens surrounded by an extensive media campaign activating hatred and evoking racist assumptions about 'Gypsies' in the Italian public cannot be tolerated if our common goal is to build a Union where all its citizens are equally enjoying full and uncompromised human rights and freedoms as guaranteed by the Treaties.

Furthermore, 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 Reports¹ 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.

Building on the achievements of the 2007 European Year of Equal Opportunities for All, 2008 marks the European Year of Intercultural Dialogue, which offers a great opportunity to strengthen the links between governments and civil society and to support an open and effective dialogue between stakeholders as a principle and as a working method. The incoming Slovenian 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 in close cooperation with civil society. 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.

Reflecting the priorities of the Slovenian Presidency programme, the memorandum is divided into three main areas: the Future of the Union, the Lisbon Strategy, and Freedom, security and justice and seven subsections: (1) The constitutional/institutional reform process and enlargement (2) Equality and anti-discrimination; (3) Fundamental rights; (4) Employment and social policy; (5) Education, culture and youth; (6) Migration and Integration; and (7) Criminal justice.

¹ Racism in Europe – ENAR Shadow Report 2006
(http://www.enar-eu.org/en/publication/shadow_reports/europe2006_EN.pdf)

THE FUTURE OF THE UNION

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

A much celebrated and welcomed achievement of the Trio Presidency is the adoption of the Lisbon Treaty. The reflection period has come to an end, and an agreement has been reached between 27 Member States of the Union. The Slovenian Presidency is determined to finish the reform process and that 2008 sees a successful ratification process across Europe.

Based on the fundamental values agreed upon by the EU leaders, the Lisbon Treaty will enable the EU to emerge from the recent deadlock on the future of Europe. A crucial element of this Treaty is the **incorporation of the EU Charter of Fundamental Rights**. Principles of participatory democracy promoting people and civil society's support and involvement in the construction of Europe, protection of the fundamental right of non-discrimination, minority rights, religious freedoms and social rights are now firmly placed as core values of the Union.

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'²

ENAR believes that **these principles should be applied during the debate on ratification in all countries, as well as in regard to the campaigning for the 2009 European Parliamentary elections** which will begin during the course of the coming year. Given the political shift to the right in many EU countries in recent years, it is essential to ensure that the debate on the adoption of the Lisbon Treaty and the election campaign does not propagate racist and anti-immigrant sentiments and that anti-racism is given a high rank in the election campaign agenda.

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 Slovenian Presidency to demonstrate leadership in this regard.

ENAR calls on the Slovenian Presidency to:

- promote **the application of the principles** of the Reform Treaty to the debates around ratification in all Member States as well as in the run up of the 2009 European Parliament elections;
- promote the establishment of mechanisms **to re-enforce the EU Charter of Fundamental Rights as a key reference and guiding document** for all EU policies and actions and decisions taken by EU institutions;
- ensure a positive and open dialogue firmly based on ensuring human rights protection in the enlargement process with Turkey and Croatia.

² Article 2 of the Reform Treaty

2. EQUALITY AND ANTI-DISCRIMINATION

In recent years much progress has been made towards implementation of a comprehensive legislative framework and the Race Equality and Framework Directive have had a significant impact on the European anti-discrimination landscape. Nonetheless, the quality of transposition and implementation remains problematic in most Member States. The procedure launched in June 2007 by the European Commission against 14 Member States for failure to adequately transpose the Race Equality Directive is an illustration of that situation. ENAR urges the Slovenian Presidency to demand full compliance and to ensure its full engagement in monitoring the implementation of the directives at national level.

The directives offer a high level of protection but **gaps remain in the overall legal framework**, 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 and the exclusion of immigration matters in Article 3. 2. of the Race Equality Directive leaves third country nationals unprotected from much discrimination and also reduces the coherence of the legislative protection on non-discrimination.

The European Commission has made significant steps in recognising the existence of gaps in the current anti-discrimination framework at the European level and the need to address this. In its legislative work programme 2008, the European Commission has announced the proposal of a **directive implementing the principle of equal treatment outside employment**. ENAR believes that this is an important chance to move forward on building a comprehensive legislative framework, securing existing protection and taking further action to address discrimination. Building on the significant work already done by all stakeholders the Slovenian Presidency has a clear opportunity and role in taking leadership in these efforts.

ENAR welcomes the adoption of the **Council Resolution on the Follow-up of the European Year of Equal Opportunities for All** in November 2007, which sets out the importance of strengthening efforts to prevent and combat discrimination. It recalls that non-discrimination and equal treatment are fundamental principles, which should be taken into account in all EU policies and draws attention to the Social Agenda 2005 – 2010, which has a key role to play in promoting equal opportunities.

ENAR calls on the Slovenian Presidency to:

- demand **full compliance with the equality directives from Member States** who have failed to adequately transpose the directives;
- ensure that the **legislative proposal on implementing the principle of equal treatment beyond employment** will be taken forward building on and **securing existing levels of protection and addressing gaps in the current non-discrimination framework**;
- consider the recommendations of the **Council Resolution on the follow-up of the 2007 European Year** and act accordingly in close cooperation with civil society.

3. FUNDAMENTAL RIGHTS

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. ENAR is pleased that the EU Charter of Fundamental Rights is now recognised in the Treaty as legally binding and strongly hopes that the Slovenian Presidency will undertake all necessary efforts in order

to establish the power of the Charter in all policies and actions of the EU internally and in its external relations.

It is of concern however, that Poland and the UK have circumvented their obligations in terms of the EU's fundamental rights and opted out of the Charter. The network's member organisations across Europe are very concerned that the fundamental rights of EU citizens will not adequately protected as a result of this opt-out.

Recent incidents in Italy have also endangered fundamental rights protection and the respect for and recognition of basic human rights of European citizens. The mass expulsion of the Roma and the collective denial of the rights of European citizens to free movement is highly worrying not least in the light of the constitutional reform efforts to establish a Union based on fundamental principles and respect of human rights.

Therefore ENAR calls on the Slovenian Presidency to make fundamental rights protection a real experience in all Member States of the EU by **mainstreaming fundamental rights and non-discrimination and acknowledging that non-discrimination is a core fundamental right** as articulated in Article 21 of the European Charter of Fundamental Rights. ENAR encourages the Slovenian Presidency to adopt **a fully integrated approach** to non-discrimination and anti-racism as core fundamental rights, to **undertake and reinforce effective fundamental rights assessments**, and to recognise the significance of broader developments on ethnic and religious minorities.

In these efforts the emergence of a strong and effective Fundamental Rights Agency (FRA) 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. It is therefore very important that the **Multi Annual Framework of the FRA for 2007-2012 is adopted giving detailed consideration to the recommendations of the Report of the European Parliament**, which sets out that the Framework should include the fight against racism, xenophobia and related intolerance amongst the thematic areas of the Agency's activity and the protection of the rights of persons belonging to ethnic or national minorities. The Report also stipulates that the Agency shall examine the concept of multiple discrimination and deal with issues of this complex form of discrimination.

ENAR therefore calls upon the Slovenian Presidency to:

- **establish the power of the Charter in all policies and actions of the EU;**
- 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;**
- formally adopt the Multi Annual Framework of the Fundamental Rights Agency considering the recommendations of the European Parliament.

THE LISBON STRATEGY: STRENGTHENING THE ROLE OF EUROPE'S SOCIAL DIMENSION

4. EMPLOYMENT AND SOCIAL POLICY

Europe's *raison d'être* is the creation of stable, peaceful and prosperous societies based on democracy, the rule of law and respect for and protection of human rights.

Today's Europe however has undergone profound changes and faces many challenges. The aging population contributes to the fears of an unsustainable Europe. Poverty and inequality persist, unemployment rates are rising and the social and economic inclusion of ethnic and religious minorities remains one of Europe's biggest challenges. Exclusion from employment, health, housing and education continue to undermine the everyday experiences of millions of ethnic minorities across Europe, including the continuous and persistent discrimination faced by Roma, Sinti and Travellers, new migrants, established minorities from immigrant origin and other minority groups. Not only are minorities more likely to experience exclusion but experiences of exclusion are often more severe and extreme.

One of the main findings of the ENAR ad hoc expert group on social and economic inclusion of disadvantaged ethnic and religious minorities held in March 2007 points out that as a general trend across Europe governments do recognize the need for interventions to enable those most disadvantaged to escape poverty and social exclusion but links between discrimination and structural disadvantage as factors of continuing social exclusion are not established. Consequently the social exclusion experienced by ethnic minorities are not addressed appropriately, different experiences of the many groups commonly referred to as 'disadvantaged groups' are not taken into account, disaggregated data is not available, meaning that social exclusion of ethnic minorities remain invisible and thus social inclusion policies are not delivering for the most disadvantaged and excluded in Europe.

In this context, ENAR very much welcomes the **commitment of the Slovenian Presidency to promote the wider social dimension of the Lisbon Strategy** and to put the efforts to fight poverty and social exclusion at the forefront of its Presidency. Europe's social inclusion agenda provides an opportunity which has not yet been fully realised to combat the phenomena of poverty and exclusion of ethnic and religious minorities.

The Open Method of Coordination on social inclusion and social protection, National Reform Programmes and the Employment Guidelines are core tools enabling Member States and civil society to ensure that poverty and social exclusion experienced by religious and ethnic minorities are adequately addressed. ENAR calls on the Slovenian Presidency **to give special attention to the systematic links that exist between social exclusion and discrimination in the revision of the Integrated Guidelines and when examining National Reform Programmes** submitted in autumn 2007. The new three year cycle of the Lisbon Strategy begins in 2008 offering a concrete opportunity to reflect on the progress made at both national and Community level and on whether the Lisbon strategy needs refinement.

These exercise needs to be firmly grounded on the **recommendations of the 6th European Round Table on Poverty and Social Exclusion**, which reinforces the need to mainstream social inclusion across and within policy areas and draws attention to the diverse nature of social exclusion which calls for specific policy design to deal with specific challenges of situations such as ethnic minorities and migrants. The findings also highlight **'active inclusion'** strategy as an adequate framework to strengthen the social OMC and to map priorities for social standards across different policy areas. To achieve policy coherence and to adequately address social inclusion and the integration of people furthest from the labour market active

inclusion policies should complement and be fully integrated into the broader objectives of the OMC on Social Protection and Social Inclusion and the European Employment Strategy.

Consequently ENAR calls on the Slovenian Presidency to:

- 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;
- build on the findings of the **6th Roundtable on Poverty and Social Inclusion**;
- ensure the **inclusion of discrimination and inequality** as part of the social reality stock taking and in the 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 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.

ENAR considers the **creation of inclusive learning environments** as critical in achieving social cohesion and long term competitive growth, which stand at the core of the **revised Lisbon strategy**. Those objectives have been reflected in the **EU's Education and Training 2010** working programme and further elaborated upon in the 2006 Commission Communication on promoting efficiency and equity in educational systems.³

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. As discrimination is a key barrier to achieving equality of access to education and educational attainment, it is essential that **equal opportunities strategies are placed at the heart of all educational initiatives**; in the forthcoming **Green paper on migration and education** and in identifying areas of school education on which joint action at Community level could be effective in the follow up of the public consultation '**European Commission Staff Working Paper 'Schools for the 21st century'**

2008 will be highlighted by the **European Year of Intercultural Dialogue**. This confirms the recognition that within an increasingly multicultural Europe the development of intercultural competences are essential to achieving social cohesion, equality and non-discrimination. Intercultural dialogue contributes to a number of strategic priorities of the European Union such as respecting and promoting cultural diversity; favouring the European Union's commitment to solidarity, social justice and reinforced cohesion. ENAR is convinced that the Year should be **closely linked to broader anti-racist strategies**.

The Year also offers a concrete opportunity to **promote strategies of a vibrant dialogue between civil society, Member States and EU institutions** as the contribution of civil society has been proved to be crucial in developing, implementing and evaluating policies and legal instruments. ENAR encourages the Slovenian Presidency to give a **detailed consideration to**

³ Communication from the Commission to the Council and to the European Parliament on *Efficiency and equity in European education and training systems*, COM (2006) 481.

'The Rainbow Paper' of the Civil Society Platform for Intercultural Dialogue, which was launched on 7 January 2008 at the Opening Conference of the 2008 European Year in Ljubljana. The Rainbow Platform brings together organisations from civil society to 'share effective Intercultural Dialogue practices and to engage with the political process under the European Year of Intercultural Dialogue 2008 and beyond'. To this end the rainbow paper puts forward principles of actions laying down common interests amongst Platform participants. These principles include managing, reducing or eliminating inequality and injustice; building on the intimate connection that exist between culture, diversity and democracy; the understanding and promotion of a participatory learning and decision-making model.

Key recommendations that the Slovenian 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 equality and non-discrimination** in the Lisbon Education and Training 2010 work programme and forthcoming policy initiatives, such as the Green Paper on Migration and Education;
- **develop benchmarks** that can provide guidance to Member States on how to address disadvantage experienced by ethnic minorities and on how to achieve equity in access and attainment in education;
- **disaggregated data collection** as a central element of the strategies related to mainstreaming of non-discrimination and equal opportunities in school systems;
- call on all Member States to ensure that **NGOs are actively involved** on both the implementation and the evaluation of the 2008 Year **building on the approach and principles of action of the Rainbow Paper**;
- demonstrate leadership by using the 2008 Year as a concrete opportunity to raise awareness of **civil participation**.

6. 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'.⁴

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. 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.

Many of the recent developments in the broad agenda of migration policy including the proposed Directive on common standards and procedures in Member States for returning illegally staying third-country nationals and the proposed EU directive providing for sanctions against employers of irregular Third Country Nationals nonetheless have the potential of undermining the basic human rights of third country nationals. While the framework directive on the basic socio-economic rights for all third country workers aims to fill the rights gap, there are concerns that the priority given to immigration control in bringing forward proposals on regular and irregular migration distorts the framework. **Employment and broader socio-economic rights should be provided equally to every member of European societies, without any artificial division based on legal statuses.** Requiring employers to undertake immigration control functions runs the risk of fuelling racism and stereotyping and thus endangers the achievements of the European anti-discrimination framework. In addition, there is a real danger of further re-enforcing, rather than eradicating, the most exploitative elements of the irregular labour market.

These legislative proposals are illustrations of the current discourse which sees migration as a utilitarian and short-term solution to demographic change, whereby migrants are welcome to contribute to the European economy but are treated differently and are restricted in exercising basic human and socio-economic rights. ENAR urges the Slovenian Presidency in its work on migration and integration, to pay particular attention to the fundamental rights of third country nationals and **to follow a rights-based approach which ensures equal treatment of all third country nationals, including undocumented migrants.**

Furthermore ENAR would like to stress the importance of the **principle of integration as a 'two way' process** as defined by the Common Basic Principles adopted in 2004, which should be vigorously applied in all integration policy approaches along with the recognition that **anti-discrimination is both a pre-requisite for, and modus operandi of, successful integration.** ENAR calls on the Slovenian Presidency to give a detailed consideration of these principles and strive to achieve policy coherence between non-discrimination, social inclusion and integration strategies in the run up for the second European interministerial meeting to be held in the second half of 2008.

⁴ Article 2 of the Universal Declaration of Human Rights

Specifically ENAR urges the Slovenian 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 for all third country nationals, including undocumented migrants**;
- give political support to the **mainstreaming of equality and non-discrimination** in measures aimed at integration and to **achieving policy coherence** between non-discrimination, social inclusion and integration strategies;
- ensure that migration and integration policies and legislative proposals are developed and implemented **in close cooperation with civil society**;
- demonstrate leadership by **signing and ratifying the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families**.

7. Criminal Justice

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 combating racism and xenophobia by means of criminal law**. 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. The final text was agreed by all 27 Member States at the Justice and Home Affairs Council on 19-20 April 2007. It is essential that the Slovenian Presidency takes on the responsibility of taking forward this important document and **demands that national governments lift parliamentary reservations** currently in place on the proposal so that the adoption can be formalised and **published in the Official Journal of the European Union without any further delay**.

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**. The challenge before the Slovenian presidency is to secure the effectiveness of the counter-terrorism policy by ensuring that it **is carried out within the context of the international human rights framework and in a non-discriminatory manner**.

ENAR calls on the Slovenian Presidency to:

- hold Member States to their commitments to **formalise the Framework Decision** without any further delay;
- ensure that counter-terrorism policies are developed and implemented in the framework of human rights and anti-discrimination and **that anti-racism is a key element in counter-terrorism strategies**;
- design, implement and evaluate counter-terrorism measures in an open and transparent manner, which takes into account the **perspectives of all religious or ethnic communities in the EU**;
- 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 and religious profiling** on counter-terrorism and mainstream policing.

CONCLUSION

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 Slovenian Presidency in taking forward the work on these key priority areas in the coming months.