



## **Letter from the European Network against Racism (ENAR)**

**To: Members of the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE)**

**Regarding:**  
**Framework Decision on Racism and Xenophobia**

**November 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)*

8<sup>th</sup> November 2007, Brussels

**Dear Member of the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE),**

ENAR is writing to you in advance of the Committee vote on the *Draft Report on the proposal for a Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (11522/2007 – C6 0246/2007 – 2001/0270(CNS)) (Renewed consultation) Rapporteur: Martine Roure*, due on Monday 12<sup>th</sup> November, to express our views and support for key amendments that are proposed.

ENAR has campaigned over the past number of years for the adoption of the Framework Decision, most recently leading a campaign endorsed by organisations from across Europe.<sup>1</sup> ENAR sees this as an important opportunity to address the lack of adequate protection against racial violence and hate crime in the EU. 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'.

Racism continues to be a 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.

**Specific comments and recommendations**

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 proposals run the risk of failing to take

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<sup>1</sup> See for example the joint statement issued in November 2006 at: <http://www.enar-eu.org/en/press/2006-11-30.pdf> and ENAR Policy position of February 2007 [http://www.enar-eu.org/en/policy/feb07\\_framework\\_decision.pdf](http://www.enar-eu.org/en/policy/feb07_framework_decision.pdf)

<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".

sufficient action in a number of key areas. 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.

However, recognising the political constraints faced in realising this tool, and given the limitations introduced during the negotiations, **ENAR supports**

- 1. Amendment 1 re-introducing Recital 9 a (new)**“(9a) An offence concerning racism and xenophobia committed in the exercise of a professional activity, should be considered as an aggravating circumstance since it entails an abuse and is particularly reprehensible.”

This clause was included in the previous draft, and is essential in recognising that **when a person is acting in a professional capacity they have a particular responsibility** to ensure that they treat all people equally and that as such racist or xenophobic acts committed in the exercise of a professional activity should be regarded as particularly reprehensible.

- 2. Amendment introducing Article 7 a (new) regarding minimum provisions:**

“Minimum provisions

“1. Member States may adopt or maintain a higher level of protection in the fight against racism and xenophobia than that arising from the provisions of this framework directive.

2. Implementation of this framework decision shall in no circumstances constitute grounds for lowering the level of protection already ensured by the Member States in the areas governed by this framework directive.

3. Nothing in this framework decision may be interpreted as affecting any obligations incumbent on the Member States under the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966. The Member States shall implement this framework directive in line with those obligations.”

ENAR has consistently called for the inclusion of a **non-regression clause**, 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>. **This clause is essential to ensure that implementation does not lead to the watering down of existing protections.** ENAR has also consistently asserted that 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

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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”.

15 July 1996 concerning action to combat racism and xenophobia.<sup>5</sup>

- 3. Amendment 8 to Article 10, paragraph 3**, adding the **requirement of consultation** with the European Parliament and that the views of NGOs and the European Union Fundamental Rights Agency should be taken into account in the 3 year review of the Framework Decision.

ENAR believes that this is essential if the Review is to be an effective tool in assessing the effectiveness of the Framework Decision in achieving its potential as an important step forward on the road to fully protecting the fundamental rights of ethnic and religious minorities in Europe.

### **The potential to change lives**

ENAR believes that if these amendments are adopted, the potential of the Framework Decision will be greatly enhanced. 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> (now the EU Fundamental Rights Agency) 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>

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 response to it, this engagement should be consistent, ongoing and structured.

### **Conclusion**

ENAR urges the European Parliament to continue its work to see the adoption of an effective instrument. ENAR believes that despite the inherent weaknesses of this instrument, the addition clauses proposed 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>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”.

<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”.