ENAR’S SIXTH EUROPEAN EQUAL@WORK SEMINAR

REPORT

Brussels, 4 December 2014

EQUALITY DATA COLLECTION IN EMPLOYMENT AND THE WORKPLACE

european network against racism
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For this sixth annual Equal@work seminar, ENAR and its partners have chosen a subject at the core of successful diversity management policies, although it has the reputation of being very technical. This reputation is justified, but equality data collection is also a political subject. In the realm of diversity management, there are indeed many themes and fields for action. Precisely for this reason, equality data collection is connected to all of them. How can we undertake action if we cannot name the problems, and measure the results?

This publication builds on the work ENAR has done with its partners via its Equal@work Platform as well as its unique expertise in the field of equality data collection. It comes in particular following a key conclusion of ENAR’s 2013 Equal@work seminar on the glass ceiling for ethnic minorities, which clearly highlighted the need for equality data collection to document the phenomenon and measure progress made in tackling this specific form of discrimination in career progression. The main conclusion of last year’s Equal@work seminar was that data were needed to take the next logical step in promoting diversity. Equal@work remains a small-scale, value-driven platform where practitioners can have the necessary technical conversations regarding diversity in a supportive club atmosphere. In doing so, good practices can be developed, encouraged and applied across all business sectors. The multi-stakeholder approach of Equal@work is crucial to achieving this.

At the same time, Equal@work is an ambitious project. The goal of the Equal@work Platform is to devise policies that answer the needs of both employers and minorities, acting as ENAR’s laboratory and feeding into its advocacy. Based on quality exchanges with social partners and relevant stakeholders, the platform empowers ENAR to disseminate expert knowledge and policy solutions. This year again, talents and commitments were present in the room, seeking practical and transferable solutions to be applied in the company next door, and disseminated across Europe.

We are very grateful to all the speakers and participants who contributed to the discussion and shared their expertise, insights and solutions for change, and enabled this report to be produced. We also thank our key partners for their commitment and continued support: the European Commission, the Open Society Foundations, Adecco Group, L’Oréal and Sodexo.

Sarah Isal
ENAR Chair
Since 2009, ENAR has been working closely with employers, NGOs and public authorities to facilitate the access of workers from ethnic minority and migrant backgrounds to the labour market. Since then, subjects as diverse as monitoring diversity from the employer’s perspective to addressing reasonable accommodation have been examined. One of the main characteristics of ENAR’s work in this field is the attention its members pay not only to theoretical debates but also to the real practical issues that impact on individuals as they seek to make a positive influence on companies’ recruitment behaviour.

The Equal@work conference in 2010 looked at issues around monitoring diversity and considered employers’ perspectives. The 2011 conference looked at reasonable accommodation of cultural diversity in the workplace and at what is being done on the ground by companies. In 2012, the conference looked at third country nationals’ ability to access the labour market, and in 2013, at the glass ceiling for ethnic minorities. Following these meetings, a number of recommendations were put forward to relevant stakeholders at all levels.

Over the years, ENAR has worked to ensure the social inclusion of ethnic and religious minorities and migrants and to enable their full participation in the EU labour market. Since 2009, ENAR has been actively transferring and testing good diversity management practices in different national contexts, in collaboration with its members and corporate partners in a multi-stakeholder dialogue, thereby broadening respective horizons, generating trust and inspiring innovation, from European to local levels.

ENAR has succeeded in establishing a trusting network of key international companies, trade unions, public employers, academia and civil society organisations that develop innovative approaches to diversity management, which became the Equal@work Platform in 2011.

The Equal@work Platform aims to provide innovative solutions to combat racial discrimination in employment. At the European level, stakeholders:

■ anticipate future trends regarding diversity in the labour market;
■ share best practices and facilitate mutual learning;
■ design new projects and actions; and
■ provide feedback and recommendations to European policy makers.
For a policy-driven, advocacy organisation like ENAR, it is important to engage in a collective reflection to map the right questions. Identifying the right questions is the best way towards significant answers and real change. What is a right question? It is a question that makes enough sense to trigger answers, and to shake our reflections. For policy makers, it is a question that can result in serious evaluation of existing schemes, and in achievable proposals for change.
Equality data collection, a working definition:

Equality data collection refers to all types of disaggregated data used to assess the comparative situation of specific groups at risk of discrimination, design public policies so that they can contribute to promoting equality and assess their implementation. Such data can be collected through different techniques, i.e. in the framework of public statistics (census, administrative files), ad hoc surveys, internal monitoring by companies or public administrations, judicial system data, and data from complaints received by equality bodies.

**The right questions**

1. Why collect equality data?
2. How can it be useful for employees, for employers?
3. How can it improve life in the organisation?

**What types of good practices can we define together?**

- **What to collect?**
  - What principles can we agree on?
  - What are the relevant legal standards?
  - What is the scope of data collection?

- **How to collect it?**
  - Which technical solutions can we use?
  - Can we name cost-efficient solutions?
  - Can we share data collection tools?

- **What data analysis?**
  - What benchmark can we use?
  - What level of detail is needed?
  - Is there an optimum relevance level?

**Addressing specific questions**

- What are the specificities of data collection in SMEs?
- What about working with specific communities (e.g. Roma)?
2. SETTING THE FRAME:
THE EQUALITY DATA INITIATIVE

The Equality Data Initiative was presented by Claire Fernandez, ENAR Deputy Director for Policy, and enabled participants to have an overview of recent research undertaken on equality data collection.
In 2014, ENAR was involved in two research projects on equality data collection:

- The first is ENAR’s publication “Measure, plan, act: How data collection can support racial equality”, which includes a survey of ENAR members and other NGOs, as well as legal and empirical data on existing equality data collection practices. The publication also proposes a number of good practices/cases studies in this field.

- ENAR also contributed to consultations with community representatives and civil society organisations at the national level (in Bulgaria, France, Germany, Hungary, Ireland, Romania and Sweden), which were included in the report “Ethnic Origin and disability data collection in Europe: measuring inequality – combating discrimination”, published by the Open Society Foundations and produced by the Migration Policy Group.

Nobody questions the fact that data collection has been very useful in highlighting gender discrimination issues like the pay gap or the glass ceiling effect. The reports mentioned above highlight that other sensitive data (i.e. data revealing ethnic origin or religion) need exclusive consent from the subjects of data collection. This is one of the reasons why the collection of data disaggregated by ethnicity or religion can often be controversial. But that does not mean that it should be regarded as impossible.

One interesting point in both reports is that a growing number of people at risk of discrimination actually want equality data to make their situation visible and to enable a comparative assessment of this situation. The research also shows that:

- All countries collect different elements of sensitive personal data in direct or indirect ways. The data generated do not always comply with data protection rules and cannot be used for equality purposes.

- In most countries, a third party decides who should be identified as belonging to an ethnic or religious minority.

- Most of the time, data collection takes place without the consent of the people whose data are being collected.

- Data collection is also carried out according to proxies, which are imprecise in capturing discrimination based on ethnic origin or religion. Proxies used include:
  1. Names/patronymics;
  2. Identification by community leaders, teachers or any other professionals;
  3. Criteria of migration background (nationality of parents/grandparents);
  4. Language spoken at home/mother tongue.

The reports also highlight the concerns expressed by ethnic and religious minorities regarding the use of the data. This can explain, in some cases, reluctance to supply the data in the first place. It also underlines the importance of transparent aims and processes for...
data collection so that it is really used to help end discrimination. Ideally, minorities should not only be consulted; they should also be empowered to participate in data collection and data analysis efforts. The reports also insist on the principle of voluntary self-identification based on consent, an “opt in”: you have the right to self-declare, but you are not obliged to. Some case studies illustrate these points:

- In **Ireland**, efforts were made to **empower Traveller communities**, stressing the importance of taking part in the national census and to declare themselves as Travellers. Various methods were used to implement this strategy, such as appointing Travellers themselves as enumerators to encourage a higher response rate.

- In the **United Kingdom**, data collection is done through **self-identification surveys and the census**. Administrative data can also be used to fill the gaps, such as school registers, hospital files etc. Forms all have self-identification processes that can be used to cross-reference. In the UK, data collection – which was a demand of minorities in the first place – is seen as part of the equality process of employers, and data are used to plan equality policies and act/report on them.

Unfortunately, in some cases, public money was spent on surveys that did not ask useful questions to capture the actual issues, or that were not conducted in a community-inclusive manner. Subsequently, ENAR joined the Open Society Foundations (OSF) and the Migration Policy Group (MPG) to provide useful guidelines for safe and inclusive equality data collection.


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This section identifies the principles which should underpin equality data collection and presents some data collection practices put forward by participants.
The principles below are based on the exchanges held in the workshops of the sixth Equal@work seminar:

- **The freedom to self-identify** is fundamental, including when data collection processes include the aggregation of some categories at later stages of data processing. This is why ethnic minority communities need to be consulted on categories, especially on the question of combining categories. It is important to note that respondents should be able to choose multiple and intersectional identities.

- **The voluntary character** of responses goes together with the freedom to self-identify. Measures based on arbitrary categories, particularly when based on proxies such as patronyms or nationality, violate both principles.

- **The informed consent** of data collection subjects must always be a guiding principle. The absence of procedures to ensure that participants give their informed consent is a characteristic of unacceptable practices such as racial profiling.

- **Community consultation or participation** in the definition of equality data processes is fundamen-

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3.1. Some fundamental principles to keep in mind

The principles below are based on the exchanges held in the workshops of the sixth Equal@work seminar:

- **The freedom to self-identify** is fundamental, including when data collection processes include the aggregation of some categories at later stages of data processing. This is why ethnic minority communities need to be consulted on categories, especially on the question of combining categories. It is important to note that respondents should be able to choose multiple and intersectional identities.

In Belgium, the Flemish public employment agency VDAB (Vlaams Dienst voor Arbeidsbemiddeling en Beroepsopleiding), tried to collect data based on the “allochtonic” category to provide extra support. However, the process was hampered by the lack of consultation of the data collection subjects, and as a result, by the fact that people did not identify with the category proposed, which could be understood as a stigmatising label.

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5 Third-party identification refers to the assignment of persons to a given ethnic or religious category, or to a proxy identity (e.g. nationality of parents), chosen without consulting these persons and possibly without their consent.
tal. It is a means to work on the respect of the three previous principles. It is also a way to facilitate the tailoring of questions capturing real-life experiences of discrimination.

- **Anonymity** or early stage anonymisation are guarantees related to personal data protection. The purpose of equality data collection is absolutely not to allow third parties to personally identify members of ethnic or religious communities.

- **The respect of the legal framework** is important. Legal frameworks may condition the collection of data to certain limitations, but they also contribute to guaranteeing personal data protection.

- **Well-thought technological choices** are often part of data collection processes. They may imply costs, for example to establish an efficient IT system. They also have implications in terms of data protection, and choices in this area must always seek to respect data protection standards.

To go further, a useful reference is provided by the Equality Data Initiative project run by the Open Society Foundations (OSF), the Migration Policy Group (MPG) and ENAR. The Equality Data Initiative partners have written a Draft Commission Recommendation on the processing of data revealing disability, ethnic or racial origin for the purposes of monitoring and implementing equal treatment irrespective of disability, ethnic and racial origin. Shorter “Guidelines to collect and use equality data to fight discrimination” have also been produced. Both documents clearly substantiate the need for, and the possibility to collect equality data. They provide definitions and core principles to be applied:

- self-identification, voluntary participation in data collection, confidentiality of the data, informed consent of participants and community participation throughout the process. Both documents are available upon request.

In the United Kingdom, people trust the process of data collection, including in employment and recruitment matters. People are asked questions related to religion, ethnicity, sexual orientation, etc. If they are unsuccessful in their job application the data is held for a year and then destroyed. People by and large trust this system, as the reason for data collection is to provide a better service and prevent discrimination.

A specific example is provided by the application of the Equality Act of 2010. The Act includes an obligation for all public bodies to set specific and measurable equality objectives for themselves, at least every four years. It also includes an obligation to publish relevant and proportionate information demonstrating their compliance with this public sector equality duty, which implies the collection of equality data on the following characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race including ethnic or national origin, colour or nationality, religion or belief, sex and sexual orientation. The Equality Act clarifies that legal standards on data protection must always be respected.

For trade unions’ advocacy and litigation strategies, data collection is often a resource to establish the existence of discrimination. To be successful, evidence is needed, as assumptions are not sufficient to prove discrimination.

For companies, the same logic works in reverse if they want to prove that their diversity promotion actions have positive results.

3.2. Learning from existing data collection practices

The table below is based on the practices described by the participants of the sixth Equal@work seminar:

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<th>Key principles</th>
<th>Mistakes and dangers</th>
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<tr>
<td><strong>Clarify the objectives:</strong> Ensure that the policy</td>
<td><strong>Unclear objectives:</strong> Collecting data cannot be performed only for the sake of collecting data. Unclear objectives can result in the implementation of wrong methodologies and in a lack of trust.</td>
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<tr>
<td>goals justifying data collection are fully and clearly spelled out.</td>
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<tr>
<td><strong>Create confidence:</strong> Clarify the aim of data collection, based on dialogue with relevant minority groups.</td>
<td><strong>Unclear categories and concepts:</strong> This can lead to mistrust and unsatisfying participation in data collection processes. Note that uncertainty on definitions can be due to the existence of consensus on concepts in the business sector or among policy makers.</td>
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<tr>
<td><strong>Foster common understanding:</strong> Give members of ethnic minority groups the possibility to understand the methodology chosen.</td>
<td><strong>Refuse the possibility to self-identify:</strong> This is important for ethnic and religious minorities, but also for other grounds of discrimination, such as gender, where offering only binary choices may not reflect the reality.</td>
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<td><strong>Promoting skills and competence:</strong> Establish a link with diversity management, and the legitimate purpose of recognising existing competence, as opposed to only looking at people’s minority backgrounds.</td>
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The Council of the European Union, as a recruiter and an employer, collects data on gender, age and nationality only. The Council has had an Equal Opportunities Office since 2010. It collects data on gender to facilitate exible working arrangements. The Council also needs to be careful that specific nationalities are not over-subscribed/over-represented, with the idea that the staff that should reflect the make-up of the EU. However, this logic does not apply to ethnicity or religious affiliation. Regarding disability, applicants are asked if there are any special needs requirements, resulting in the production of some statistics on disability, for internal use.

In the workshop, the remark was made that some minorities, such as Roma, could not benefit from the Council’s recruitment policies. It is for example impossible to select Romani language in a recruitment competition, despite the fact that it is part of Europe’s diversity: this language is not one of the official languages of the Union.
4. RECOMMENDATIONS:
TOWARDS STANDARD SETTING FOR EQUALITY DATA COLLECTION ON THE GROUNDS OF ETHNICITY AND RELIGION OR BELIEF
4.1. Recommendations at European and national levels, and to employers’ organisations

General recommendations:

■ Take gender and disability policies as examples of areas where data collection is better developed, and where the business case for diversity is already made by institutions.

■ At all levels, stakeholders should devise coherent action plans with realistic timelines to ensure that policy and practice change actually happens. Data collection on ethnicity is a complex process and it cannot be rushed or poorly thought out.

Specific recommendations on equality data collection and equality in employment:

■ To European Union institutions:

1. The European Commission should make the business case for equality data collection, targeting Member States and employers’ organisations.

2. Include indicators and targets related to ethnic and religious diversity in the frame of the EU 2020 strategy.

3. Adopt a common EU framework for the collection and analysis of reliable and comparable disaggregated equality data for the purpose of combating discrimination, including in employment.

4. Set up common EU standards on equality bodies ensuring a broad mandate to cover employment, the possibility to initiate court proceedings either in the victim’s and/or their own name and adequate financial resources, the capacity to undertake equality data collection to measure discrimination, as well as the resources to fulfil their task in an independent and effective manner.

5. Conduct in-depth qualitative and quantitative research and analysis on the effects and impact of austerity measures on marginalised groups in society, including migrants and ethnic and religious minorities (with a focus on the situation of women). A coherent and transparent consultation with relevant organisations and stakeholders should be foreseen to ensure the full participation of the parties directly concerned.

6. Introduce controlling mechanisms at the national level to strengthen standard setting initiatives such as diversity charters and encourage the development of diversity labels as effective monitoring tools. Promote existing pan-European diversity labels taking into account ethnic and cultural origin.

■ To national authorities:

7. Implement Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups, empha-
sising the competitive advantage for companies pursuing diversity in their policies.

8. Collect equality data and monitor labour market indicators to measure equality, which include the employment position of migrants and minority groups, in respect of privacy and fundamental rights standards.

9. Ensure stable and adequate resource allocation to National Human Rights Institutions and equality bodies so that they can pursue the missions they are entrusted with, including the production of data and reports on discrimination.

10. Ensure public sector employers have a positive equality duty, which implies the duty to recruit professionals from migrant and minority groups and the duty to mainstream diversity in public procurement policies (ensure that external contractors implement diversity management policies with a focus on ethnic and religious minorities and migrants).

11. Develop national/regional standard setting initiatives such as diversity charters and ensure control mechanisms for the implementation of such initiatives. Incomplete implementation should not give way to claiming official participation in such standard setting initiatives at national level.

- To employers:

12. Build on the success of the positive profitability impact of gender parity at board level.

13. Build on existing advanced models developed by national employers’ organisations (e.g. in Scandinavian countries).

14. Mainstream the fight against racism in corporate social responsibility and diversity strategies that include data collection schemes.

15. Monitor and review recruitment, progression and retention of workforce by equality strand in order to identify direct or indirect discriminatory practices and adopt corrective measures to reduce inequality in each of these areas. To this effect, collect equality data in respect of privacy and fundamental rights standards.

16. Develop clear internal regulations against racism, related discrimination and harassment in the workplace. These regulations should include clear information for employees who are victims or witnesses of discrimination, internal remedy procedures and the establishment of a complaint desk/trusted representative to assist victims in reporting discrimination cases either to court or to equality bodies.

17. Sign and implement diversity charters, which exist in several EU Member States and which enable companies to share good practices in the recruitment of migrants and ethnic minorities. Implement diversity labels where they exist (such as the AFNOR certification in France or the European Holistic Diversity Management Certificate).
To trade unions:

18. Develop and promote good practices in monitoring and addressing racism and related discrimination in employment, including on the grounds of culture/religion.

19. Place racism and related discrimination in employment, as well as its measurement through data collection, on the agenda in social dialogues with both the government and employers’ organisations.

20. Develop internal strategies to support delegates in addressing racism and related discrimination within trade union structures and affiliates, and in supporting victims of racism and related discrimination in the workplace.

To equality bodies:

21. Proactively collect and publish data on court cases and complaints concerning discrimination in employment and disaggregate data by ground of discrimination and field of complaint.

22. Pro-actively conduct research on ethnic and religious minorities’ discrimination experiences in employment by using surveys to overcome underreporting of discrimination cases.

23. Launch public campaigns to better inform both employers and groups of victims of discrimination about anti-discrimination legislation, complaint procedures, the importance of reporting, as well as about relevant developments in non-discrimination case-law.
4.2. An assessment grid for secured and inclusive data collection in employment

This is a check-list of legal criteria for employers wanting to develop a data collection mechanism. Fulfilling the criteria in the table will enable them to ensure that they comply with the law. They should consult their data protection authority for full validation, but the check-list will help them secure compliance with the requested legal criteria.

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<thead>
<tr>
<th>Principles</th>
<th>Implementation</th>
<th>Notes</th>
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<tr>
<td><strong>General</strong></td>
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<tr>
<td>1. <strong>Self-identification</strong></td>
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<td>Identification based on the personal perception of the data subject’s identity</td>
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<td>2. <strong>Voluntary response</strong></td>
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<td>Individual right to opt in for equality data collection</td>
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<td>3. <strong>Anonymity or early stage anonymisation</strong></td>
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<td>Data are collected on truly anonymous basis or are anonymised early in the process (use of codes, etc.)</td>
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<td>4. <strong>Informed consent</strong></td>
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<td>Individuals receive clear and transparent information on the purpose of equality data collection and give explicit consent (no link with performance evaluation, remuneration, etc.)</td>
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<td>5. <strong>Community consultation</strong></td>
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<td>5.a) topics:</td>
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<tr>
<td>1. definition of potential equality data collection purposes</td>
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<td>2. naming of categories</td>
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<td>3. identification of question sets based on the agreed equality data collection purposes</td>
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<td>4. participation in the data collection processes (hiring/selecting/training minority members as data collectors)</td>
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<td>5. analysis and dissemination of data</td>
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7 The following grid is based on the Equality Data Guidelines developed by the Migration Policy Group in 2014/2015 through consultation with experts and officials engaged in the fields of data collection, data protection and anti-discrimination law, representatives of groups at risk of discrimination as well as of national equality bodies. The guidelines contain recommendations for the development, collection and use of equality data and draw from conclusions of the Equality Data Initiative (a joint project of the Open Society Foundations, MPG and ENAR), which are included in the report Ethnic and Disability Data Collection in Europe, available at: http://www.opensocietyfoundations.org/sites/default/files/ethnic-origin-and-disability-data-collection-europe-20141126.pdf. The guidelines were not published at the time of printing this report.
### Key Recommendations

**Principles**

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<th>Implementation</th>
<th>Notes</th>
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5.b) Stakeholders (where relevant):
- 1. Trade unions
- 2. Security and Hygiene Commissions
- 3. Affinity groups
- 4. Employee representatives
- 5. Minority employees
- 6. Local/national anti-racism NGOs and minority-led NGOs
- 7. Data protection authorities
- 8. Equality bodies
- 9. National statistical institutes

6. Right to choose multiple and intersectional identities

7. Components to be taken into consideration when designing categories on ethnic/racial origin*
- Geographic origin (including historical origin/descent)
- Languages spoken
- Culture
- Religion

8. Discrimination experience*
Auto-hetero perception based on experience of discrimination and perception by others (i.e. asking the data subjects to identify the characteristics they believe that the majority attributes to them)

*These points need to be implemented according to the principle of self-identification
Thursday 4 December

10:30 - 10:35  
Introduction and welcome words  
■ Michael Privot, Director of ENAR

10:35 - 10:45  
Action in groups  
■ Pascal Hildebert, Facilitator

10:45 - 11:00  
Setting the frame and feedback from the ENAR-OSF high-level policy symposium on equality data collection
■ Claire Fernandez, Policy Director of ENAR

11:00 - 12:30  
Working groups I: What are the data collection practices in the public and private sectors? Focus on gender, disability and ethnicity

12:30 - 13:15  
Networking lunch

13:15 - 14:00  
Feedback from the working groups in plenary  
Presentation of an equality data collection framework

14:00 - 15:30  
Working groups II:  
1) How to develop practical and sensitive solutions for equality data collection on the grounds of ethnicity and religion or belief in the short and longer terms?  
2) What should be our key advocacy messages towards EU institutions?  
3) Agreeing on the next steps

The European Network Against Racism (ENAR) stands against racism and discrimination and advocates equality, solidarity and well-being for all in Europe. We connect local and national anti-racism NGOs throughout Europe and act as an interface between our member organisations and the European institutions. We voice the concerns of ethnic and religious minorities in European and national policy debates.

Visit ENAR’s website: www.enar-eu.org