



European Network Against Racism
Réseau européen contre le racisme
Europäisches Netz gegen Rassismus

Rights and Protection of Victims of Crime & Violence

Preliminary comments of the European Network Against Racism
on the Commission Victims' Package Consultation Document:
Taking action on Rights, Support and Protection of Victims of
Crime and Violence

September 2010

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The European Network against Racism (ENAR) is a network of some 700 NGOs working to combat racism in all EU Member States. ENAR is determined to fight racism, racial discrimination, xenophobia and related intolerance, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national and European initiatives.

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Introduction

ENAR welcomes this opportunity to contribute to the debate focusing on the rights of victims which will result in a Directive on minimum standards in the first half of 2011. This is an important opportunity to reshape the way the European Union approaches victims' needs throughout Member States.

In this paper we primarily respond to the questions in light of the needs of victims of hate crime. Every day ethnic and religious minority groups face racist crime and violence. Often this reality is at worst denied, and at best underestimated. The most pervasive racist violence in Europe is also perhaps the most banal and unorganised, however that is not to suggest that serious and organised racist crime does not exist. Despite the lack of data and information on racist crime and violence there is no doubt that they are serious concerns in the European context. ENAR's 2007 and 2008 Shadow Reports on racism from a number of countries report an increase in racist violence and crime including Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg and the UK¹.

Therefore it is imperative that the new package of victims' rights takes into account the seriousness of hate crimes and provides the necessary safeguards to victims. ENAR hopes that the European Commission sees it as an opportunity to address the specific needs of victims of hate crimes.

Each act of hate crime inflicts numerous hurts and involves many victims. Understanding the greater hurts involved is vitally important to inform effective intervention and support with victims and victimised communities. Therefore, it is essential that specific provisions are put in place to meet the needs of victims.

These priorities are drawn from a wide range of debates within the ENAR network and are based upon the evidence that we have gathered over the past 10 years of working together against racism.

Key Commission Consultation Questions

QUESTION 1: What are the main obstacles and problems faced by victims of crime or violence in relation to the five categories of needs (Recognition, Protection, Support, Access to Justice, Compensation and Restoration)?

ENAR RESPONSE:

⇒ **Recognition**

One of the fundamental problems facing victims of racist violence is that a crime is wrongly classified as an aggravated assault or another form of assault rather than being identified as a hate crime. This has a significant effect on the victim (see below), the subsequent criminal investigation and the response of the country in general to hate crimes. For example, if the country collects data on hate crimes, the incident is not entered in a correct manner which distorts the figures and does not accurately reflect the severity of racist violence and crime in the country concerned.

¹ ENAR, 2007 Shadow report on racism in Europe (2008), ENAR, 2008 Shadow report on racism in Europe (2009).

This is aggravated by the fact that there is no common definition across the EU as to what is a hate crime or indeed any definition of what constitutes racist violence. Each member state's criminal law or penal code includes definitions of prohibited actions that constitute "violence". In most EU member states, however, legal definitions of violence are limited in the sense that they do not always include reference to the racist motivation².

Secondly, it is believed that hate crimes cause greater harm than ordinary crimes. While all crime hurts in one way or another, the essence of a hate crime is that it hurts more than a parallel crime. It is evident that victims suffer distinct harm compared with victims of similar crimes that are not motivated or aggravated by an offender's bigotry, bias or prejudice. Evidence from the British Crime Survey shows that higher proportions of victims in incidents believed to be racially motivated compared with victims of other comparable crimes, reported feelings of shock, fear, depression, anxiety, panic attacks, loss of confidence, vulnerability, difficulty sleeping and crying. Moreover, the consequences of hate crime can spread well beyond the victimized individual. Hate crimes can terrorise communities³. Due to the fact that hate crimes can cause greater harm to the individual and community concerned, specific supports are needed to deal with its impact. However if the crime is wrongly classified some of these supports and safeguards are not available to the victim⁴.

Thirdly, governmental authorities feel they do not have to respond to the problem if the data is distorted due to an incorrect classification of the crime concerned. This belittles the victims suffering and generates a culture of passive acceptance which allows hate crimes to foster and grow. For example in Cyprus there is little or no data collected in hate crime⁵. It allows politicians to believe that they do not have to address the issue. This was highlighted when the Chairman of the House of Parliament Human Rights Committee stated 'we didn't hand in a report, [to the Fundamental Rights Agency] because we believe there is no racism in Cyprus'⁶. This in contrast to the European Commission against Racism and Intolerance (ECRI) 2009 report which documented that racist violence was on the rise in Cyprus⁷. It is also noted that the Fundamental Rights Agency believe that only 12 Member States collect sufficient robust justice data on racist violence and crime to allow for a trend analysis of this problem⁸.

⇒ **Protection**

As highlighted in the ENAR shadow reports, victims of racist violence often feel that they do not have access to sufficient protection due to the fact that at times the police trivialise the issue or take a passive stance⁹. For example in a number of countries such as Malta and Cyprus there is a perceived

² Georgina Siklossy and Paul Iganski, 'Racist violence and support to victims' ENAR Fact Sheet 41 (Brussels, ENAR, 2010) p4.

³ Ibid, p5.

⁴ As provided for in Council Framework Decision on the standing of victims in criminal proceedings, (2001/220/JHA) Article 2 (2) provides that Member States shall ensure 'that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances'. Some countries have identified victims of hate crime as vulnerable victims.

⁵ See OSI/ENAR Hate Crime in Cyprus, publication forthcoming 2010. This lack of data was also highlighted by European Union Agency for Fundamental Rights (FRA) in their 2007 annual report.

⁶ Cyprus Mail, 'We didn't produce a report because there's no racism in Cyprus', <http://www.cyprus-mail.com/cyprus/we-didn-t-produce-report-because-there-s-no-racism-cyprus> accessed June 2010

⁷ ECRI <http://www.socialwatch.eu/wcm/discrimination.html> (ECRI, 2009), p.7.

⁸ EU Fundamental Rights Agency, Annual Report 2009, p 113, see also ENAR, Shadow Report on racism in Europe.

⁹ ENAR, Shadow Report on Racism p 19, another example of police passiveness can be found in Lithuania. In 2008 on National Independence Day (11 March) a group of approximately 200 right wing extremists marched through the capital shouting racial slurs at Jews and Russians. The police did not attempt to halt the marching, and passively observed the manifestation of hatred. Videos were published of the march which provoked

failure of the police to take adequate reports of racist violence. Furthermore, a number of victims claimed that despite efforts to file reports they were refused such possibility by the police¹⁰.

Moreover, it has been reported that the police themselves are the actual perpetrators of the crime which leaves the victim with little or no protection whatsoever¹¹.

Sometimes victims are not encouraged to identify the racial element of the crime and it is reported as an act of mere hooliganism. This is due to the fact that at times some police agencies believe that it will have an adverse affect on their community if it is perceived that a serious problem exists¹². Furthermore, police are not trained to identify incidents of racial violence and are not aware of the best way to deal with the situation.

In other countries there are no mechanisms in place to provide or offer sufficient protection from systematic abuse leaving the victim to feel that they have to deal with the issue themselves making them more isolated or being put in a position that the only possibility they have is to move from the respective area.

⇒ **Support**

A number of Member States do not have any victim support organisations. According to the experts consulted for the project 'Victims in Europe', one needs to consider whether the organisation has national coverage and whether it provides, at the minimum, general services to all victims of crime. If a Member State does not meet one or both of these criteria, not all victims will be able to obtain benefit of the types of services outlined in Article 13 (2)¹³.

It also became apparent that across the Member States there is a lack of public awareness of the existence of support organisations. As a result many victims did not report the incident concerned¹⁴. In addition, a lot of countries reported that victims did not feel that they would get the requisite help needed due to the fact they felt that 'nothing would happen'¹⁵.

public outrage; it was only after 3 days of silence that the police launched a statement regarding a criminal investigation.

¹⁰ OSI/ENAR, Racist Violence in Malta, p5, publication forthcoming 2010.

¹¹ During a riot in Sweden in December 2008 the police were caught on camera calling immigrant youth 'dam little apes'. Later it became known that fictitious names such as 'negro niggerson and Oskar Nigger' were used during an internal education course. A preliminary investigation has since been launched. In Romania, there were reported cases of racist violence perpetrated by the law enforcement agencies. In 2008 the ECtHR found in *Stoica v Romania* that the use of extreme violence by the police was racially motivated. See ECHR; *Stoica v Romania*, [2008], application no. 42722/02. Racist violence by the police was also reported in Austria and in Greece, information obtained from ENAR Members.

¹² OSCE, Preventing and responding to hate crimes, a resource guide for NGOs in the OSCE region, (Warsaw, OSCE, 2009) p28.

¹³ Victim Support Europe, 'Victims in Europe, Implementation of the Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union, available at <http://www.apav.pt/vine/images/reportVinE.pdf> accessed 8 September 2010, pp121-123.

¹⁴ This is also documented by the EU MIDIS (European Union Minorities and Discrimination Survey), main results report, 2009, p54.

¹⁵ See EU MIDIS main results survey, (however this relates to discrimination in general), p 54.

⇒ Access to Justice

In a number of Member States a racist or xenophobic motive can be taken into account as an aggravating factor at the sentencing stage. However even where this is allowed, it is rarely applied¹⁶. In other countries their criminal code does not provide for this to be taken into account as an aggravating factor such as Cyprus¹⁷.

Having hate crime recognised as an aggravating factor is very important for the victim. As stated earlier, hate crimes not only affect the individual but the whole community. A lack of response or a lack of condemnation of the crime can make the affected community desponded and disillusioned¹⁸.

Furthermore, legal aid is not always available. Although most Member States have some sort of legal aid scheme available, it is often limited to victims of a certain crime category or income¹⁹. Few Member States offer free legal advice just because individuals are a victim. It is also reported that this legal aid is not readily available and difficult to access. It is essential that victims have access to legal aid regardless of income or category. It should also be provided in a timely manner and given access to appropriate legal advice and support.

⇒ Compensation and Restoration

It has been reported that victims applying for compensation encounter a lengthy and complicated procedure when filing an application for compensation. This can be frustrating for victims who can be traumatised and not in a position to engage in a prolonged administrative process.

Furthermore, some Member States such as Malta do not allow third country nationals apply for compensation, limiting it to nationals of Member States²⁰. At times third country nationals can be the most vulnerable in society and excluding them from obtaining compensation which is essential to their recovery can have a damaging effect to this delicate process, with potentially important psychological and physical consequences.

For victims, in general, the actual monetary compensation they receive is not of primary importance. What is of central importance is the formal acknowledgement and recognition of the suffering the victim experienced and what they are saying is true. By not having easily accessible compensation available, victims miss out on this essential process in their recovery.

In addition, it is recognized that in some countries, the offender can be sentenced to pay compensation to the victim; however, it is often the case that the offender never pays the compensation to the victim. It should not be the responsibility of the victim to follow up on payment as this forces the victim to keep in contact with the offender and it also gives the offender a certain degree of power over the victim. Finally, in line with Article 10 of the Framework Decision on the standing of victims in criminal proceedings, there is a wide margin left to Member States regarding

¹⁶ For instance in Finland, in the cases that were identified as having a racial motivation in the Helsinki region (54), in none of these cases did the prosecution demand an increase in punishment on the grounds of racial motivation. See Laura Peutere, *Rasistisia piirteitä sisältävät rikosepäilyt rikosprosessissa – Tapaustutkimus Helsingistä 2006*, Poliisiammattikorkeakoulun raportteja 73/2008 (Tampere: Poliisiammattikorkeakoulu, 2008), p 12 and pp61-63. This is also reported in Ireland and Italy. Latvia, also have a similar provision however this has never been applied in practice.

¹⁷ OSI/ENAR (5).

¹⁸ OSCE, *Hate Crime Laws, A Practical Guide*, (Warsaw, OSCE, 2009) p21.

¹⁹ *Victims Support Europe* (n13) pp81-82.

²⁰ See Criminal Code (CAP. 9) Criminal Injuries Compensation Regulations, 2007, Part 1 (6), available at <http://www.doi.gov.mt/EN/legalnotices/2007/07/LN%20190.pdf>, accessed 3 September 2010.

what method of mediation they use. However a number of countries do not provide for mediation in the course of criminal proceedings²¹.

QUESTION 2: What concrete initiatives would you suggest to ensure the five categories of victims' needs are met? Do you think the EU can contribute to these initiatives and if so how?

ENAR RESPONSE:

⇒ **Recognition**

ENAR believes that it is essential that hate crimes are identified in order for the victim to obtain the help of support services, in order for the relevant law authorities to address the problem and to ensure that there is accurate data which can be used to shape future initiatives. It is essential that the EU takes an active role in order to ensure that victims get the help they need.

As mentioned there is a lack of knowledge and training provided for police officers who work with victims of racist violence. It is crucial that police are aware of the specific issues victims of hate crime face in order for them to deal with the crime in an appropriate and professional manner. Therefore, ENAR suggests the following initiatives:

- *Facilitate the exchange of best practice within the police forces across Europe.*
- *Develop training for police officers through the European Police College on how to deal with victims of hate crime and how to ensure that the crime is properly documented. This should also include training on how to identify the race component in incidents where appropriate and highlight the importance of doing so.*
- *Provide training on preventative measures for the law enforcement in order to ensure that victims of hate crimes are not subject to repeated victimisation.*

⇒ **Protection**

Victims need to believe that the law enforcement authorities are taking their case seriously and dealing with it in an appropriate manner. It is essential that when criminal cases are being investigated and prosecuted, the hate crime is recognised and punished in an appropriate manner. If this is not done, the deterrent effect that this can have on others is lost. It has been documented that hate crimes can multiply if Member States are seen to allow hate crimes and to take a lax approach to the prosecution of the perpetrators. Therefore ENAR would recommend the EU to encourage the Member States to adopt and use the Council of Europe Recommendations No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, particularly recommendation A regarding police practice²².

²¹ Victim Support Europe, (n13) p116.

²² 'At police level,

1. Police officers should be trained to deal with victims in a sympathetic, constructive and reassuring manner;
2. The police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation;
3. The victim should be able to obtain information on the outcome of the police investigation;
4. In any report to the prosecuting authorities, the police should give as clear and complete a statement as possible of the injuries and losses suffered by the victim.

Practitioner experience has also shown that a number of aspects of victim support are essential for securing the trust and confidence of victims, ENAR recommends that the EU highlights the following as essential in order for the police authorities to handle hate crimes appropriately;

- *The police authorities need to be knowledgeable about the steps involved in handling reports.*
- *The victim's complaint needs to be listened to sensitively and staffs need to be trained to manage reports sensitively.*
- *Emphasizing that the victim's wishes are at the centre of managing a report of racist violence- in other words empowering the victim is fundamental to seeking a resolution.*

Furthermore, *ENAR calls upon the EU to encourage Member States to adapt their practices in order to comply with ECtHR decisions regarding the response of state authorities.* In *Nachova and Others v Bulgaria*²³ the Court found that there was a duty to investigate whether there was a racist motive behind violent attacks by state authorities. Such a duty should be made mandatory where there is any suspicion of impropriety.

It was also recognized by the Court that there should be a response from the relevant judicial authorities to hate crimes that is proportionate to the harm caused²⁴. *We ask that the EU encourage and ensure that Member States react in a responsible and in an appropriate manner when its residents face racist violence.*

⇒ **Support**

ENAR is pleased that reference in legislation is made to international standards for assessing the independence of equality bodies, such as the UN Paris Principles. This allows for the independence of equality bodies to be improved while not being overly prescriptive on the internal structures of equality bodies. However, the importance of having equality bodies independent from Governments is at the core of these Principles. We ask the EU to encourage Member States to ensure that these agencies become independent if this is not the case already and that this is stipulated in the core of the text in order to ensure its application.

We note that many Member States offer and provide medical assistance/psychological counseling to victims. However approximately half of the Member States do not offer such services²⁵. These services are essential for victims in order for them to deal with the attack and to move past the incident. Therefore *ENAR calls upon the EU to ensure that Member States provide such services in the context of Article 13 of the Framework Decision on the standing of victims in criminal proceedings.*

Furthermore, in order for victims to get the assistance they need, facilities need to be easily accessed and there needs to be straightforward and understandable information regarding the services available. However this is not provided for in some countries and in others such as the Czech

²³ ECHR *Nachova and Others v Bulgaria*, [2005], Application No. 43577/98 and 43579/98 para 160-168. It was found Bulgaria violated Article 14 of the Convention by failing to investigate possible racist motives.

²⁴ In *Secic v Croatia*, [2006] Application no. 40116/02 the Court found that "... when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights." Para 66.

²⁵ Member States' legislation, national policies, practices and approaches concerning the victims of crime (Sofia, 2009) p67.

Republic information is only available for victims of domestic violence²⁶. Others reported that by the time the information was provided to the victim it was too late²⁷.

ENAR also believes that information should be provided in a language the victim understands. The EU should encourage a more comprehensive approach to information provision to ensure that victims of racial violence have the support they need in a timely manner. A good example of this is the *Opferfibel* in Germany which explains in simple terms the situation of victims of crime according to the law and advising them of their options²⁸.

Moreover, Article 13 stipulates that Member States shall provide victims with 'specially trained personnel within its public services or through recognition and funding of victim support organizations'. However according to Victim support Europe, and as witnessed by ENAR, the majority of Member States found the funding inadequate. Therefore *ENAR recommends the EU to encourage Member States to provide additional funding to victim support organizations*²⁹.

In order for there to be a systematic response from Member States to enable them to support victims of hate crime, there needs to be concrete and complete collection of data. The EU should facilitate the exchange of best practices for assisting victims of hate crimes. Furthermore, the EU should insist that there is a comprehensive collection of data from all Member States. In 2010, the Annual Report of the European Agency for Fundamental Rights noted a significant variation in the collection and publication of data, with only the UK, Sweden and Finland providing comprehensive data³⁰, this was also noted in ENARs shadow report on racism. This cannot provide an accurate assessment of the situation which inhibits strategic action by the EU.

*We also ask that the EU conducts a substantial multidisciplinary, trans-national scientific exploration on the nature and prevalence of hate crimes in Europe*³¹. This should include an analysis as to how the law enforcement agencies address and respond to such incidents and how the media, elite discourses and institutional frameworks influence national anti-hate speech policies. It should also include a broad academic discussion on the usefulness and the applicability of this concept to assist policy makers and law enforcement agencies to adequately address the problem.

Finally, as articulated in our fact sheet on racist violence and support to victims, ENAR specifically recommends that the EU³²;

- *Maps out specific areas of interest to exchange best practices and set up joint projects with other actors in this field;*
- *Encourages Member States to provide funding which would allow for the training of local communities to empower them to report hate crimes;*
- *To work together and develop cooperation with academics working on racist crime, possibly even joint projects.*

²⁶ Ibid, p 69.

²⁷ Victims in Europe, (n13) p 130.

²⁸ Ibid, p 69.

²⁹ Victim Support Europe, (n 13) p123.

³⁰ Fundamental Rights Agency Annual Report 2010, (Vienna, Fundamental Rights Agency, 2010) p35.

³¹ OSI/ENAR Racist Violence in Germany, publication forthcoming, p 14.

³² ENAR, Factsheet no. 14, 'Racist Violence and Support to Victims', 2010, p 12.

⇒ Access to justice

In line with the Stockholm Programme's aim to foster a genuine European judicial and law enforcement culture³³, ENAR believes that training should be provided to judges, prosecutors and judicial staff on hate crimes and on best practice methods on prosecuting the perpetrators of racist violence. We recommend that this training includes:

- *Reasons why hate crime is an aggravating factor should be applied at the sentencing stage,*
- *Emphasis on why judges need to stress the reasons for applying or not applying the additional penalty³⁴,*
- *Emphasise the importance on enforcing the legislation,*
- *The importance of recognising the social and historical patterns of discrimination.*

These trainings should result in more active prosecution of hate crimes which can have a ripple effect on others and help them to identify the racial motivation of the crime where appropriate.

Nevertheless, even if there is sufficient legislation in place it is worthless if it is not used or enforced. Therefore we ask that the EU, and particularly the Fundamental Rights Agency (FRA) to enhance monitoring of racist violence and crime. We echo the calls of the European Union Monitoring Centre on Racism and Xenophobia (EUMC)³⁵ for Member States to put in place adequate procedures to deal with racist violence. It is essential that the European Fundamental Rights Agency monitor the implementation of the Framework Decision on racism and xenophobia.

In addition, *ENAR believes that victims should be given the choice to be more involved in the proceedings.* It should be recognized that they have a legitimate interest in the case and participate as appropriate. For example the victim should be notified and consulted regarding any decision to stop an investigation or prosecution.

⇒ Compensation and Restoration

It is recommended the EU do the following in order to ensure that the victims' needs are met;

Compensation

- *Ensure that clearer and more accessible information outlining the procedure and requirements for compensation is provided in order to ensure all sections of the population are aware of this possibility.*
- *It should be the responsibility of the State to seek reimbursement from the offender where granted without involving the victim. This allows for all unnecessary formal contacts between the victim and the offender are severed.*

³³The Stockholm Programme, An open and secure Europe serving and protecting citizens, 17024:09.

³⁴ This can serve as a deterrent factor for future perpetrators. Furthermore it is important for the victims and the community as a whole to see that the perpetrators are being punished and for the severity of the crime to be recognized.

³⁵EUMC (2005) Racist Violence in 15 EU Member States, available at: <http://eumc.europa.eu/eumc/material/pub/comparativestudy/CS-RV-main.pdf>, The EUMC was the predecessor of the Fundamental Rights Agency which took over its main functions in 2007.

Restoration

ENAR recommends that;

- *Member States develop mediation measures in addition to (and not instead of) all other support measures for victims specified within the Framework Decision. Article 10 should not be seen as a way to relieve Member States from fulfilling their other obligations to victims as outlined in the Framework Decision.*
- *Practical information and emotional support should be available to victims of hate crime in order for them to make an informed decision as to whether or not to engage in mediation.*
- *Emotional support should be offered before, during and after the mediation process.*
- *We also recommend that the EU launch a study on benefits and best practices of Restoration for victims of hate crime.*

Question 3: Are you aware of good practices, initiatives, programmes (including training programmes) or tools that contribute to meeting the needs of victims?

⇒ **Holistic approach**

It is apparent that all victims have different needs and priorities after a hate crime attack. Therefore a holistic approach which involves different sections of the community is needed to ensure the different needs are met for victims of hate crime.

- An example of this scheme is in place in Ireland. In local areas/county wide level, a number of initiatives have been developed to support community relations and outreach work. For example, an initiative was developed between NASC (the Irish Immigrant Support Centre) and the police to reach people who have experienced racist incidents but might not be comfortable going to the police, whereby migrants can report an incident to the NGO. Migrants can choose whether they want the report to be passed on to the police. This is currently under review³⁶.
- In Latvia, NGOs (notably LCHR) were involved in facilitating the exchange of experiences in handling hate crimes between the Latvian police and various other European police forces through mutual exchange study visits, seminars and conferences. This led to an increased awareness and capacity of police officers in the capital Riga in responding to the cases of hate crimes³⁷.

⇒ **Information**

- In Denmark the Copenhagen City Council launched an anti-discrimination hotline in response to the upsurge of racist violence. Victims can ring the hotline to get advice about their legal rights and entitlements. This is an easy and anonymous way to ensure that victims have access to the supports they need³⁸.

³⁶ OSI/ENAR, Racist Violence in Ireland, publication forthcoming, p8.

³⁷ OSI/ENAR, Racist Violence in Latvia, publication forthcoming, p4.

³⁸ OSI/ENAR, Racist Violence in Denmark, publication forthcoming, p6.

⇒ Police initiatives

- In Ireland the Garda (Police) Commissioner established the Garda Racial and Intercultural Office (GRIO) in April 2000. Staff members of the GRIO coordinate, monitor and advise on all aspects of policing in the area of ethnic and cultural diversity. The office has a staff of 3 (2 Gardaí and 1 Civilian Administrator). GRIO staff members are available to members of the public and the Garda organisation for advice and support in the GRIO area of expertise³⁹.
- In the UK, the Crown Prosecution Service has taken specific initiatives to reduce unsuccessful hate crimes prosecutions, including quarterly performance reporting obligations and rating of areas, themed reviews and data analysis. It has also taken initiatives to share good practice and lessons learnt⁴⁰. In addition, the CPS has produced detailed guidance on the prosecution of racially and religiously motivated offences. The police appear to have improved in recording attacks that could be racially motivated however, in a number of cases; the racial element is not actually brought before the court⁴¹. This may be the result of plea bargaining where the defendant agrees to plead guilty to a less serious charge, for example in which allegations of racial aggravation are dropped⁴².

⇒ Police training

In Austria, as part of the police's initial training, all new officers are required to take a 56-hour module on fundamental rights that includes diversity and anti-discrimination training. Serving officers can take these courses on a voluntary basis as part of their on-going training.

Since 2001 Anti-Defamation League (ADL) has been offering "A World of Difference" seminar aimed at combating prejudice and sensitizing officers in regards to racism and discrimination. The seminar has become an obligatory part of police officers' basic and advanced training in 2004. External experts are involved to enable a multi-layered access to the topic of diversity⁴³.

⇒ Broader initiatives to combat hate crimes

In the Netherlands the following broad initiatives have been launched at different times to tackle racism and hate crimes such as tolerance lessons at school, financing ADAs and broadly anti-racism activities.

They also had initiatives that would assist the victim which involves educating the perpetrator. For example he/she could be punished for racist utterances and would have to write a paper after visiting the Anne Frank Foundation and the House or the former Nazi-concentration camp of Westerbork.

³⁹ For further information, go to <http://www.garda.ie/Controller.aspx?Page=154>

⁴⁰ Crown Prosecution Service, Handling Sensitive Race Hate Crime: An Overview of good practice and lessons learnt in the CPS Merseyside handling of racist murder of Anthony Walker (n.p.: CPS May 2006).

⁴¹ Athwal, Harmit, Bourne, Jenny and Wood, Rebecca, Racial violence: the buried issue, IRR briefing paper no. 6 (London: IRR, 2010) p8.

⁴² Ibid, p.20.

⁴³ OSI/ENAR, Racist Violence in Austria, publication forthcoming, pp 7-8.

They also have preventative measures in place, one such instrument to deal with (signals of or threatening) social crises, which may occur after racist incidents, is the so-called social crisis approach (or social disaster plan, *sociaal calamiteitenplan*, SCP)⁴⁴. In this approach a structure of signalling social crises that can be foreseen is developed as well as a procedure on how to handle such (threatening) crises with all social parties involved in trying to de-escalate the threat.

Question 4: How could existing EU legislation on victims be improved to meet the needs of victims?

⇒ **The limitations of the 2008 framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law**⁴⁵

Despite original intentions at the conception of the Decision, the text is significantly weaker than the original version put forward by the European Commission in 2001. Below the limitations of the decision are highlighted. It is recommended that these are taken into account by the European Commission in order to ensure that the needs of victims of hate crimes are met.

• **Types of activities targeted**

The Framework Decision does not provide an accurate definition of the types of racist and xenophobic activities and/or behaviours which it seeks to target. In 2001, the original European Commission proposed a general definition of “racist and xenophobic activities and behaviours”.

• **Public incitement/public dissemination**

The scope of public incitement/dissemination is not addressed in the Framework Decision. Article 1 criminalises public forms of incitement/dissemination to hatred without providing a definition of the public sphere. As a result, it is difficult to identify the type of conduct which is the object of criminalisation in the absence of such a definition. In addition to this, although the Decision refers to activities and behaviours which result in public disturbance, it does not address activities and behaviours which constitute a threat for private individuals and as such further clarification of such terminology would be beneficial.

• **Public figures and representatives of state authority**

In its resolution of 29 November 2007, the European Parliament noted that public figures and representatives of authorities should be punished with more severity, due to their status, when found to have engaged in racist and xenophobic activities and behaviours. This requirement was not incorporated into the final decision. Given the status and influence of public figures and representatives of authorities, when such persons are found to have engaged in racist and xenophobic activity, punishment needs to be of a more stringent and deterring nature than the Decision currently pertains to.

• **Non-regression clause**

The Decision does not contain a non-regression clause. Such a clause was initially included in the 2001 proposal. This issue was raised by ENAR who insisted that such a clause is necessary to ensure

⁴⁴ See for instance: R. Witte, M. Veenstra, K. Schram & F. Kors, 2003, *Interetnische spanningen. Een draaiboek*, Den Haag: SDU; and FORUM, 2009, *Handboek Sociaal Calamiteiten Plan*, Utrecht: FORUM. Of course this SCP can be introduced on a wider range of (possible) social crises than only in relation to racist violence.

⁴⁵ Council Framework Decision 2008/213/JHA.

that member states whose legislation provides for a higher level of protection abide by the standard of their obligations and do not fall below these.

- **Provision on international obligations**

The Decision should include a provision reminding member states of their international obligations concerning the criminalisation of racist and xenophobic activities and behaviours. Such a provision would highlight the existing binding obligations of the international community on combating racism and xenophobia in international standards such as those contained in the International Convention on the Elimination of All Forms of Racial Discrimination, CERD.

- **Mutual assistance**

ENAR suggested that the provision on mutual assistance raising the issue of cross-border racism should be reinstated in the Framework Decision. However, a reference to the obligation of mutual assistance binding on member states could be the object of a paragraph in the Preamble since there is already a Convention on this issue: Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty of the European Union, the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*⁶.

- **Monitoring the implementation**

The Decision should include a provision establishing a mechanism and reiterating the need to monitor the implementation of the Framework Decision by member states. In its Resolution of 29 November 2007, the European Parliament noted that the Council together with the Commission should ensure the effective monitoring of the transposition and implementation of the Framework Decision by each member state and set up a mechanism of revision of the provisions of the Framework Decision three years after the time limit for its transposition, but this was not included in the final Decision.

- **Specific omissions**

Specifically the Framework Decision does not address the following ever more dangerous areas of racist and xenophobic activity:

- **Cyber hatred:**

Given the ever increasing usage of web based technology the Framework Decision does not provide strong and comprehensive guidelines in this area, thus missing an opportunity to put the use of the internet as a tool for dissemination of racist sentiment prominently on the EU agenda.

- **Racist violence targeting particularly vulnerable groups:**

Particularly vulnerable groups, including Jews, Roma, Blacks and Muslims, are not expressly mentioned in the Framework Decision.

⇒ **Council Directive relating to compensation to crime victims**⁴⁶

- Amend Article 4; As mentioned by our members, the procedure involved for applying for compensation can be lengthy, complicated and information about the procedure may not available in a language that the victim understands. Therefore it is recommended that Article 4 of Council Directive 2004/80/EC be amended to read⁴⁷;

⁴⁶ Council Directive 2004/80/EC.

⁴⁷ It is also worth noting that the Framework Decision on the standing of victims in criminal proceedings goes further to provide in Article 4 (1) that 'Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies by any means appropriate and as far as possible in

Member States shall ensure that the potential applicants for compensation have access to easily understandable information on the possibilities to apply for compensation in a language that he or she understands.

⇒ **Council Framework Decision on the standing of victims in criminal proceedings**⁴⁸

ENAR feels that the spirit of this Framework Decision is very useful for victims but is still concerned about some aspects of the Decision. There is no specific mention of victims of hate crime however it is acknowledged that the Framework Decision provides additional safeguards for victims who are particularly vulnerable.

Nevertheless we are concerned that there is no explanation given as to who is a vulnerable victim and some Member States interpret this in a restrictive manner. The fact that it is left up to the individual Member State leads to disparities and different standards across Europe. We are concerned that few countries have specific provisions for victims of hate crime⁴⁹. Therefore it is recommended that more explicit provisions are inserted to ensure that victims of hate crime are treated as vulnerable victims. To this effect we support the **Council of Europe wording in Article 3 (4) on vulnerable victims in their recommendation Rec (2006)8 of the Committee of Ministers to Member States on assistance to crime victims**⁵⁰.

Question 5: Is sufficient information and data collected on victims' policies and needs? How do you think such information should be collected (e.g. specific studies and research, national or EU wide victim satisfaction surveys)?

As highlighted in ENAR's Shadow Reports on Racism, data collection and information on hate crimes is severely lacking in the EU⁵¹. In addition, according to ODIHR's Hate Crime report, three countries - Bulgaria, Luxembourg and Portugal - do not compile any data on racist crimes. Greece reported that there were no crimes in the country and Hungary reported that there were just 12 racist violence attacks⁵². Moreover, the existence and capacity of relevant data collection systems as well as the availability of data varies considerably from one EU Member State to another. In addition a general problem is that in most EU Member States there is no data collection related to a person's ethnicity

languages commonly understood'...However as noted in the Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings {SEC (2004) 102}that there is a problem with languages. Despite the fact that this provision is more progressive than what is contained in the 2008 Directive, a lot of countries were highlighted as not providing sufficient information in a language the victim could reasonably be expected to understand.

⁴⁸ 2001:220/JHA.

⁴⁹ Countries which have provisions in their criminal code relating to victims of hate crime include, France, Ireland, Latvia, Luxembourg, the Netherlands, Finland and the UK. See Member States' legislation, national policies, practices and approaches concerning the victims of crime (Sofia, 2009).

⁵⁰ Article 3 (4) states "States should ensure that victims who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, can benefit from special measures best suited to their situation".

⁵¹ ENAR (n1). While anecdotal evidence is available, the lack of official data or access to official data limits corroboration of the sources of informal data collected.

⁵² Office for Democratic Institutions and Human Rights (ODIHR) (2009) Hate Crimes in the OSCE Region – Incidents and Responses. Annual Report for 2008, Warsaw: OSCE, ODIHR, p33.

and/or religion making it difficult to collect data on racist violence. In addition, where there is no legislation defining racist crime as an aggravating factor, crime statistics do not mention whether the crime had a bias element. Even when hate crimes are registered, hate incidents with low levels of violence are often not reported to official channels and are therefore rarely recorded⁵³. Further, the recording process is also problematic due to a lack of awareness of some police as to what is racism and an unwillingness sometimes to record a crime as racist⁵⁴.

Moreover, even if data is made available, it is widely accepted that official crime records only capture a fragmented view of the overall problem. Crime victimisation surveys illustrate that only a minority of racist incidents is reported to the police⁵⁵.

If rudimentary or no data is available on hate crime, there is little need to assess what are the needs of victims of hate crime. A comprehensive approach is needed to ensure concrete and complete data is collected on racist violence which will then allow a more strategic approach to assessing the needs of victims.

Due to the problems countries encounter relating to under-reporting, some countries such as the UK put in place alternate reporting arrangements. This became known as 'third-party' reporting which was established by NGOs and some official agencies outside the criminal justice system⁵⁶.

It is recommended that a number of Member States carry out a pilot projects collecting information in this way in order to get a more complete picture of racist violence in Europe.

⁵³ Office for Democratic Institutions and Human Rights (OSCE), Hate crimes in the OSCE region - incidents and responses. Annual Report for 2007 (2008).

⁵⁴ ENAR, (n3) p2.

⁵⁵ Brå (2009) Hate Crimes 2008, English summary of Brå report No 2009:10, Stockholm: The Swedish National Council for Crime Prevention (Brå), pages 29-30. Furthermore, it became apparent that a number of factors were at play which led to the non-reporting of incidents of racist violence. These include distrust of the police, feeling that nothing can be done, fear of stigmatisation and fear that it could affect their immigration status. Others do not report due to the fact that it is the law enforcement authorities that carry out the racist violence attacks as documented in a number of the ENAR country reports.

⁵⁶ For more information see the Metropolitan Police Website available at; http://cms.met.police.uk/met/boroughs/bromley/06advice_and_support/third_party_reporting_guide; accessed 2 September 2010.