



ENAR's demands to the EU Council Presidency (Latvia) January 2015

The present document lists the demands of the European Network Against Racism (ENAR) to the EU Council, and in particular to the Latvian Presidency (1st semester 2015). ENAR, a network of more than 150 European, national and local NGOs, has identified where Council initiatives and actions can make the difference in the area of equality and anti-racism policies. Consequently, this document addresses specific policy requests and suggestions to those which hold a competence in relation to social employment and social affairs, justice and home affairs, economic and financial affairs, as well as general affairs.

ENAR will engage with Council members in charge of the legislation and policies mentioned in these demands. We will also continue monitoring them until the end of the mandate of the current Presidencies trio.

1. "Safeguarding fundamental rights": the way from a welcome objective to actual delivery

The 18 months programme of the Council (1 July 2014 – 31 December 2015) mentions a number of priorities that have the potential to make a difference from a human rights, anti-racism perspective. ENAR welcomes the emphasis put on the safeguard of fundamental rights, and ENAR reminds the different formations of the Council that fundamental rights, as defined in EU Treaties, include non-discrimination and equality, to be delivered by the adoption of specific legislation (Article 19 TFEU) and by mainstreaming in the implementation and enforcement of other policies (Articles 8 and 10 TFEU). ENAR calls on the Council to deliver effective change in this area.

The institutional agenda of the EU offers a number of opportunities. Following the 2013 *Assises de la Justice* organised by the Commission and the commitments made by Commission and Council leaders in the European election 2014 sequence, all institutions now agree on the need to develop more effective fundamental rights watchdogs in the Union. Following the CJEU's December 2014 opinion, the accession of the EU to the ECHR should still be an opportunity to ensure a higher degree of consistency in the application of human rights standards by both EU institutions and Member States. In this context, ENAR strongly insists on the recommendations below.

Recommendations to the General Affairs and the Justice and Home Affairs Councils, including the FREMP Working Party:

ENAR, together with the Human Rights and Democracy Network (HRDN), calls for the adoption of an EU fundamental rights strategy. Beyond compatibility checks of EU policies and Member States policy delivery with the Charter of Fundamental Rights, **the Council, with the Commission, should define a real mechanism guaranteeing a real policy process between the EU institutions on fundamental rights, ensuring that human rights standards are actually enforced, and that fundamental rights violations are met by strong political reactions and infringement proceedings if applicable** Falling short of

delivering such a mechanism would make it impossible for the Council to deliver on its ambition to “resolve future systemic threats to the Rule of Law in Member States”, as stated in its operational programme.

In this context, ENAR welcomes the indication given by the Council’s Programme that the EU’s accession to the European Convention on Human Rights (ECHR) should remain high on the agenda. **The ECHR accession process should be regarded as an opportunity to conduct an overall human rights audit of EU legislation and policies** on the basis of the ECHR and ECtHR case law. This audit should also inform the work on the foreseen EU framework to strengthen the Rule of Law.

Recommendation to the Justice and Home Affairs Council:

Further steps in the development of the Justice Scoreboard provide opportunities to benefit from useful indicators as regards the fundamental rights assessment of EU measures and of their implementation. This work should also inform the Council’s work on the EU framework to strengthen the Rule of Law.

2. Equality and social inclusion: from principles to effective action

The work programme of the new Presidencies’ trio insists on the importance of delivering social inclusion. A particular and understandable emphasis is put on access to employment, and on the continuation of work in view of the adoption of the new Equal Treatment Directive, proposed in 2008 by the European Commission. The Latvian Presidency, following the work of its Italian predecessor, should by all means continue to seek a consensus, or the abstention of the Member States still opposing the directive. The renewed commitments made by the Juncker Commission in that respect, together with important other policy developments such as the review of the Europe 2020 strategy, will represent key opportunities for the Council to deliver on its commitments.

As the Presidencies’ work programme indicates that “additional attention needs to be paid to addressing the problems of vulnerable groups, with a particular focus on young people, women, older workers and the long-term unemployed”, ENAR formulates the following recommendations to highlight ways forward that are inclusive of all vulnerable and discriminated groups. Indeed, [ENAR’s latest shadow report on discrimination in employment](#) has identified five groups being most vulnerable to discrimination in employment: migrants from non-EU Member States; Roma; Muslims; people of African descent and Black Europeans; and women with a minority or migrant background. The economic and financial crisis, and the lack of social investment, have worsened the employment gap between migrants, ethnic and religious minorities and the majority population (for example, a study by the EU Fundamental Rights Agency shows that among eleven Member States, one out of three Roma respondents reported that they were unemployed; in the Netherlands, Moroccans have the highest unemployment rates). Moreover, discrimination affecting migrants and minorities place them at disadvantage already when they attempt to access the labour market (for example, in the United Kingdom, people with foreign sounding names are a third less likely to be shortlisted for jobs than people with white British sounding names; in the Netherlands, 57% of recruitment agencies complied with a request not to introduce Moroccan, Turkish or Surinamese candidates). Finally, even once they are in a job, migrants and minorities continue to face unequal treatment: lower wages, a lack of career prospects, precarious and difficult working conditions, harassment, abusive dismissal, are just some of the manifestations (for example in Italy, 34% of foreigners are employed as unskilled workers compared with 8% of the majority population).

Recommendations to the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO):

ENAR welcomes the Presidency's intention to continue working on the proposal for a Council Directive on equal treatment irrespective of religion or belief, disability, age or sexual orientation. **The completion of the EU's legislative framework on equality is essential for all citizens and residents, including religious and ethnic communities' members, to be equally protected in all areas of life.** We call specifically on the Latvian Presidency to adopt a proactive approach, to capitalise on the momentum created by new and more favourable positions of some Member States, such as the Czech Republic and Malta, and by the useful consolidation work undertaken by the Italian Presidency.

ENAR considers that the mid-term review of the Employment Guidelines is another opportunity to ensure that all dimensions of social inclusion are equally prioritised in EU policies. The current guidelines, particularly **Guideline 7** (Increasing labour market participation of women and men, reducing structural unemployment and promoting quality jobs) **and Guideline 10** (Promoting social inclusion and combating poverty) **should be improved in that respect to address the situation of ethnic and religious groups victims of discrimination, as well as the situation of migrant workers** to ensure, as a minimum, that EU law standards are fully respected in relation to their rights. The EPSCO Council should send a strong message to the Commission, which is due to table a proposal in 2015.

Recommendations to the General Affairs and EPSCO Councils:

The review of the Europe 2020 Strategy is due to begin in 2015, based on a proposal of the European Commission. ENAR, under the umbrella of the European Platform of Social NGOs, [has contributed to the Commission's consultation on Europe 2020](#) and would like to insist on the following points.

The strategy should adopt a multi-faceted approach, responding to all forms of discrimination and social exclusion. This move is feasible and relevant, as the operational programme includes an emphasis on, *inter alia*, employment and poverty/social exclusion indicators. The programme specifically and rightly mentions the particular cases of women and young people on the labour market. ENAR insists that all communities or groups also facing specific social inclusion and employment problems, including ethnic and religious minorities, that should benefit from EU policy prioritisation.

The EU 2020 strategy's objectives should be revised accordingly, in order to provide EU and national decision-makers with clear targets and benchmarks and have an actual effect on policy delivery. In addition to employment, the 2020 Strategy also touches upon areas of work such as education and training, culture and health. Its objectives should also, as much as possible, reflect the definition of concrete targets. Similarly, within the scope of the EU Framework on National Roma Integration Strategies, Member States are working with the Fundamental Rights Agency on developing more indicators in relation to fundamental rights standards, to complement already existing social inclusion indicators. Nevertheless, without ability to consistently collect data on ethnicity, measuring progress based on these indicators will be very difficult.

That's why ENAR also calls for EU Frameworks for national strategies to combat specific forms of racism such as anti-Semitism, Islamophobia and Afrophobia to complement the EU 2020 Strategy and promote the inclusion of most marginalised groups, based on the model of the EU Framework for National Roma Integration Strategies (NRIS). These frameworks would provide the EU and the Member States with clear indicators and tools to reach the EU 2020 objectives in the specific cases of

discriminated ethnic and religious communities. As such, part of these future strategies' objectives in terms of labour market and social inclusion could be incorporated into the EU 2020 Strategy, in order to ensure consistency and prioritisation.

3. Protecting minorities from violence and hate crimes: making full use of existing tools

In the area of justice and home affairs, one strong priority of the Council should remain the protection of all EU residents from hate crime, including racist and xenophobic crimes. The Lithuanian and Italian Presidencies have made efforts to recognise this pervasive human rights violation as an EU work priority. This momentum should be used, in order for initiatives such as the Council/FRA's Working Party on hate crime results in the adoption of actual public policies to combat this phenomenon. The EU can make use of different legislative and non-legislative tools in this area.

Various opportunities can be identified in 2015-2016, from the implementation of existing legislation to the expected new steps in the recast of the statute and missions of agencies such as EUROPOL and CEPOL, and to the activation of other EU-level bodies such as EJTN. ENAR's recommendations in this area are listed below.

Recommendations to the Justice and Home Affairs Council:

The mandate of the Council/FRA Working Party on hate crime should be consolidated in order to ensure the full implementation of Member States' obligations in the implementation of existing EU law (Framework Decision 2008/913/JHA on combating racism and xenophobia, and Directive 2012/29/EU on the rights of victims of crime). This includes the application of their relevant hate crime and hate speech positions to all forms of racism, including anti-Semitism, Islamophobia, Afrophobia and anti-Gypsyism. The Council should also encourage systematic mobilisation of the policy knowledge and best practices accumulated by national authorities, civil society organisations and the Commission, notably thanks to the various EU-funded projects supported over the last decade (Fundamental Rights and Citizenship Programme, DAPHNE, etc.).

CEPOL should be tasked with the development of modules on racist and xenophobic crimes, as well as all crimes committed with a bias or discriminatory motivation, conform to its mission to develop European training schemes with European value added. The Council should impulse this decision in coordination with CEPOL's governing board. The training models offered to law enforcement officers should, as a minimum, be based on Member States' obligations under Framework Decision 2008/913/JHA 2012/29/EU.

ENAR stresses the need for the foreseen **Roadmap on the position of victims in criminal proceedings to clearly address Articles 22 and 25 of Directive 2012/29/EU.** This should in particular apply to the individual assessment of victims' special protection needs, paying "particular attention [...] to victims who have suffered a crime committed with a bias or discriminatory motive [...] related to their personal characteristics"¹. It should also apply to the related training needs of the different professionals mentioned in Article 25 of the Directive: law enforcement officers, judges and prosecutors, lawyers, victim support organisations.

¹ Article 22 (3) of Directive 2012/2012/29.

Eventually, ENAR values the potential of EJTN in allowing knowledge sharing and developing new training for judicial professionals. **The Council should propose that EJTN addresses the question of standard minimum training on racist and xenophobic crimes**, as well as all crimes committed with a bias or discriminatory motivation. The training standards to be developed could build on existing national models and should, as a minimum, be based on Member States' obligations under Framework Decision 2008/913/JHA and Directive 2012/29/EU.

4. Unmasking discrimination and measuring progresses: steps towards European equality data collection

In order to effectively and efficiently tackle discrimination and stigmatisation, policy-making must be informed by clear data measuring inequality. ENAR calls for the collection of equality data, disaggregated by ethnicity, religion and other discrimination grounds, and in the respect of data protection standards, self-identification, and voluntary participation. Such data should cover the areas of employment, education, health, access to basic goods and services, inequalities of income.

In Europe, the responsibility of collecting economic and social data lies primarily in the competence of the Member States and of their statistical institutes. However, the EU, and particularly Eurostat, on the basis of the regulations adopted by the Economic and Financial Affairs Council, defines data collection standards to make available comparable statistics in the policy areas where legislation and priorities are adopted at EU level.

In the recommendations below, ENAR lists areas of work where the EU, also to back its existing anti-discrimination policies, should propose new initiatives. The Economic and Financial Affairs Council can contribute to impulse them.

Recommendations to the Economic and Financial Affairs Council:

Equality data should be collected, in the respect of data protection EU law standards, disaggregated based on ethnic and religious self-identification, in the frame of national censuses, household surveys and existing EU-wide statistic tools (Labour Force Survey (LFS), EU Statistics on Income and Living Conditions (SILC) for instance).

Consistently with our recommendations to the General Affairs and the EPSCO Council formations about the development of revised EU 2020 Strategy targets and objectives, **ENAR calls on the Council to impulse the definition of indicators to provide a benchmark and make it possible to measure policy delivery**, as a part of the Strategy itself and as a condition of effectiveness. Ideally, disaggregated indicators should allow for monitoring progress on all the relevant priorities and targets of the Strategy.

The ongoing negotiations on the amendment of Regulation 223/2009 on European Statistics are an opportunity to raise these evolutions and prepare a reflexion on the implementation of the legislative frame on statistics, in order to impulse the collection of equality data across the EU, including in particular by **adapting the next European Statistical Programme (2018-2022) and the subsequent annual work programmes**. The governing bodies of the European Statistical System, such as the ESS Committee, could be tasked with an exploratory mission in that respect.

5. Refrain from counter-terrorism measures with discriminatory impact: security and fundamental rights are not in opposition

In the aftermath of the deadly attacks that took place in Paris from 7 to 9 January, ENAR also stresses that the European institutions, including the Council, should refrain from hasted intrusive policies which could have a discriminatory impact. Security and fundamental rights are not in opposition, and counter-terrorism policies must respect international human rights standards and avoid discriminatory profiling and data abuses. In addition, counter-terrorism policies must be backed up by deeper and more effective solutions, addressing social inequalities in the long-run and promoting inclusion and participation of ethnic and religious communities.

A full version of ENAR's position on counter-terrorism policies in equality perspective can be found on our website².

Recommendation to the General Affairs and to the Justice and Home Affairs Councils:

In the context of the current counter-terrorism policy discussions, **ENAR urges the Council to strengthen fundamental rights safeguards within impact assessment of new counter-terrorism initiatives by, among others, consulting the FREMP.** New prevention and sanction measures, including restrictions to freedom of movement or detention, should be devised and implemented only based on legally defined, legitimate and proportionate criteria, under the control of independent and fair judicial systems.

ENAR also calls for concrete measures against the potentially discriminatory effects of profiling policies, and calls on the EU and on Member States to collect equality data to assess all measures' impact on specific communities. Accessible, confidential and independent complaint mechanisms should be made available in case individuals feel they are disproportionately affected by security and counter-terrorism measures.

Community reach-out activities and community policing programmes should be developed across Europe. Such programmes should complement non-discrimination and equality policies. In this context, ENAR reiterates its call for the adoption of **EU Frameworks for national strategies to combat specific forms of racism such as anti-Semitism, Islamophobia and Afrophobia.**

² <http://www.enar-eu.org/Policy-statement-EU-Counter>