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Public statement on the occasion of the Justice and Home Affairs Council, 19-20 April 2007

EU governments must make the framework decision on racism and xenophobia a minimum standard for action rather than inaction

On the occasion of the Justice and Home Affairs Council on 19-20 April, the European Network against Racism (ENAR) is concerned that member states will seek to adopt a weak framework decision on racism and xenophobia, in order to end long-standing negotiations without any substantial intent to provide strengthened protections for those who experience racist crime and violence in Europe.

Over the last months, ENAR has welcomed the efforts of the German presidency, and appreciates the energy and drive which it has brought to the negotiations on this instrument. It is long past time that EU member states demonstrated their commitment to anti-racism by adopting this legal standard. However, in reality the protracted discussions have resulted in a weak text, which will not require substantive changes to the legal orders of many member states. In taking protection against racism seriously, member states will have to approach this tool for what it is - a minimum standard.

The move to finally adopt the framework decision is an important initiative, coming as it does in a week which marks Holocaust Remembrance Day/Yom Ha'Shoah on 15 April. The implementation of this instrument should, however, amount to much more than the sum of its political compromises. The act of finally agreeing this text does not in itself represent concrete action to address the persistent and increasing problems of racism and xenophobia seen throughout Europe. Evidence gathered by ENAR and other bodies demonstrates that member states cannot afford to see this development as the end rather than the means.

ENAR is very concerned that the Council has not given due regard to the views of the European Parliament on this subject. Despite calls for a 're-consultation' with the Parliament, the move to finalise the framework decision comes before the adoption of a European parliamentary report. The report which was discussed by the Committee on Civil Liberties, Justice and Home Affairs last week has not yet been adopted in plenary.

Much of the content of the original Commission proposal has been removed, and many escape clauses have been introduced to allow member states to circumnavigate their responsibilities. Recently ENAR has been disappointed by developments such as:

- The removal of the provisions on mutual assistance, which would have provided a substantial step forward in dealing with 'cross-border racism'.
- The introduction of maximum criminal penalties of at least one to 1 and 3 years, without minimum provisions.
- The inclusion of vague language defining as criminal only those acts likely to 'disturb public order' or which are 'threatening, abusive or insulting'.

ENAR is very concerned that its call for the inclusion of a non-regression clause, and a specific reference to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), have not been included in the text.¹ The addition of these elements, called for in the draft European Parliament report, would strengthen the implementation of the text, and provide a benchmark against which to measure its impact.

Consequently ENAR calls for member states not to further compromise the text by including a reference publicly condoning, denying or trivializing crimes of genocide, crimes against humanity or war crimes to cases not motivated by racism and xenophobia. This is a specific tool and such references, outside of the sphere of racism, risk undermining it.

In 2006, ENAR adopted a general policy paper in which it called for a comprehensive European approach to combating racist crime.² The current negotiations are a long way from fulfilling that objective, and ENAR will continue to advocate for an instrument which requires meaningful and effective change with regard to national law. ENAR will closely monitor the impact of the implementation of this instrument and looks forward to a comprehensive review within three years, which should involve consultation with NGOs, the European Parliament and the European Fundamental Rights Agency.

The European Network Against Racism (ENAR) is a network of European NGOs working to combat racism in all EU member states and represents more than 600 NGOs spread around the European Union. Its establishment was a major outcome of the 1997 European Year Against Racism. ENAR aims to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.

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¹ See press release of 14 February 2007, <http://www.enar-eu.org/en/press/2007-02-14.pdf>

² See general Policy paper No. 2, http://www.enar-eu.org/en/policy/GPP_2_EN.pdf