



European Network Against Racism

Réseau européen contre le racisme

## European Commission's reports on EU legislation against racism and discrimination fall short on addressing victims' need for justice

In January 2014, the European Commission issued two implementation reports on EU legislation against racial discrimination and racist violence: the joint report on the implementation of the 2000 Equality Directives and the report on the implementation of the 2008 Framework Decision on Racism and Xenophobia.

The European Network Against Racism (ENAR) welcomes the reports and the efforts by the European Commission to regularly assess Member States' progress towards equality in outcome. However, the Commission mainly focuses on legal transposition and only reviews implementation in general terms without consideration of human rights violation examples and their concrete impact on the daily lives of ethnic and religious minorities and migrants in Europe.

The European Commission correctly points to gaps in the implementation of EU legislation on countering racist violence and racist speech. It regrets, for instance, the inadequacy of national provisions against denying, condoning or grossly trivialising crimes against humanity in 20 Member States. Due consideration for the racist and xenophobic motivation of crimes is also not always satisfactory, leading, for instance, to racist crimes being categorised as 'hooliganism'. In Greece for instance, despite new amendments to hate crime legislation, 154 incidents of racist violence were recorded between January and December 2012 [by a network of NGOs](#).

On the other hand, there are a number of issues that both the European Commission and EU Member States should address to ensure victims are fully protected.

### Key recommendations to the European Commission:

- Call for secured and inclusive data collection as part of Member States' obligation to ensure equality and combat racist crime
- Launch infringement procedures against Member States which systematically exclude - or condone the exclusion of - Muslim women wearing headscarves from some areas of employment, including public employment
- Call Member States to overcome underreporting of discrimination and racist crime by conducting victimisation surveys
- Propose new EU legislation on hate crime to fill existing gaps in the Framework Decision on racism and xenophobia and ensure effective remedies for victims of racist crime
- Propose a fundamental rights internal strategy to ensure existing EU law is implemented consistently with international human rights standards

## Key recommendations to EU Member States:

- Conduct victimisation surveys to overcome underreporting of hate crime
- Collect equality data disaggregated by prohibited discrimination grounds to ensure equality
- Provide adequate funding to victim support services and reporting NGO networks
- Provide training on racist crime to judges, law-enforcement officials and prosecutors
- Put in place positive action measures to address widespread structural and institutional discrimination
- Adopt the 2008 proposed Directive on equal treatment
- Implement sanctions against the public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes, including the transatlantic slave trade, when it constitutes an incitement to hatred.
- Pay special attention to victims of hate crime when implementing the EU Victims' Directive
- Ratify the Council of Europe's Additional Protocol to the Convention on Cybercrime

### Lack of equality data

Unfortunately, the Commission's reports do not provide a comprehensive analysis of trends of discrimination at the national level. In particular, ENAR regrets that no specific cases of systematic discrimination are mentioned, evading the opportunity to name and shame Member States.

This is partly due to the fact that research and reporting on legislation implementation is hindered by the lack of equality data - with only the UK measuring ethnic and religious minorities' inclusion in the field of education and employment.

The Equality Directives do not directly provide for the obligation of Member States to collect data, **but the European Commission should call for secured and inclusive data collection as part of Member States' obligation to ensure equality.**

### Lack of data on racist violence

ENAR regrets that the implementation report on the Framework Decision on Racism and Xenophobia does not go far enough in terms of data required to monitor racist violence. Indeed, when requesting data on hate crime, the European Commission received only 17 replies from Member States. The EC, unfortunately, does not seem to envisage any measures to get Member States to implement their commitments.

Collecting data on incidents is not enough to grasp the extent of crimes when we consider that according to a [survey from the EU Fundamental Rights Agency](#), on average 80 % of racist incidents against 'visible' minorities are not reported to the police. **Victimisation surveys, and data collection disaggregated by prohibited grounds must be conducted by Member States in order to compensate the gaps in monitoring and reporting.**

## Discrimination in employment on the ground of religion

The Commission's report on the Equality Directives highlights the existing intersections between discrimination grounds, such as racial or ethnic origin and religion. Religion is specifically covered by the employment directive. The European Commission, in the [annex](#) to the implementation report on the Equality Directives, takes a timid step towards the recognition of religious discrimination in employment and states that: "many seemingly neutral requirements or measures may be indirect discrimination if they affect specific groups such as older or disabled workers or persons of a particular religion", giving the example of "unjustified dress codes". **ENAR hopes that this will trigger the European Commission's opening of infringement procedures against Member States which systematically exclude - or condone the exclusion of - Muslim women wearing headscarves from some areas of employment, including public employment, when differences of treatment on the ground of religion or belief are not based on an objective and reasonable justification.**

## Obstacles to effective remedies

The Commission reports highlight the wide lack of awareness of victims' rights, quoting the [FRA survey](#) according to which only 25% of the respondents said that they were aware of anti-discrimination legislation. **ENAR regrets that the reports pay less attention to other factors leading to underreporting of discrimination and racist crime.**

Beyond the complexity of complaint mechanisms and "negative experience due to inconvenience", victims' fear of re-victimisation is a serious threat to the rule of law. Witnesses and victims of discrimination in the workplace may fear repercussions on their work situation if they come forward with a complaint. Moreover, victims of racist crime often face further stereotypes and re-victimisation by the police and the judiciary. **Training of judges, law-enforcement officials and prosecutors, as well as exchange of information with civil society organisations is crucial. Victim support services, reporting NGO networks, websites and applications, such as [iReport](#) in Ireland and the [CCIF app](#) must receive adequate funding and support from competent institutions. User-friendly and coordinated reporting mechanisms and partnerships could be the way for victims of racism to regain trust in existing remedies.**

## Gaps in EU legislation on equality

The Equality Directives are not fully implemented or exploited to their maximum potential to achieve equality in outcome. For example, the possibility to put in place positive action measures is very rarely used, although these could serve to address widespread structural and institutional discrimination.

In addition, gaps in the EU Equality legislative framework will remain until the 2008 proposed Directive on equal treatment is adopted and discrimination on all protected grounds is prohibited outside employment.

## Gaps in EU legislation on hate crime

**ENAR regrets that the European Commission report on the Framework Decision fails to point out existing gaps in the Decision. The Framework Decision sets very low standards, does not provide a definition of hate crime and does not require that States ensure proper police investigation on the racist motive of alleged crimes, therefore hindering proper treatment by courts.**

Furthermore, recognition and remembrance of past crimes are major steps in the protection of minorities' rights and their full inclusion in Europe. **This is why ENAR calls at minima for the full implementation of sanctions against the public condoning, denying or grossly trivialising crimes of**

**genocide, crimes against humanity and war crimes, including the transatlantic slave trade, when it constitutes an incitement to hatred.**

**ENAR also calls for new EU legislation on hate crime, which would fill existing gaps and ensure effective remedies for victims of racist crime. Member States should also pay special attention to victims of hate crime when implementing the [Victims' Directive](#).**

Evidence shows a rise in racist speech on the internet since a number of years, giving a new dimension to the impact of hate speech. ENAR regrets that this increasing phenomenon is not given the attention it deserves, having a negative impact on social cohesion and leading to an increase in racist violence. **We call all Member States to ratify the Council of Europe's Additional Protocol to the Convention on Cybercrime.**

### **Lack of an EU fundamental rights internal strategy**

The gaps and discrepancies in the implementation of these two EU laws reflect an overall lack of a human-rights based approach. **ENAR calls for a fundamental rights internal strategy to ensure existing law is implemented consistently with international human rights standards. The EU should ensure that it uses its available powers to ensure that its values, including respect for fundamental rights and the rule of law, are implemented within its borders.**

### **Conclusion**

Priorities should be given to both the implementation of existing legislation, by means of infringement proceedings if necessary, and to the development of a more comprehensive equality and fundamental rights framework to fill legislation gaps.

It is no coincidence that ENAR reacts jointly to these two implementation reports. We believe it is **necessary to look at the responses to the rise in racist violence together with the implementation of equality policies. It is essential to promote a holistic vision of equality as an integral part of all EU fundamental rights, justice and rule of law policies.**