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# ESSAY

## Europe's Consultative Commission on Racism and Xenophobia and the Slow Progress Towards a European Antiracism Observatory

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### I. INTRODUCTION

On different levels, the European Union (EU) stresses the importance of democratic values and respect for fundamental rights. The Union Treaty exemplifies this by noting that respecting fundamental rights must be a general principle of Community Law.<sup>1</sup>

Other documents express the EU's desire to become a union that entitles all people to rights and freedoms without regard to gender, race, color, language, religion, and political or other opinion. These documents include: (1) the Joint Declarations by the European Parliament, the Council, the representatives of the governments of the Member States meeting within the Council and the Commission of 1977, 1986, and 1990;<sup>2</sup> (2) various resolutions of the European Parliament subsequently adopted on this subject;<sup>3</sup>

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1. Treaty on European Union and Final Act, Feb. 7, 1992, pmbl. para. 3, *reprinted in* 31 I.L.M. 247, 253 (1992) [hereinafter Maastricht Treaty]; *id.* art. F(2).

2. Joint Declaration by the European Parliament, the Council and the Commission, 1977 O.J. (C 103) 1; Declaration Against Racism and Xenophobia, 1986 O.J. (C 158) 1; Resolution of the Council and the Representatives of the Governments of the Member States, Meeting Within the Council of 29 May 1990 on the Fight Against Racism and Xenophobia, 1990 O.J. (C 157) 1.

3. Resolution on the Resurgence of Racism and Xenophobia in Europe and the Danger of the Right-Wing Extremist Violence, 1993 O.J. (C 150) 127, 129; Resolution on

(3) the conclusions of the Committees of Inquiry into Racism and Xenophobia;<sup>4</sup> (4) the 1989 Community Charter of the Fundamental Social Rights of Workers;<sup>5</sup> (5) the Opinion adopted by the Economic and Social Committee;<sup>6</sup> (6) the Commission on Racism, Xenophobia and Antisemitism Communication;<sup>7</sup> and (7) the Joint Declaration of the European Social Partners to the Madrid European Council "on the prevention of racial discrimination and xenophobia and promotion of equal treatment in the work place," adopted during the Social Dialogue Summit in Florence on October 21, 1985.<sup>8</sup> The obligation to respect fundamental rights also confirms the Court of Justice of the European Communities' jurisprudence<sup>9</sup> and follows the common traditions of the Member States.

## II. PROCEEDINGS OF THE COMMISSION

On June 24 and 25, 1994, the European Council in Corfu welcomed the Franco-German initiative against racism and xenophobia. This initiative proposed the creation and led to the establishment of the Consultative Commission on Racism and Xenophobia (Commission).<sup>10</sup> The Commission received its mandate from the Council on July 18, 1994,<sup>11</sup> and has met regularly since September 1994 under the chairmanship of Mr. Jean

Racism and Xenophobia, 1993 O.J. (C 342) 19, 20-21; Resolution on Racism and Xenophobia, 1994 O.J. (C 323) 154; Resolution on Racism, Xenophobia and Anti-Semitism, 1995 O.J. (C 126) 75.

4. Report drawn up on behalf of the Committee of Inquiry into Racism and Xenophobia, PARL. EUR. DOC. A3-0195/90 (PE 141.205/def.) 1.

5. This Charter emphasized the importance of combating every form of discrimination, including discrimination based on gender, color, race, opinion, and beliefs. COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS.

6. Economic and Social Committee, Opinion on the Citizens' Europe, 1992 O.J. (C 313) 34.

7. Communication from the Commission on Racism, Xenophobia and Antisemitism and Proposals for a Council Decision Designating 1997 as European Year Against Racism, COM(95)653 final at 6.

8. Joint Declaration of the European Social Partners to the Madrid European Council, EUR. UNION COUNCIL DOC. 11518/95 (RAXEN 56).

9. Case 11/70, Int'l Handelsgesellschaft v. Einfuhr-und Vorratsstelle Getreide, 1970 E.C.R. 1125, 1135; Case C-159/90, Society for the Protection of Unborn Children Ltd. v. Grogan & Ors, 2 CEC (CCH) 539, 553 (1991).

10. Final Report of the Consultative Commission on Racism and Xenophobia, EUR. UNION COUNCIL DOC. (6906/1/95 RAXEN 24) 2 [hereinafter Final Report].

11. *Id.* at 3.

Kahn.<sup>12</sup> Observers from the European Parliament and the Council of Europe in Strasbourg participated in the Commission's discussions.

The Commission's work is divided into two periods. The first period extended from September 1994 through June 1995; the second period commenced during the Presidency Conclusions at the Summit of Cannes in June 1995 and ends in June 1996.

#### *A. The First Period*

During the first period, the Commission had an "overall task."<sup>13</sup> The Council instructed the Commission to "make recommendations, geared as far as possible to national and local circumstances, on cooperation between governments and the various social bodies in favour of encouraging tolerance, understanding and harmony with foreigners."<sup>14</sup> The Commission created the following subcommittees and ad hoc Working Party to accomplish this task: (1) the Subcommittee on Education and Training; (2) the Subcommittee on Information, Communications and the Media; (3) the Subcommittee on Police and Justice; and (4) an ad hoc Working Party that made proposals on institutional questions.<sup>15</sup>

On December 8 and 9, 1994, the Working Party submitted an interim report at the European Council meeting in Essen. During the Presidency Conclusions, the European Council approved the guidelines contained in the interim report and called upon the Commission "to step up its discussions in particular in the various areas of education and training, information and media and in the areas of police and justice."<sup>16</sup> The Council declared that the subsequent Council of Ministers would elaborate on an overall strategy against racism and xenophobia, using the Commission's report as a guideline.<sup>17</sup>

To that end, the Commission submitted a second report of its activities in May 1995 and presented it to the European Council

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12. *Id.* at 2.

13. *Id.*

14. *Id.* at 2.

15. *Id.*

16. *cf.* Presidency Conclusions of the European Council Summit-in Essen (Dec. 9-10, 1994) (on file with author).

17. *Id.*

during their meeting in Cannes on June 25 and 26, 1995.<sup>18</sup>

### B. *The Second Period*

The Cannes' European Council did not create an overall strategy to tackle racism, but prolonged the Commission's mandate. The Commission was to work closely with the European Council in examining the feasibility of establishing a European Observatory on Racism and Xenophobia (Observatory). Unlike during the first period, the Commission had a precise task in the second period.

Two subcommittees of the Commission are investigating the institutional aspects and legal basis of this Observatory. On December 15 and 16, 1995, the Madrid Summit requested that the Commission continue its activities and submit a final report in June 1996.

## III. PROPOSALS OF THE FIRST PERIOD

### A. *Subcommittee on Education and Training*

The Subcommittee on Education and Training made seventeen proposals for education, nine regarding training of occupational groups, and ten specifically directed at "difficult districts."<sup>19</sup> The first series of proposals urge Member States to "develop, for all educational institutions, an access policy whereby there will be no discrimination on the basis of race, religion or origin and whereby non-discrimination codes of conduct are introduced."<sup>20</sup> At the same time, the proposals recommend that schools recruit minority teachers. The proposals advocate parental participation in matters regarding the methods and objectives of education. The education proposals also encourage schools to emphasize additional language training and include other cultures in the social sciences, language training, history, geography, philosophy and religious studies. Finally, the proposals request Member States to provide education to children of asylum seekers and those with irregular residence status, and to focus more attention on educating children of Romanies, nomads and caravan dwellers.<sup>21</sup> The first series of

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18. See Communication from Commission on Racism, Xenophobia and Anti-Semitism and Proposal for a Council Decision Designating 1997 as European Year Against Racism, COM(95) 653 final at 4, 20.

19. *Id.* at 6-15.

20. *Id.* at 7.

21. *Id.* at 10.

proposals allow room for cultural pluralism, though some Member States will practice this more than others. The proposals also ask Member States to honor Article 2 of the Convention on the Rights of the Child<sup>22</sup> without regard to the struggle against employment of undocumented immigrants.

The second series of proposals addresses the problems of educating and training various occupational groups and public servants, "such as police, judges, prosecutors, customs and immigration officers, labour market officers, social and health workers and teachers."<sup>23</sup> Although the proposals promote the employment of bilingual co-workers, subsequent discussions note that implementing this policy is more difficult in certain countries. The proposals state, "collective agreements should establish programmes for active recruitment from minorities."<sup>24</sup> Thus, the occupational proposals promote the idea of "affirmative action" without labeling it as such. Although countries like the United Kingdom and the Netherlands accept affirmative action, other countries reject this idea because they ban ethnic ascriptions from instruments issuing social rules and ordering public life.

The third series of proposals direct special attention to "difficult districts."<sup>25</sup> Several countries, including France, Belgium, and the Netherlands, realize the "educational-priority policies" applicable to such metropolitan "difficult districts."<sup>26</sup> The Commission repeatedly suggested that the EU direct its attention not only to underdeveloped rural districts, particularly in southern Europe, but invest some liberated resources in underdeveloped metropolitan districts. Additionally, "the European Union must use the resources of its Social Fund and its programs for the alleviation of deprivation in urban areas to support programs in 'difficult districts' of the sort indicated in the above proposals."<sup>27</sup>

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22. Convention on the Rights of the Child, Nov. 20, 1989, art. 2, *reprinted in* 28 I.L.M. 1448 (1989). Article 2 of the Convention obligates States Parties to the Convention to protect "each child within their respective jurisdiction" against any form of discrimination or punishment based on the "child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." *Id.* art 2.

23. *Id.* at 11.

24. *Id.* at 12.

25. *Id.* at 13.

26. *Id.*

27. *Id.* at 14.

The European approach clearly shows that "ethnicity"<sup>28</sup> is related to employment and training programs that directly prepare an applicant for employment. Ethnicity, however, generally is not related to education. Rather, education generally employs a culture-concept wherein culture is a social practice that changes throughout the generations, leaving room for what is described as "language and culture of the country of residence."<sup>29</sup>

Housing, a third traditional pillar of society, usually is closely linked to the two previous pillars of education and employment. Housing is also an important instrument of minority policy, but one with which reflections on ethnicity and culture may not interfere. Therefore, the several Member States consider the activities of this first Subcommittee as preeminently dealing with specific national matters. Although willing to accept suggestions from the European level, Member States are reluctant to adopt regulations.

#### *B. Subcommittee on Information, Communications & the Media*

The Commission's main information proposal sought to establish the Observatory.<sup>30</sup> Apparently, this is the only point that the Council of Cannes explicitly selected.

The primary information issue was whether the Commission should establish the Observatory as: (1) a joint venture with the Council of Europe (in Strasbourg); (2) a separate unit; (3) a network between national institutions; or (4) a well-devised European unit in a designated location. Several European countries already have established organizations such as the Commission for Racial Equality in London; the Center for Equal Opportunities and Opposition to Racism in Brussels; the National Office for Opposition to Racism in Utrecht; the Ombudsman Against Ethnic Discrimination in Stockholm; and the Board for Racial Equality in Copenhagen. Ideally, in addition to the European Observatory, each country should establish a similar national center.

#### *C. Subcommittee on Police and Justice*

In its introductory note, the Subcommittee on Police and

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28. T.H. Eriksen considers ethnicity a debatable instrument in the policy programs of several countries. See THOMAS H. ERIKSEN, *ETHNICITY AND NATIONALISM: ANTHROPOLOGICAL PERSPECTIVES* (1993).

29. Final Report, *supra* note 10, at 14.

30. *Id.* at 16.

Justice urged that "all Member States should show a strong and consistent commitment to promoting equality of opportunity and outlawing discrimination and violent racist activities."<sup>31</sup>

One of this Subcommittee's most effective proposals seeks to abolish restrictions on the freedom of movement for non-EU citizens. Although one must consider the possible extension of EU citizenship to all persons who have permanently resided in one of the Member State's territories for a period of at least five years,<sup>32</sup> the Subcommittee suggests a gradual execution of this extension. The first measure is to gradually exercise the right to free movement by granting this citizenship right. Therefore, the Commission proposes that the Council of Ministers do the following:

1. grant freedom of movement within the Union to non-EU citizens who reside legally within the territory of a Member State and who are in possession of a document which proves that status;
2. grant the right to travel as a worker within the Union for the purpose of activities related to work to non-EU citizens who reside and work legally within the territory of a Member State and who are in possession of a document which proves that status;
3. grant freedom of movement to non-EU citizens who reside *permanently* within the territory of one of the Member States. This freedom of movement includes the right to enter another Union country in order to apply for a position, to commence professional activities, or to look for a job. During this period (period of actually carrying out an activity or searching for a position) the person may stay in the country concerned. To obtain a document proving the status of permanent residence, five years legal residence in a Member State is required.<sup>33</sup>

As a member of this Subcommittee, I emphasize the importance of the right of free movement. Moreover, the EU has an imperative obligation to combat racism and xenophobia. As long as states deny community resident status to immigrants from non-EU countries, states will retard the process of their integration and prolong their segregation, ultimately generating prejudice and

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31. *Id.* at 36.

32. Several Member States employ a five-year term to obtain a residence permit. *Id.* at 45, n.1. See also Council Directive 68/360, art. 6, cl. 1, 1968 O.J. (L 257) 13.

33. Final Report, *supra* note 10, at 45.



nurturing preconceptions.

Delaying the debate on free movement and its consequences until immigration from outside the EU is controlled will only prolong discrimination within the EU. Having complete control over immigrants' movements is not necessary to open the debate on the position of non-EU members. Moreover, for participants in the EU's economic process to fall outside EU law, whether they are consumers or service providers is illogical. Furthermore, total restriction on movement of non-EU citizens is decreasing. For example, in 1994 and 1995, Mr. Wiebenga of the European Parliament noted the right of free travel for non-EU citizens is of the utmost priority.<sup>34</sup>

The Consultative Commission on Civil Liberties and Internal Affairs drafted a charter of the rights and duties of non-EU citizens residing in the EU.<sup>35</sup> The EU's Decree 94/795/JHA of November 30, 1994<sup>36</sup> and a draft of a resolution of the Council of Ministers seek to liberalize the right of free movement for non-EU citizens. An ad hoc European Coordination Committee is currently examining these documents.

#### D. *Ad Hoc Working Group*

The subgroup on Treaty Amendment and Community Competence emphasized that the struggle against racism and xenophobia should become part of the EU's future "core-business." It further noted that the Treaty's amendment explicitly providing for community competence must be an essential element of any strategy aimed at combating racism and xenophobia. The 1996 Intergovernmental Conference on the Revision of the Treaty provides the ideal opportunity to make changes and grant legal

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34. "D'éliminer enfin les obstacles auxquels se heurtent les immigrants légalement établis dans un Etat membre, afin qu'ils puissent voyager librement dans l'Union, sans aucune obligation de visa, et chercher du travail dans un des pays membres.' Ce doit être 'une priorité des priorités.'" [It is high time to remove obstacles to immigrants who are legally established in a Member State in order to enable them to travel freely within the Union without a visa requirement, and to seek employment within the Union. This must be a top priority.]. *EP/Immigration: The Wiebenga Report Approves The European Commission's Broad Approach (Controlling Immigration, Integration of Legal Migrants) and Calls for a Genuine Action Programme—The Possibility of Maastricht's Third Pillar Must Be Used to the Full*, EUROPE, no. 6562, Sept. 14, 1995, at 11 (quoting Mr. Jan Kees Wiebenga, Liberal, NL).

35. EUR. PARL. DOC. A3-0144/94 (PE 208.166/fin.).

36. 1994 O.J. (L 327) 1.

status to non-EU citizens. The ultimate goal is to grant third country nationals EU-citizen status upon completion of a five-year lawful residency requirement in one of the Member States.

#### IV. CONCLUSION OF THE WORKING GROUPS DURING THE SECOND PERIOD

Although the Commission still is forming the Observatory, it has already established certain guidelines. The Observatory's general tasks are to observe racist xenophobic trends in Europe and elaborate on proposals that the EU, or other bodies such as the Council of Europe, will make to national governments on eradicating such trends. In short, this entails: (1) integrating existing data and research facilities; (2) providing information concerning the context, causes and consequences of racism and xenophobia and the effects of certain counter-strategies; (3) stimulating research; (4) continuing research projects; and (5) recommending specific measures. The Observatory's internal structure is one of "independence,"<sup>37</sup> "legitimacy,"<sup>38</sup> "permanence,"<sup>39</sup> and "leanness."<sup>40</sup> The Commission, however, has yet to think through the practical realization of its goals.

#### V. FEEDBACK—THE IMPACT OF THE COMMISSION PROPOSALS ON A NATIONAL LEVEL

To initiate dialogue among various non-governmental organizations and immigration institutions regarding foreign nationals and situations that result in racism and xenophobia, the Commission's members organized national round-table discussions where such meetings had not yet occurred. In many countries, these round-table discussions resulted in fruitful contacts between the participants.<sup>41</sup>

In Belgium, the round-table took place in Brussels at the

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37. The Observatory should not be bound by any chain of command. Draft Text on the Functions and Internal Structure of the Monitoring Centre on Racism and Xenophobia, EUR. UNION COUNCIL DOC. (11231/95 RAXEN 53) 4.

38. The Observatory should "enjoy maximum recognition in the international, national and non-governmental" scene. *Id.*

39. The Observatory "must be more than a [mere] commission" and needs a staff that is capable of securing a reputation. *Id.* at 5.

40. The Observatory should, for substantial as well as pragmatic reasons, be established as a "small institution" and should remain so. *Id.*

41. Final Report, *supra* note 10, at 24.

Center for Equal Opportunities and Opposition to Racism on October 27, 1994. Approximately twenty non-governmental organizations participated. The discussions centered on media, education-formation, and cooperation with the police and courts. The Observatory's approach to racism parallels that of various European countries.

## VI. CONCLUSION

At present, commenting on the impact of the Commission's work is difficult. Although establishment of the Commission enhanced debate at the EU level, now is the time for the EU to adopt a general policy addressing racism. Such a policy was announced some time ago but has not yet materialized. Extending the Commission's mandate indefinitely is not a solution. Thus, a structural approach is necessary. Perhaps establishing the Observatory will achieve this goal. If so, both national and EU policy-makers must address the Observatory's recommendations. A powerful Observatory finally may implement into practice the progressive European ideas that the Commission exemplifies in its Final Report.