

Consultative Commission  
on racism and xenophobia

**1997** European year



against racism

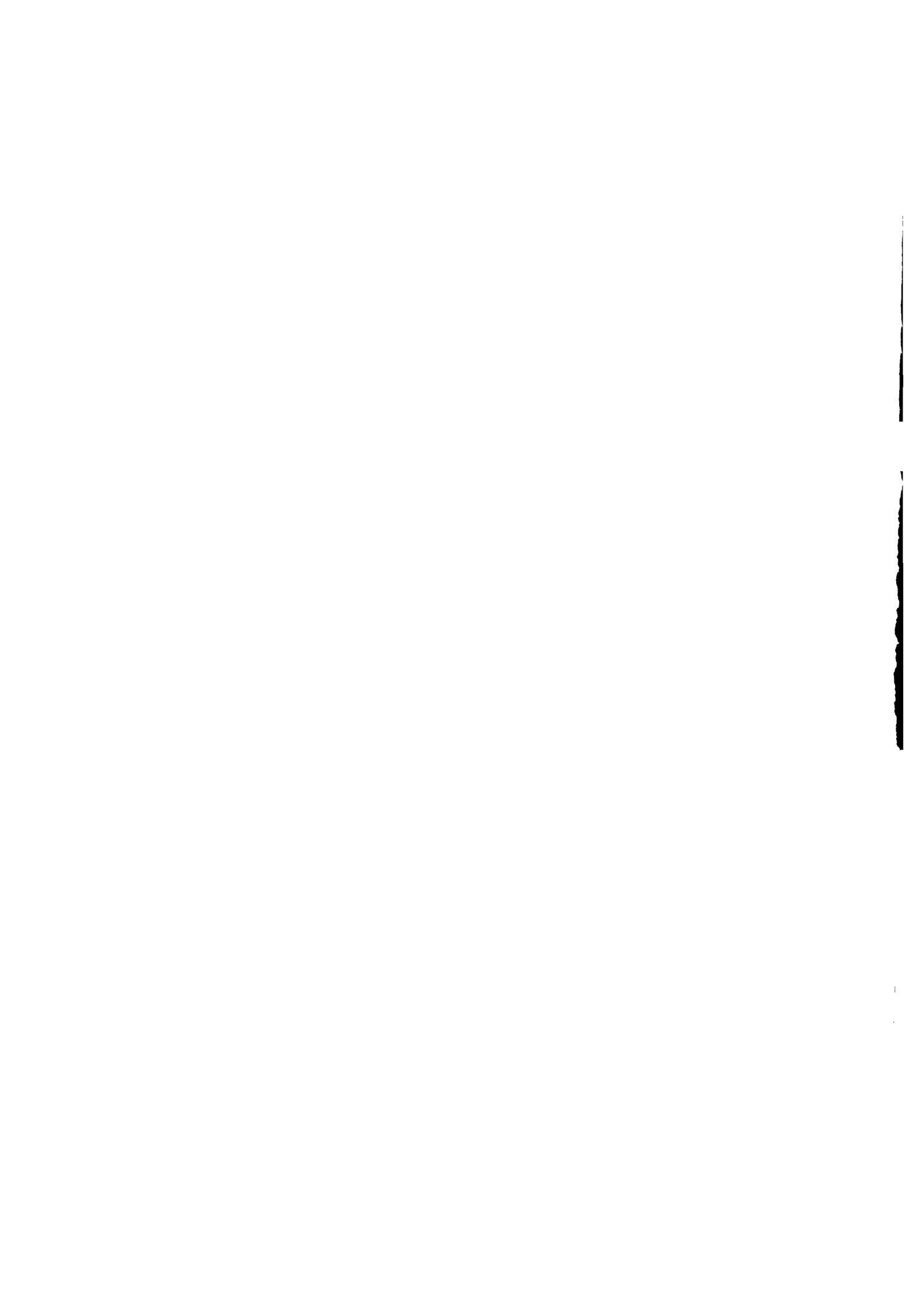
REPORT  
OF THE CONSULTATIVE COMMISSION  
"RACISM AND XENOPHOBIA"

Council of the European Union

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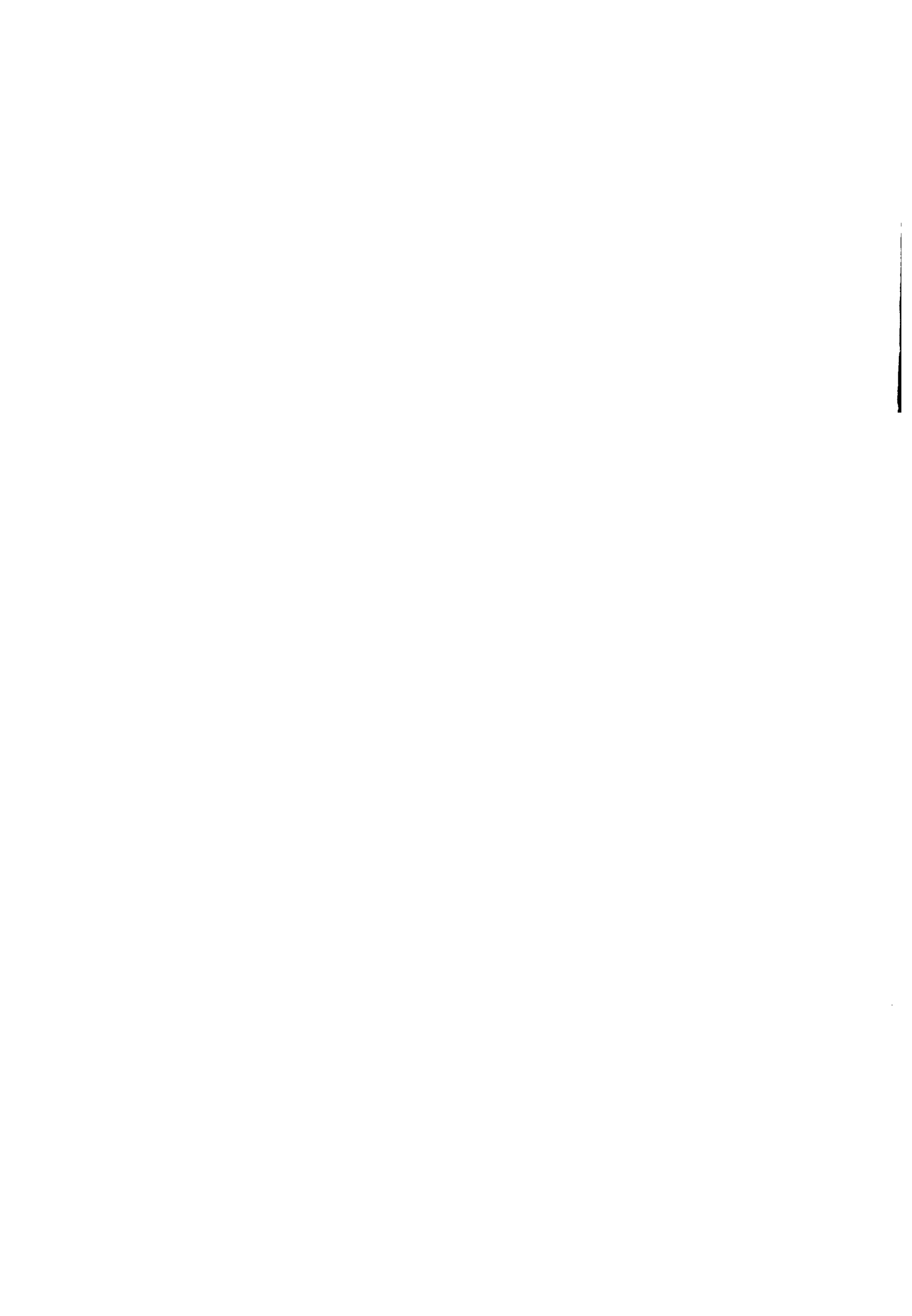
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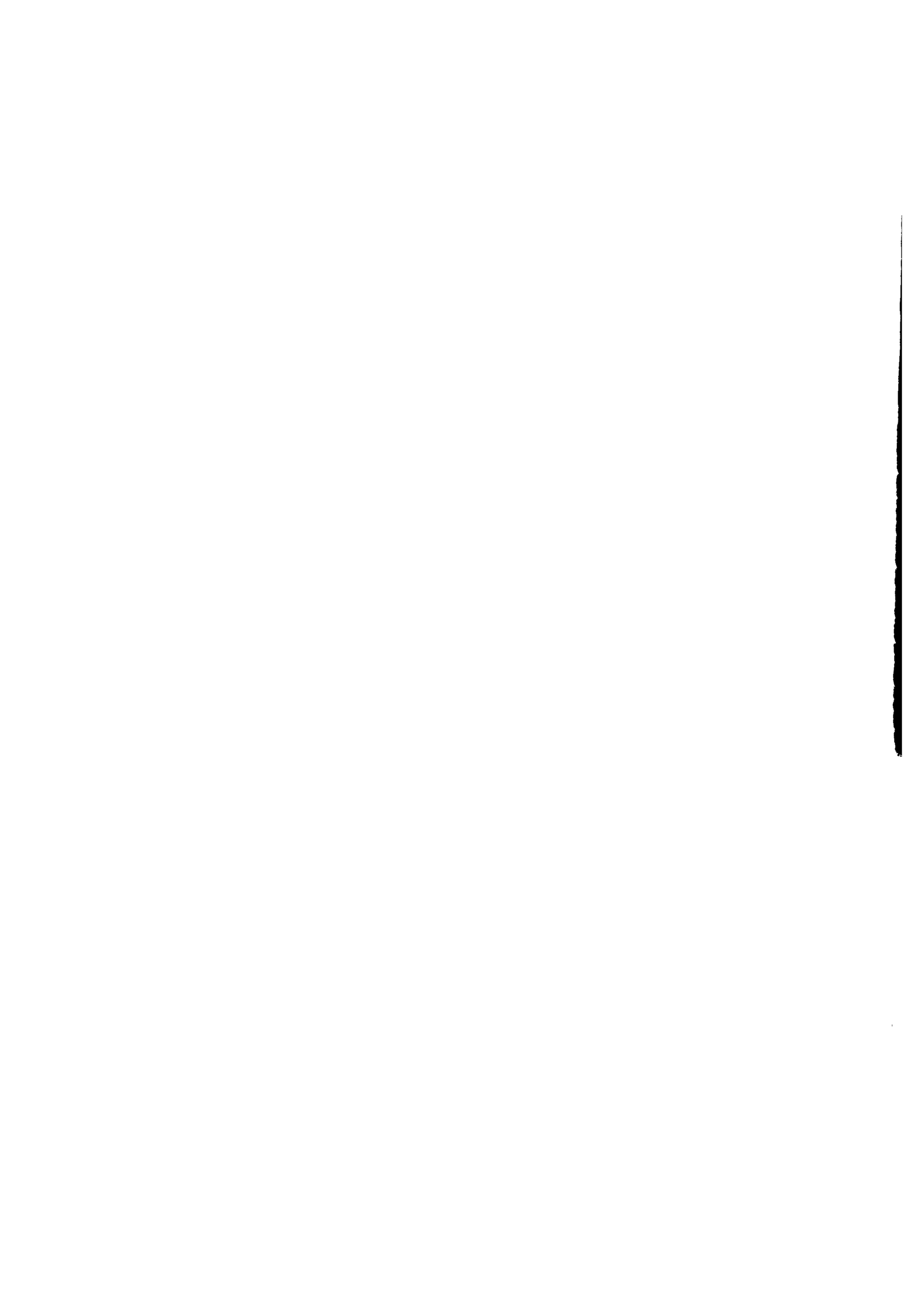


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## **Introduction**



The Consultative Commission on Racism and Xenophobia, whose origins go back to a Franco-German initiative which took shape at the Corfu European Council meeting on 24 and 25 June 1994, has met regularly since September 1994.

Its terms of reference, timetable and work programme were laid down by the European Council and further specified by the General Affairs Council.

The Consultative Commission was initially instructed 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".

The Consultative Commission submitted its proposals in April 1995 (see 2).

The Cannes European Council meeting welcomed the work carried on by the Consultative Commission and asked it to extend its work in order to study, in close cooperation with the Council of Europe, the feasibility of a European Monitoring Centre on Racism and Xenophobia.

Instructed by the Madrid European Council meeting to complete the feasibility study for a European Monitoring Centre by June 1996, the Consultative Commission completed the report (see 3) on 30 April 1996. The Florence European Council meeting in June 1996 approved the ideas contained in the report and instructed the Consultative Commission to continue its work until the Monitoring Centre was established.

According to the feasibility study, the proposed Monitoring Centre will have a dual role: to take stock of and evaluate racist and xenophobic phenomena and analyze their causes, and to formulate concrete, practicable proposals to combat such phenomena. In order to carry out its tasks, the future Monitoring Centre is proposed as a permanent and independent "agency under Community law" operating within the framework of the European Community. It will carry out its work in close cooperation in particular with non-governmental organizations responsible for combating racism and xenophobia, with which it will form a European information network on racism and xenophobia.

In Dublin on 13 and 14 December 1996 the European Council welcomed the progress made since its meeting in Florence and called on the Council to complete its work with a view to the speedy establishment of a Monitoring Centre on Racism and Xenophobia, which will have to work in close cooperation with the Council of Europe.



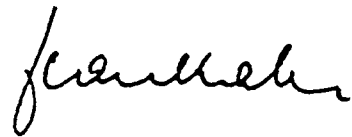
Since then the Consultative Commission has been monitoring and analysing racist and xenophobic phenomena in the various Member States; it takes up positions on the most significant events such as the European Year against Racism and Xenophobia. It will report to the Council and the European Parliament on its activities towards the end of 1997.

The Consultative Commission is pleased to note that in its recent activities the Council took as a basis the recommendations contained in the Commission's report of April 1995. This is the case with:

- the Resolution of the Education Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the response of educational systems to the problems of racism and xenophobia;
- the Resolution of the Labour and Social Affairs Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the fight against racism and xenophobia in the fields of employment and social affairs;
- the joint action (96/443/JHA) adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on action against racism and xenophobia.

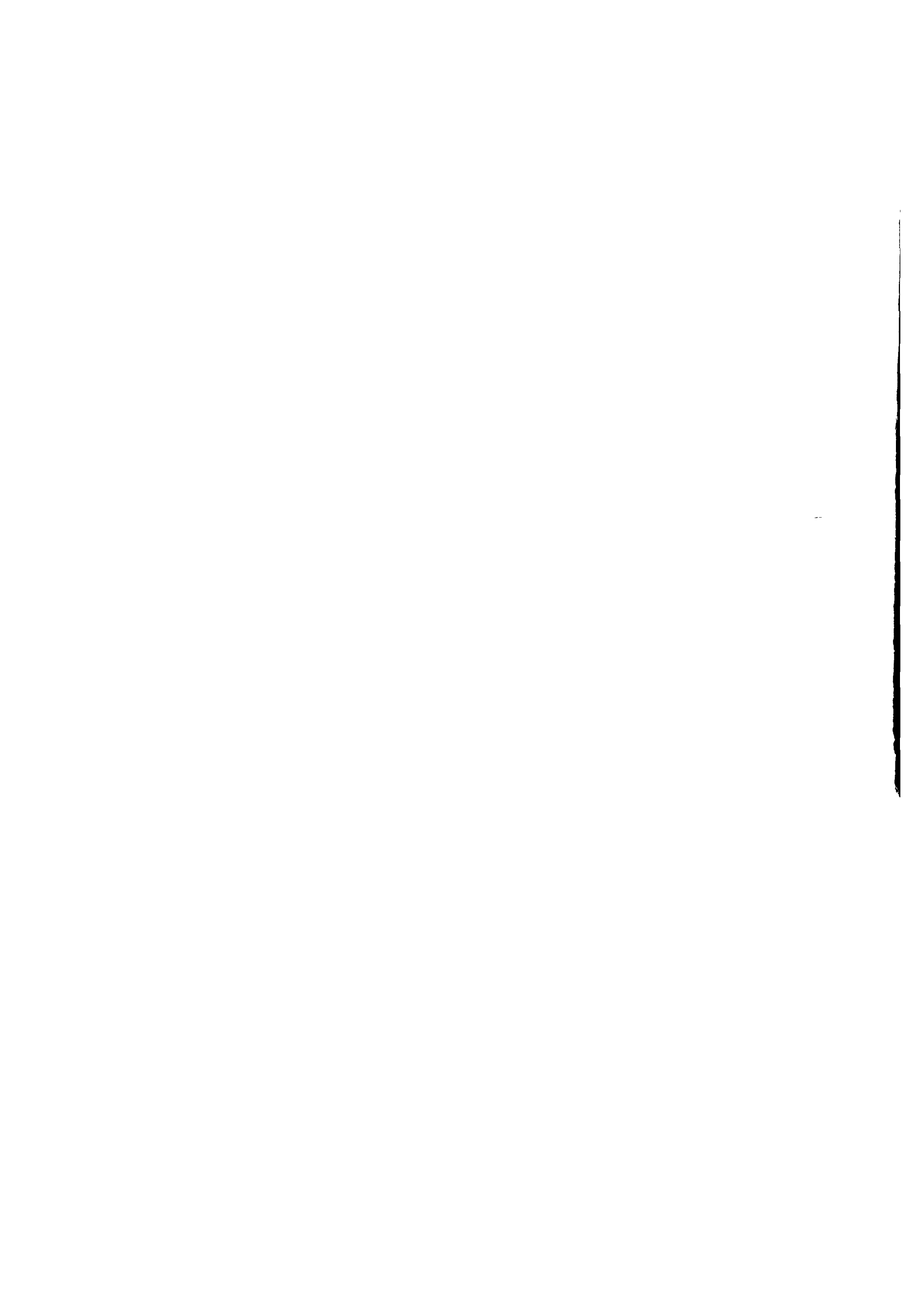
The Consultative Commission underlines the need for the proceedings of the Intergovernmental Conference to lead to the inclusion in the Treaty of clear provisions making it possible to combat racism and xenophobia effectively. It refers to the proposals it has made to this effect.

It expresses the hope that in this European Year against Racism solutions can be found with regard to the establishment of the Monitoring Centre on Racism and Xenophobia and the inclusion in the Treaty of provisions to enable even more effective action to be taken in the future against this plague which threatens our society.



Jean KAHN

**Final report of the Consultative Commission on  
"Racism and Xenophobia"  
April 1995**



## Consultative Commission on Racism and Xenophobia

### FINAL REPORT

April 1995

#### I. INTRODUCTION

The European Council in Corfu on 24 and 25 June 1994 welcomed the Franco/German initiative against racism and xenophobia, which proposed, inter alia, the setting up of a Consultative Commission.

Its mandate, timetable and work programme were laid down by the European Council and further specified by the General Affairs Council.

The Consultative Commission was instructed 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"*.

The Consultative Commission on Racism and Xenophobia has met regularly since September 1994 under the chairmanship of Mr Jean KAHN. Observers from the European Parliament and the Council of Europe have taken part in the Commission's discussions.

The Consultative Commission set up three subcommittees and an ad hoc Working Party, viz.:

- the Subcommittee on Education and Training, chaired by Mr Bengt GUSTAFSSON;
- the Subcommittee on Information, Communications and the Media, chaired by Ms Uta WÜRFEL;
- the Subcommittee on Police and Justice, chaired by Baroness Shreela FLATHER;
- an ad hoc Working Party, chaired by Professor William R. DUNCAN, which has made proposals concerning institutional questions.

Furthermore, it decided that its members would organize national round table discussions in their Member States with the social bodies where such encounters were not already taking place. In many countries these round table discussions have laid the foundations for fruitful contacts between the authorities and various non-governmental organizations as well as other institutions concerned with problems relating to immigration, the situation of foreign nationals and other issues or phenomena which could give rise to racism or xenophobia.

The Commission does not intend in this report to revert to the general considerations discussed in its interim report on respect for human rights, European solidarity and acceptance without exception forming a common ethical code for combating racism, xenophobia and anti-semitism.

Racism and xenophobia are a fact of daily life (see part II below).

In part III the Commission describes its findings on the basis of reports submitted by the various Subcommittees and adopted by the Commission in plenary formation.

Part IV sets out the final considerations.

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The Consultative Commission requests, in the light of the mandate which the Council gave it on 18 July 1994, that its report should be made public and published and given widespread distribution both at European level and in each Member State at the earliest possible opportunity.

## II. DAILY LIFE

The Europe of Fifteen is now faced with a new threat, sixty years after it was plunged into barbarism by fascism, racism and anti-semitism.

Racism and xenophobia are again killing and wounding people in Europe, arousing anxiety and fear. The victims are mainly foreigners from outside or inside Europe, but also national citizens from minority groups.

Current events of the last few months show the urgency of facing up to these widespread phenomena, whether they occur nationally or throughout Europe, whether violent or commonplace in daily life.

The following is a rapid, non-exhaustive review, intended to offer significant examples of the phenomena in all the countries of the European Union.

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**In Belgium**, during the night of 15 to 16 May 1994, fire broke out in Red Cross buildings which were about to be used to house wounded and mutilated children from Rwanda. The criminal investigation concluded that the fire was caused by arson, as a gas bottle had been placed inside the building; the perpetrators have not been found.

**In Denmark**, persons unknown threw two Molotov cocktails at a centre for Yugoslav refugees for the third time in eighteen months.

**In Germany**, a Molotov cocktail was thrown through the window of the children's bedroom of the house of a family from Sri Lanka; the two children and their mother, who was also sleeping in the room because of previous incidents, were unharmed because the device failed to ignite.

**In Greece**, a sociological study of Greek attitudes to minorities living in Greece in 1994 showed racist, xenophobic and anti-semitic attitudes, particularly against Turks, Albanians, Jews and gypsies, and a general feeling that many foreigners were a danger to the public.

**In Spain**, thirty or so Dominican immigrants squatting in the ruins of an abandoned discotheque were suddenly attacked in para-military fashion by four masked men who opened fire with sub-machine-guns, killing a young woman and wounding her companions before making off.

**In Finland**, a Finnish woman married to an African, with whom she has a coloured child, complains about regular rude, racist remarks and accusations made by strangers in shops, in the street and on buses.

**In France**, a seventeen-year-old French schoolboy of Comoran origin was killed by a shot in the back by three people putting up posters for the National Front.

**In Ireland**, many public houses refuse to serve drinks to members of the travelling community. This was highlighted in a recent Court hearing concerning the renewal, which was refused, of the licence of one of the few public houses in one area which has allowed its premises to be used for travellers' wedding receptions.

**In Italy**, two ten-year-olds of gypsy origin were given a doll by the occupants of a car; the doll contained an explosive device which exploded, injuring the little boy in the eyes and causing the little girl to lose her forearm.

**In Luxembourg**, in April 1994, a Portuguese pupil at grammar school in Esch-sur-Alzette was systematically called "Gual" and "dirty Portuguese" by his French teacher.

**In the Netherlands**, in January 1995, a device tied onto a caravan housing a family of refugees from Georgia located at the outskirts of a refugee centre in Luterén, exploded, blowing a hole of one square foot in area in the wall of the sleeping compartment, fortunately at a time when no-one was at home.

**In Austria**, right-wing extremists carried out a series of letter-bomb attacks at the end of 1993; in Oberwart four gypsies were killed in a bomb attack and an attack in Stinatz was clearly targeted at Croats.

**In Portugal**, outright racist activity is mainly linked with skinheads motivated by neo-Nazi ideology or by extreme nationalism; in 1992 in particular, they provoked a wave of violence in football stadiums.

**In Sweden**, ten immigrants were attacked, one after the other, by an unknown man who was soon dubbed "Laser man" because his gun-sight projected a red spot on to his victims; the man was clearly out to kill. The attacks took place at the end of 1991/beginning of 1992; the trial is currently in progress.

As regards **the United Kingdom**, violence, planned and coordinated by a group of fifty English supporters having connections with fascist organizations and raising fascist salutes during the playing of the national anthems, broke out among spectators during a soccer match between the Republic of Ireland and England, resulting in one death from a heart attack and the hospitalization of more than 20 persons.

### **III. REPORTS OF THE THREE SUBCOMMITTEES AND OF THE AD HOC WORKING PARTY ON INSTITUTIONAL QUESTIONS**

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

##### **1. Education towards respect for diversity and mutual loyalty**

###### **Commentary**

- (a) In Directive 77/486 of 25 July 1977, the European Community has pointed out that the Member States are responsible for ensuring respectful treatment for the children of every Member State.
- (b) Existing educational and youth programmes in the European Union should be used in the best possible way to meet the needs of ethnic minority groups, including third country nationals resident in the European Union. These programmes could also be used when appropriate to counteract racism and xenophobia.
- (c) The European Parliament has repeatedly pointed out the importance of education in the construction of harmonious societies with equal opportunities for everyone. Young people would learn to associate with each other in reciprocal respect for each other's diversity and with mutual loyalty.
- (d) All Member States recognize that one of the reasons for the growing racism and the growing number of instances of racial discrimination in Europe is the lack of acceptance of and respect for human dignity and for cultural and religious diversity.
- (e) Some Member States know how difficult it is to respond to the need for continuous schooling of the children of gypsies and travelling people.
- (f) All Member States are confronted to a greater or lesser degree with the phenomenon of school-age children with irregular status.



**Proposals**

- (a) The educational system must promote respect for all persons, irrespective of cultural background and religion. On the other hand, cultural and religious differences can not excuse violations of basic democratic rules and fundamental freedoms.
- (b) All levels of education must include the basic ideas of humanity and democracy, stressing equal rights and obligations for all. The principles of acceptance, equality, religious freedom and equal status must be taught and practised. This should be realized in the development of the ordinary curriculum but could be strengthened with means such as project periods, special teaching aids and expertise from specialized institutions. Children should be taught to see children from other parts of the world as fellow human beings. They should recognize the similar human being in the other. They should learn how to live in a pluralistic society where people share a common human destiny.
- (c) Member States must 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.
- (d) The role of teachers is particularly important in forming the attitudes of children. Teachers should be supported in their task of promoting equal opportunities, e.g. by training courses, exchange programmes and exchanges of know-how and experience in counteracting racism and racial discrimination.

Schools should also pursue an active policy of recruiting teachers from different ethnic minorities.

- (e) The role of school administrators is important in promoting acceptance and respect for all cultures. It is their responsibility that racial discrimination should not occur in the schools and they have the authority to ensure that measures are taken to prevent and combat racial harassment. It lies with the governments of the European Union Member States to establish training programmes for administrators and school leaders on these issues.
- (f) Projects could be initiated to enable persons with experience of living in a multicultural society to visit schools and talk with pupils.

- (g) Education must strive to reflect a multi-cultural society. The school curricula in social sciences, language training, history, geography, philosophy and religion especially must reflect a society open to other cultures. It is of crucial importance that schoolbooks do not have an ethnocentric message. The school should increase the understanding of the different qualifications and cultural backgrounds that the various individuals bring along. Experience has shown that exhibitions, theatre, films, videos, etc. could be used as relevant teaching materials.
- (h) The European Union should find ways of promoting possibilities of exchanging educational material on racism and racial discrimination, developing networks and facilitating the generation of teaching methods by the experts responsible in this sector. These tasks could be performed through a European Clearing House attached to the proposed European Observatory on Racism and Xenophobia. Such materials should include facts on and experience of teaching basic ideas of humanity, democracy and human rights.

The proposed functions of the Observatory should also include services to authors and publishers of school books who need knowledge on issues relevant in this context. A program of support should be established for national procedures which can check existing and new school books for racially biased views.

The European Observatory should promote the cooperation of authors and publishers in order to stimulate the development of methods and books for teaching European school children the principles of human rights and cultural diversity. These efforts must be coordinated with the Council of Europe.

- (i) Schoolchildren in some of the Member States are confronted with new expressions of Nazism and antisemitism in media of different kinds. Particularly dangerous are the materials provided through the new electronic media (computer games). In cooperation with the parents, schools must find ways of combating such phenomena.
- (j) Self-management is essential in school education. Children should be given the opportunity of taking part in the organization of school life. Parents should be involved in matters regarding the methods and objectives of education. Such cooperation is essential for parents and children both from ethnic minorities and from the majority population. At the level of kindergarten, parents from ethnic minorities should also be urged to be present and participate in actual education.

If such democratic organization of school life is to be achieved, the governments of the European Union must make provision for such considerations to be included in the explanatory clauses or preambles of national legislation regarding the primary and secondary school system.

- (k) In order to promote equal opportunities it must be realized that children and students from ethnic minorities may have special needs. Particular difficulties faced in the educational system by children and students from ethnic minorities should be addressed to help them cope better. Such measures could be, inter alia, additional language training.
- (l) Marginalized young people from the majority population often feel themselves rejected by society and act violently toward ethnic minorities. That marginalized youth should be included in programmes aiming at promoting identity building and equal opportunities. The programmes must be sustainable until the individual is integrated in society, the school system or the labour market.
- (m) It is for the governments of the European Union Member States to establish exchange or meeting programmes between schools where ethnic minorities are predominant and schools with children mainly from the majority population. Children from the youngest age groups should be special targets for such efforts.
- (n) The European Union should establish a European "travelling school against discrimination and racism" to teach the EU citizen ways of combatting racism and racial discrimination in theory and in practice. The target group of the school will be European young people that have finished secondary school and adults. The school will spend periods of about 4-6 months working in and with different local communities in different countries.

Each Member State of the European Union should also establish such a "travelling school against discrimination and racism".

In its educational institutions the European Union should include courses on racial discrimination, racism and xenophobia and allocate the necessary funding.

- (o) Children of asylum seekers and children with irregular residence status in the Member States demand attention. These children must have access to the regular educational curriculum although that must not give them any extra rights to have their residential status regularized. Under legally binding European and international human rights instruments, the right to primary education is a right for all children regardless of the status of their parents (see in particular Article 2 of the Convention on the Rights of the Child).
- (p) Special attention is also required for the education of children of Romanies, nomads and caravan dwellers. Attempts should be made to cooperate with these groups in finding solutions to various educational problems. The existing European Community programmes for migrant children and for the children of travelling people should be used to meet these needs.
- (q) Training courses for young people from ethnic minorities aimed at integrating them in the labour market should be arranged. The courses should be based on the resources and qualifications of the individuals themselves. Initiatives for such alternative training courses emanating from ethnic minorities themselves must be supported. It is therefore for the European Union to establish a foundation to which ethnic minorities can apply for funding for such alternative projects.

## **2. Training of occupational groups**

### **Commentary**

- (a) All Member States experience disproportionately high unemployment rates among ethnic minorities.
- (b) All Member States experience problems of racial harassment and racial discrimination at the workplace and in all spheres of working life.
- (c) All Member States have realized the more or less inadequate way the labour market deals with such problems.
- (d) All Member States recognize that their public services do not reflect the social environment. Ethnic minorities are not very visible.
- (e) All Member States are aware that for a variety of reasons some individuals who belong to ethnic minorities distrust the public services.

### **Proposals**

- (a) Knowledge related to counteracting racial discrimination, racism and xenophobia, including aspects of living and working in a multiracial society, should be considered in the education and training of various occupational groups. The training should also cover principles of human rights, democracy and cultural and religious diversity. Of particular importance is the education and training of public servants such as police, judges, prosecutors, customs and immigration officers, labour market officers, social and health workers and teachers.
- (b) Responsible bodies at the workplace and labour-market organizations should initiate or arrange special courses to give the knowledge mentioned above. The training should be related to the individual post and include supervision on handling difficult practical situations. Such training could preferably be arranged at the place of work.
- (c) The governments of the Member States should cooperate with labour-market organizations to bring about the framework for such training policy.

- (d) Exchange programmes and networks should be implemented. A databank of projects could collect and disseminate good ideas at the European level. These functions may be included in the proposed Observatory.
- (e) Educational and training institutions for civil servants should actively recruit students and trainees from ethnic minorities.
- (f) It is crucial to have bilingual co-workers in the various sectors of working life. This is particularly important in the public services. It is therefore for the governments of the European Union Member States to make available the necessary resources for education and training in bilingualism.
- (g) The labour-market organizations should make collective agreements containing provisions prohibiting all forms of discrimination on grounds of race, nationality and religion at the place of work. These agreements may include codes of conduct on anti-racist and tolerant behaviour.
- (h) Collective agreements should establish programmes for active recruitment from minorities.
- (i) Member States should take the initiative to establish the necessary complaint procedures for instances of racial discrimination. The relevant complaint bodies could intervene at the first level at the individual place of work to try to solve problems of racial discrimination and racism by mediation. One objective of such a complaint procedure is thus primarily to create a forum for discussion and thereby for the parties to find a joint solution. Such complaint procedure will thus initiate a long term training policy and prevent discrimination and racism.

### **3. Other measures specifically directed towards "difficult districts"**

#### **Comments**

- (a) Many Member States are confronted with problems concerning the quality of education in schools located in "difficult districts". "Difficult districts" must be understood as districts, particularly in large cities, where social and economical deprivation is predominant.
- (b) In several Member States, majority and ethnic minority schools develop, which reflect and may to some extent contribute to the problem of "difficult districts".
- (c) In many Member States a number of adults in these districts lack a knowledge of the language and culture of the country of residence.
- (d) In some of the "difficult districts", problems often arise when young people and persons employed in the public services meet.
- (e) In the "difficult districts" a process of discrimination easily emerges, of inequality of opportunity, and of perpetuation of inequality. This process can often be the cause of reciprocal racism both within the district and between residents of the district and residents from other districts.
- (f) The problems in these districts are often linked with unemployment which marginalizes the exposed individuals as well as the potential perpetrators of acts of racism, thereby making unemployment one breeding ground for racism and xenophobia.
- (g) Some Member States are confronted with the phenomenon of racist and violence-oriented young people, which is not confined to these districts and social strata.

#### **Proposals**

- (a) Member States with this sort of problem should define educational-priority policies aimed at their "difficult districts".

- (b) Special financial stimulus should be given to the schools located in these "difficult districts" for specific programs aiming at improving standards in schools and strengthening the respect for diversity and loyalty as well as relations with society.
- (c) At the same time adult-education programmes, especially in the language and culture of the country of residence, with a view to removing social discrimination and improving social integration, must be developed in these districts. Special programmes should also be arranged for children of pre-school age and their parents.
- (d) In Member States where violent, racial conflicts occur among young people, special programmes and pilot programmes should be developed, aimed at promoting democratic values and tolerance in everyday life. These programmes should thus promote identity building, responsibility and trust.

It is important that these programmes aimed at young persons in difficult districts should be coordinated with the various public and private institutions and organizations existing in those districts.

Programmes which aim at establishing contacts between youth and adults from difficult districts and other residential areas should be implemented. Neighbourhood associations working in this field should be promoted.

- (e) Measures should be taken in order to improve the standard of housing and the public services and facilities in these districts.
- (f) Local committees representing different sectors of the population in these districts should be set up in order to focus on existing problems, find solutions, establish contacts and take responsibility for necessary actions.
- (g) The European Union must use the resources of its Social Fund and its programmes for the alleviation of deprivation in urban areas to support programmes in "difficult districts" of the sort indicated in the above proposals.
- (h) The European Union must use the European Structural Funds to encourage measures in "difficult districts", with special emphasis on Objective 4 and the Community initiative "URBAN".



- (i) The European Union must devote special attention to vocational training for ethnic minority groups with concrete measures, such as those mentioned in, e.g., the LEONARDO programme.
  
- (j) Support must be given to access programmes to encourage and facilitate participation in higher education by persons from minority and disadvantaged communities.

## **B. SUBCOMMITTEE ON Information, Communications and the media**

### **1. European Observatory – Research into Racism**

- The Consultative Commission's main proposal in the field of information is the establishment of a European Observatory on Racism and Xenophobia; its mandate, modus operandi and organizational structure are described below:

#### **Mandate**

In view of the fact that the phenomena of racism and xenophobia involve a multiplicity of complex factors, most of which influence the concepts of tolerance and understanding towards foreigners and cannot easily be separated from them, the Observatory should be given a broad mandate to supply objective, reliable and comparable information as well as research results at European level.

#### **I. Information**

1. The statistical, documentary or technical information processed or produced must help give the Community and the Member States an overview of the phenomena of racism and xenophobia – their extent, causes and manifestations – as well as of the effects of measures already taken to combat these phenomena when, in the areas of their respective competences, the Community and the Member States adopt measures or determine actions.

This task of providing information must not prejudice the division of powers between the Community and its Member States with regard to the measures to be taken to combat racism and xenophobia.

2. In view of the fact that national, European and international organizations and agencies, governmental, non-governmental, public and private, already exist to provide information of this kind, the Observatory will have to carry out its tasks in close cooperation with them.
3. The Observatory will not normally provide any information relating to individual cases but it shall not refrain from using them as illustrations.

## II. Research

1. In all EU countries additional relevant research is being conducted on issues of racism and xenophobia. What is lacking, however, is a general, pan-European network connecting these individual research efforts. This lack means that there is a deficit in the exchange and comparison of results obtained. Besides providing information, the Observatory should establish a network of national research on racism (and research into xenophobic prejudices). Databases, a documentation centre and a general pool of available information will serve this end.
2. The Observatory must integrate and stimulate relevant research, especially on:
  - (a) causes: what social (economic, political, legal) conditions lead to increased racism and xenophobia?
  - (b) effects: what political (or legal or economic) measures can specifically influence racism and xenophobia?

Both of these areas of research can use the approaches and results of research into prejudices. A wealth of research results has been produced in many European countries (and in the USA), particularly in the field of research on anti-semitism, and this could be used as the basis for further-reaching approaches.

## III. Recommendations

On the basis of its activities in the fields of Information and Research, the Observatory will provide information and address proposals, where appropriate, to Community Institutions which may form the basis for Community recommendations.

## Operation

### I. Information

#### 1. Collection and analysis of existing data

- (a) The Observatory will collect, record and analyse the data, including research data, sent to it by the Member States, as well as data obtained from the Community, from national non-governmental sources and from the relevant international organizations. A special task of the documentation and information centre within the Observatory would be the systematic recording of the results of national analyses of xenophobic crimes, to be conducted throughout Europe.
- (b) It will use an organizational and technical system capable of providing information about similar or complementary programmes or measures in the Member States.
- (c) In consultation and cooperation with the responsible authorities and organizations in the Member States, it will set up and coordinate a "European Information Network on Racism and Xenophobia". This data network, which will constitute the infrastructure for collecting and exchanging information and documentation, will rely among other things on a dedicated data processing system linking the national racism information networks, the specialist centres and universities in the Member States and the information systems of the European or international organizations and agencies cooperating with the Observatory.

#### 2. Improving data comparison methodology

- (a) The Observatory will help to improve the objective and reliable comparability of statistical, legal, semantic and other data at European level by establishing common indicators and criteria which, although they are not binding, the Observatory may recommend to improve the consistency of the methods of measurement and analysis used by the Member States and the Community.

(b) By setting up an electronic database it will facilitate and structure the exchange of quantitative and qualitative information.

## II. Research

1. On the basis of the research network, the Observatory will compile a catalogue of gaps in research; this in turn will lead to comprehensive research while at the same time making possible pan-European comparisons. The Observatory will have the task of making proposals for European research projects.
2. Scientific orientation of the Observatory: it is essential for a well-functioning establishment to have an interdisciplinary approach towards research. Only then can the framework for and consequences of racism and xenophobia be observed, recorded, described and analyzed.

The most important scientific disciplines to be involved and used are:

- psychology,
  - social psychology,
  - sociology,
  - political science,
  - law (especially public law),
  - economics.
3. The Observatory will conduct surveys, preparatory studies and feasibility studies as well as pilot actions necessary for its own tasks; it will organize expert meetings and set up ad hoc working groups as needed for this purpose; it will establish a pool of scientific documentation open to the public and encourage the promotion of information activities.
  4. The Observatory may, with the consent of the Member States concerned, undertake to establish contractual links, particularly in the form of subcontracts, with specialized governmental or private centres so that tasks which it may entrust to them can be carried out.
  5. It will promote an exchange of information between decision-makers, researchers and social bodies concerned with combating racism and xenophobia.

### III. Dissemination of data and research results

1. The Observatory will make the information and research results which it collates available to the Community, the Member States, the relevant agencies as well as the research institutions involved or interested.
2. It will ensure the wide dissemination of information about the measures and actions undertaken by individual Member States and the Community and, where appropriate, by third states and international organizations, as well as information about the relevant findings of research into effects.
3. On the basis of the data and research results obtained and the initiatives it takes, it will publish an annual report on racism and xenophobia in Europe. In that report it will make recommendations to policy makers with respect to possible promising measures to combat racism and xenophobia in Europe. The annual report will be submitted to the European Parliament for debate.
4. In order to set up the "Raxen" network as quickly and efficiently as possible, the Member States will undertake to notify the Observatory within six months of its creation of the main elements making up their national information and research networks.

IV. Cooperation with European and international agencies and organizations, and with third countries

The first task of the Observatory will be to provide information as well as to establish cooperation in research, especially with the national research institutions already working in this field. In order to avoid duplication and to ensure mutual stimulation, the following points should be taken into account with regard to regular cooperation:

- (a) The Observatory will help to improve coordination between national and Community actions and those undertaken by the various social bodies in their respective fields of activity.
- (b) It will cooperate actively within a European network with the relevant national non-governmental organizations in the area of racism.
- (c) It will, on the basis of arrangements concluded between them and the Community, be open to third countries sharing the Community's and its Member States' interest in the Observatory's objectives and activities.
- (d) In order to avoid duplication, the Observatory will take account of activities already being carried out by other existing institutions and agencies. Integration of information as a matter of principle is intended to prevent the Observatory entering into competition with existing institutions.
- (e) Cooperation must also be sought, however, with transnational research institutions. An important example in this connection is the European Union's COST research programme. COST would also allow the involvement of the new democracies of Central and Eastern Europe.
- (f) A further example of transnational cooperation is the Council of Europe, which would also make possible systematic cooperation reaching beyond the European Union's borders. There should be consultation with the Council of Europe with a view to ensuring coordination between the work of the Observatory and the Council of Europe in the context of Europe as a whole.

## 1. Organization

The Observatory will have an Executive Board, which will establish its rules of procedure and adopt a three-year work programme. It will be headed by a Director, who will be responsible for its scientific and administrative operation.

The Executive Board and the Director will be assisted by a Scientific Committee, which will ensure a multidisciplinary approach in the Observatory's work. Its statements will be made public. The Scientific Committee will primarily comprise the directors of those research institutes in the individual European Union Member States which deal with the subject of racism and xenophobia.

2. The Observatory will have a budget, in which income and expenditure must be balanced.

Without prejudice to other resources, the Observatory's income will be made up of a Community subsidy, sums received in payment for services rendered and any financial contributions made by third states.

3. The Observatory will have legal personality. In the individual Member States it will have the maximum legal capacity accorded to legal persons under the law of each State.

It is essential for the network of relevant research institutes dealing with racism and xenophobia, envisaged in this concept of a European Observatory, to work closely together with existing, smoothly functioning research networks on related subjects.

The Consultative Commission requests that a feasibility study be carried out aimed at examining the options for closely networking numerous research institutes, or of linking different networks using the latest technology. If its mandate is extended, it proposes that it organize this feasibility study and its evaluations and subsequently make concrete proposals to the Council.



## 2. Network of Information and SOS Hotlines

Information and SOS hotlines are an important aid in the fight against racism; here, at local level, foreigners and immigrants requiring assistance and information can talk with someone about their needs. Such hotlines serve as important focuses for the day-to-day worries and complaints of foreign fellow-citizens and immigrants.

The Consultative Commission appeals to cities and local authorities to support the establishment of such hotlines and calls upon the Member States to undertake to help to ensure that this service is soon available all over the EU.

At the same time the Consultative Commission requests the allocation of a Europe-wide telephone number for all information and SOS hotlines for immigrants. The national telephone companies are called upon to provide a free line for this service. A recognizable, uniform telephone number would not only be a symbol but also enable anyone to find help quickly and easily all over Europe.

## 3. Education and Information

Many people are unaware of their prejudice against foreigners and immigrants. Therefore the public must be continually and objectively informed and educated about the various aspects of a multicultural society.

The Consultative Commission demands that the governments of the EU Member States carry out regular and comprehensive information and education campaigns on these issues.

In addition the Consultative Commission calls upon media executives to support these efforts and to give public and private initiatives generous amounts of space and time for these campaigns.

#### **4. Cooperation between NGOs and governments**

The Consultative Commission's central task is to make recommendations aimed at improving cooperation between governments and the various societal groups in order to promote acceptance of and understanding towards immigrants.

The Consultative Commission accordingly calls upon the governments of the EU Member States to make increased approaches to the NGOs and other interested societal groups with the aim of institutionalizing national "round table" discussions between NGO and government representatives.

In addition the Consultative Commission urges governments, when carrying out campaigns and measures, to pay greater heed to the experience and knowledge which the NGOs possess.

Finally, the Consultative Commission calls upon the European Commission to hold regular "round table" discussions and expert consultations at European level.

#### **5. Inflammatory and Propaganda Material from Third Countries**

The European Union is being flooded with extreme right-wing and xenophobic propaganda material. Not only do differing legislation and views among EU Member States regarding xenophobic and racist literature allow internationally active criminal organizations to produce their propaganda in one country and disseminate it in another, but there are also such fundamental differences between the law in Europe and that in third countries that Europe would not be freed from the scourge of extreme right-wing, anti-Semitic and xenophobic propaganda even if it were to harmonize most of its legislation in this area. The EU must enter a direct and informal dialogue with these states.

Thus the Consultative Commission requests that informal talks be initiated with individual third countries with the aim of stopping the export of degrading and inflammatory literature to the European Union. This is a question of the EU's exerting political influence as a community, of making joint diplomatic demarches and of jointly organizing other measures. In view of the fact that the criminal organizations often operate on a global scale and in view of their global threat, the United Nations should also take part in this dialogue like, e.g. the Dublin Group of the EU in the area of international anti-drugs activities.

## 6. "Ideas Against Xenophobia" Exhibition

Initiatives and local events supported by the public are indispensable in our fight against racism and xenophobia. These campaigns are effective above all in neighbourhoods and at the local level since in this case they help to raise public confidence and to demonstrate practical and effective ways of improving the public's acceptance of immigrants. The experience gained from these events on site should be made available to other interested citizens and thus encourage them to implement similar projects.

The Consultative Commission thus requests that a Europe-wide travelling exhibition be set up in which, on site, citizens in all EU Member States are informed about initiatives aimed at reducing intolerance. This ideas forum should present a wide variety of measures, both successful initiatives and those which have failed to achieve their objective. Apart from documentation on large-scale campaigns, smaller initiatives using simple resources such as films, cartoons, posters, stickers, etc. should also be carried out.

The Consultative Commission calls upon the European Commission to order and finance the planning of such an exhibition.

## 7. Advertising

As in the media per se, there is in advertising no reflection of reality but rather of a world largely free of racial and ethnic minorities. Advertising fails to depict the day-to-day normality of Europe's multicultural consumer society. This is all the more difficult for us to understand given that taking national peculiarities into account, advertising today is designed to have effects across national frontiers.

The Consultative Commission therefore strongly urges European advertising associations such as the European Association of Advertising Agencies (EAAA) to make use of their resources in order to portray a balanced, realistic view of minorities and immigrants that shows respect for human rights.

In this connection the Consultative Commission also suggests that more effective instruments of voluntary self-regulation be set up within the advertising industry to allow consumers to present allegations of discrimination in a swift and unbureaucratic fashion.

The Consultative Commission urges aid-organizations to avoid using racially or ethnically derogatory stereotypes and to develop standards for their promotional activities that avoid the unnecessary use of such stereotypes.

## 8. TV Viewer Research

The Consultative Commission deplors the fact that TV viewer research commissioned by both public and private companies portrays only a limited picture of viewer reality. This is because, in many Member States, immigrant households are not included in viewer research. Since the advertising industry develops and places its advertisements on the basis of that research, it is especially important that immigrants households be researched as well. This would soon lead to more immigrants being shown in advertising and thus to a more accurate portrayal of reality.

The Consultative Commission calls upon TV companies that commission viewer research to refrain from supporting the present discriminatory practice any longer.

It also urges the Member States to remind their public TV companies of their duty to represent all sections of society equally. The Consultative Commission requests that governments monitor compliance with this obligation.

## 9. **Balanced Reporting**

Pertinent and objective journalism, unbiased and balanced reporting, a sensitive choice of wording and informed tolerance demand a good journalistic training. Particularly in a career such as journalism, which lacks entry criteria, basic and further training are given by numerous groups and associations. This continuous learning process has a moulding effect on the views of opinion-makers. The daily questioning of swiftly-formed prejudice is indispensable for the development of critical analysis in journalism. The Consultative Commission's requests are thus directed at various basic and further-training agencies.

The Consultative Commission accordingly calls upon publishers' and journalists' associations, as well as TV and radio networks, to place emphasis in their training programmes upon the promotion of tolerance and acceptance of minorities and the fight against racism and xenophobia. A well-founded journalistic training in this field is an important factor in creating a Europe of solidarity. Sensitive treatment of reports on racism and xenophobia is a prerequisite for a more harmonious coexistence in our modern society. For this reason training must be practical; it should, for example, apart from teaching basic journalistic theory, include regular practical training periods with associations and NGOs concerned with the immigrant issue. Contact with and travel by young journalists to the immigrants' countries of origin would also be useful. Publishers should consider regular exchanges of journalists with editorial offices in neighbouring countries. Such bicultural meetings are of special value due to the media's multiplier effect.

The Consultative Commission also calls upon the European Journalism Training Association and other associations of schools of journalism to appeal to their members to make the promotion of acceptance and understanding of immigrants and minorities a priority when drawing up teaching plans and holding seminars.

**One example: the European Journalism Centre**

In this regard the Consultative Commission welcomes the continuing financial support given to the European Journalism Centre in Maastricht by the European Commission and its other sponsors. The Consultative Commission calls upon this independent training centre to emphasize the significance of a pertinent and sensitive treatment of racism and xenophobia in its teaching. The complexity of a multicultural Europe should also be considered to a greater extent by the Observatory not only in its round-table talks and in its special programmes for target groups but also by increasingly involving Eastern Europe in the European media scene. Existing European Journalism Centre projects such as "Euroreporter" should pay greater attention to this issue. These efforts should be focused as part of the Centre's function as a clearing house and a network.

**Handbook for Journalists**

The European Journalism Centre, taking previous national work and experience into consideration, is encouraged to elaborate a handbook for journalists' daily use and as teaching material; the issues of immigrants, asylum law, xenophobia, social exclusion and racism would be clearly set out, especially for journalists working for local newspapers. This handbook must combine topical practical aspects with useful information and serve as a practical guidebook for day-to-day journalism.

## 10. Under-representation of Ethnic Minorities

Ethnic minorities are seriously under-represented across the entire media spectrum, regardless of function, medium or category. We are a long way from having editorial departments in European radio and TV companies which reflect normal society. Owing to their exclusion from media reality, immigrants and ethnic minorities continue to be forced onto the sidelines. If TV, radio and the press were to adopt a multicultural approach to reflecting reality, it would have a major effect on the public's perception and attitude. Visible signs of participation by ethnic minorities in the mainstream media may also encourage young people from these groups.

The Consultative Commission therefore appeals to employers in the media directly to improve access to media careers for members of ethnic minorities. It calls upon the European media employers' associations to increase markedly the proportion of employees from ethnic minorities within a set period within the scope of voluntary self-regulation. The progress of these promotion programmes should be assessed and published at regular intervals. On the basis of these results new strategies could be quickly developed and discrepancies corrected. The aim of such measures should, among other things, be to employ these journalists not only in work involving foreigners but in all areas and programme categories. In the case of TV, for example, it should go without saying that ethnic minorities should be given access to mainstream programmes. Public companies in particular, which are bound to represent all sections of the public equally, must play a pioneering role in this process. These measures should also receive financial support from the governments of individual Member States.

In order to integrate members of ethnic minorities more quickly into the media, radio and TV broadcasters, as well as editorial departments, should nominate commissioners to represent the interests of these groups, comparable to the existing commissioners for women's interests and for youth protection.



## 11. Media 92 Programme

One important way for members of ethnic minorities to gain access to the media is, for example, through TV and radio productions by media-makers who themselves belong to these groups. However, this area, too, must be considerably expanded.

The Consultative Commission calls upon the European Commission to ensure that ethnic minorities have equal rights of participation in production and programmes sponsored by the Media 92 Programme. Money should be set aside within the Media 92 Programme, in order to encourage the production of multicultural programmes. Funds should be allocated in particular to independent programme-makers from ethnic minorities, to production companies and to international co-productions in which members of ethnic minorities are involved.

## 12. Media Education

Thus, on the one hand, media-makers must become aware of their special responsibility. On the other hand, however, the consumer, too, must be informed and educated about the importance, role and influence of the media, both traditional and ultra-modern. Young people in particular, whose education to tolerate and accept others is perhaps the most significant factor on the road to a functioning multicultural society, need to be made more aware of the positive and negative options of media influence.

The Consultative Commission therefore welcomes the endeavours of the European Association for the Promotion of Media Education and also supports its demand for media studies to play a greater role in basic and further teacher training.

The Consultative Commission therefore urges the Council to consult on the Europe-wide introduction of media studies as a subject into school curricula and to make corresponding recommendations to the Member States.

### 13. Journalistic Guidelines

The journalists' associations of several European countries have for a long time recognized the need to make it easier for journalists to perform the balancing act between freedom of the press and opinion on the one hand and the precepts of human dignity and equality of opportunity on the other by formulating codes of conduct or journalistic guidelines. Forty years ago the International Federation of Journalists, too, laid down basic guidelines in the Bordeaux Code. These instruments of voluntary self-regulation are, however, often unenforceable due to limited and in many cases badly functioning sanctions mechanisms. The Consultative Commission is not blind to the dilemma resulting from the unsuitability of legislation and the weakness of voluntary self-regulation.

The Consultative Commission calls upon the European journalists' and publishers' associations and those national associations which have already agreed on guidelines for ethical reporting to encourage those countries which do not yet have one to establish such a code of conduct through their national association as an instrument of voluntary self-regulation.

The Consultative Commission makes no attempt to disguise its opinion that, in drawing up corresponding guidelines, consideration should be given to certain effective sanctions mechanisms supported by the profession, as are envisaged in existing codices, to enable them to be better enforced. The Consultative Commission encourages the efforts of the International Federation of Journalists and its creation of an International Working Group against Racism and Xenophobia, which as one of its activities since September 1994 has been considering press codes and their effectiveness.

The Consultative Commission suggests that the European associations devote greater attention to journalistic guidelines.

#### 14. European Media Prize

Taking sanctions against bad examples is only one side of the coin. Positive examples, above all, play a stimulating role.

The Consultative Commission accordingly recommends the award of a European Media Prize for Tolerance and Understanding in addition to the existing Journalist Prize against Racism which has been established by the European Commission and the Council of Europe in cooperation with the International Federation of Journalists. There are already many such prizes at national level. Some initiatives are planning to make such an award at European level, too.

The Consultative Commission supports these ideas and calls upon the European Commission to share the costs of establishing a European Media Prize. In addition the Commission should form a jury consisting among others of members of those national juries which have already inaugurated such prizes. The European Media Prize should be awarded for TV, radio and the print media. Prizes should also be awarded in various programme categories (documentary, TV film, series etc.). The prize should reward the portrayal of models of successful integration and the balanced depiction of successful examples of the harmonious coexistence of members of different cultures.

## 15. Media Monitoring

The systematic, critical monitoring of media reporting and media reception makes possible a thoughtful assessment of what are often quickly formed prejudices and is a necessary part of balanced reporting. This monitoring should not, however, be restricted to the press but should also include TV and radio. Continual analysis of media content is already being carried out by numerous national institutions; at European level media monitoring is done by the European Institute for the Media. This Institute was founded with the aim of encouraging continuing research and facilitating the exchange of experience and information between media experts and European consumers.

The Observatory should collaborate in monitoring the media with appropriate institutes like the European Institute for the Media.

The Consultative Commission requests that the European Commission continue to support the European Institute for the Media and that the latter be expanded by creating a separate department for media monitoring specializing in racism, xenophobia, foreigners and immigrants. The analyses of media monitoring should be regularly published.

In addition, the European Institute for the Media should be instructed to draw up a feasibility study on the realization of a system of Europe-wide media monitoring projects, taking into account existing initiatives, and making the relevant recommendations.

## 16. Youth exchange

The Consultative Commission agrees that the promotion of tolerance and understanding for migrants, especially amongst young people, is particularly important and necessary. Our demands must therefore aim at enhancing youth exchanges within Europe. The "voluntary social year" or "ecological year" exists in very many countries. The Consultative Commission suggests the creation of a "European social service" or "European civilian service". In calling for such an institution we refer inter alia to the European Parliament Resolution of 19 January 1994 (Resolution on conscientious objection to military service in the Member States of the Community), which demanded that civilian service "should also be able to be performed with organizations in other Member States, without the need for reciprocity and even when there is no conscription in the country concerned". The Consultative Commission refers in this respect to the conclusions of the Council of 30 November 1994 within the framework of the Youth for Europe III programme and to a recommendation by the Committee of Ministers of the Council of Europe to the member states of the Council of Europe regarding the promotion of a voluntary service dated 4 May 1994.

**C. SUBCOMMITTEE ON Police and Justice****CHAPTER I****INTRODUCTION****1. Background**

The subcommittee's major concerns have been in relation to the fundamental human rights which they believe should be accorded to all individuals regardless of their race, religion, colour, or ethnic or national background or residential status. The subcommittee strongly believes that all Member States should show a strong and consistent commitment to promoting equality of opportunity and outlawing discrimination and violent racist activities. This commitment should be demonstrated through national and European legislation and by establishing procedures, practices and policies which give strong support to these aims.

**2. Employment**

The subcommittee believes that the right to equal opportunities in employment is a fundamental one, and that no member state should allow any arrangements which discriminate in the field of employment. The subcommittee believes that an essential pre-requisite for ensuring that any legislation or practices in this area are effective is to introduce a system of monitoring and record keeping. Without access to such information any pretence at ensuring equality in employment will not be credible.

The subcommittee has also looked at the effects of unemployment on the rise of racism and xenophobia. It encourages creative initiatives geared towards job-creation; supports measures which benefit the Community as a whole but also supports measures aimed at eliminating racism. It also encourages the use of the European Structural Funds to stimulate measures in deprived urban areas with high immigrant populations.

### **3. Freedom of Movement**

The subcommittee firmly believes that, as part of its strategy to tackle racism and xenophobia, the European Union should ensure that those members of minorities within Member States who have been legally resident for five years should enjoy the same rights/duties and freedom of movement as citizens of the European Union. The subcommittee feels that any barriers to freedom of movement which, in turn, curtail freedom of access to employment, simply encourage racism and discrimination against minorities within the European Union.

### **4. Harmonization of legislation and the role of the police in tackling racism and xenophobia**

The subcommittee believes that the fair and impartial application of the law in any Member State is an essential requirement in the fight against racism and xenophobia. It believes that the police and justice agencies have a key role in enforcing anti-discrimination legislation and providing a fair and non-discriminatory discharge of their duties. The subcommittee believes that Member States should enhance arrangements for ensuring that the police service properly reflects the society which it polices. The training of police officers, the mechanism within the police service for tackling racist attitudes on the part of its officers and the mechanism for monitoring and evaluating the success of its programmes are crucial to providing a credible response to racism and xenophobia.

### **5. Criminal Justice System**

The subcommittee believes that there should be a duty on all of those involved in the criminal justice system not to discriminate in the discharge of their duties. Information and statistics should be collated and published to help those involved in such work to avoid discrimination.

In crimes where racial motivation is believed to be a factor, that should be drawn to the attention of the relevant court by the prosecuting authorities so that sentences can reflect with suitable severity the view which society takes of those involved in racist crimes.

## **6. Distribution of racist material**

The subcommittee condemns the increased distribution of racist material in the European Union. It firmly believes that national legislation should be harmonized regarding the control of racist material, whatever form it takes, and its cross-border distribution.

## **7. Conclusion**

The subcommittee notes that a number of its proposals are already being given active consideration within the European Union in other fora. It welcomes this work and believes that the recommendations it has made are sensible and practical ones which, if followed, would materially improve the position of minorities within the European Union. The subcommittee believes that the European Union already has the ability to take action in all of these areas under existing legislation and strongly urges that Member States demonstrate their commitment to tackling racism and xenophobia by adopting the proposals of the subcommittee on police and justice.

Finally, the subcommittee strongly holds that it is the responsibility of Governments to set standards in all areas of public life. They should make clear their abhorrence of racist acts and all manifestations of intolerance.

The subcommittee's detailed recommendations are set out in chapters II – V.



**CHAPTER II****EMPLOYMENT****A. PROVISION AGAINST DISCRIMINATION IN EMPLOYMENT**

Principle: All individuals, regardless of their colour, race, nationality, ethnic or national origins or religion should have the right of equal access to employment, equal pay and fair treatment from an employer.

Proposals:

1. Individual Member States should introduce measures to make racial discrimination in employment unlawful.

These measures should protect both applicants and employees. Conduct which constitutes racial discrimination should include:

- (a) direct discrimination – treating a person less favourably on "racial grounds", for example, on the grounds of colour, race, nationality or ethnic or national origins;
  - (b) indirect discrimination – practices which are discriminatory in their effect on a particular racial group, and cannot be shown to be justified;
  - (c) the victimization of a person for asserting his/her rights under the legislation should also be unlawful.
2. These provisions should allow for an aggrieved individual to make a complaint to a tribunal or court. After a prima facie case has been established by the employee, the burden of proof would shift to the employer.

3. Tribunals should be able to require employers to pay compensation to the victims, when discrimination is proved. Also, the tribunal or court should be able to recommend that the employer take a particular course of action in order to eliminate discrimination, or reinstate an employee.

**Exceptions:**

The provision may allow for limited exceptions where being of a particular racial group is a genuine qualification for a job and may permit employers to provide specific training to ethnic minorities to enable them to take advantage of job opportunities.

**Monitoring:**

Effective record keeping and monitoring are central to the effective implementation of equal opportunities policies and actions plans; and in measuring the way in which the actions and policies of the organization involved tackle discrimination. The attached annex explains the methods of monitoring in more detail.

4. Arrangements should be actively encouraged to ensure that full record keeping and monitoring is in place to ensure that discrimination in employment can be identified and tackled.

**B. PROPOSALS FOR ACTION IN THE FIELD OF UNEMPLOYMENT**

The following proposals for action in the field of unemployment are put forward:

**The Consultative Commission on Racism and Xenophobia,**

WHEREAS the European Union aims at the peaceful and harmonious integration of ethnic and other visible minorities in a multi-cultural European Union;

WHEREAS in its interim report the Commission concluded that the rise of racism, xenophobia and intolerance is to a large extent closely related to the deterioration of the economic and social living conditions of certain disadvantaged groups and is especially linked with the rise of unemployment which marginalizes both the victims and the potential perpetrators of acts of racism, thereby making unemployment a breeding ground for racism and xenophobia;

WHEREAS urban areas especially are experiencing an accumulation of problems, such as high unemployment of both indigenous and non-indigenous populations;

WHEREAS integration may reduce the tension between indigenous and non-indigenous groups and whereas employment serves as one of the main vehicles for integration through socialization;

WHEREAS the demographic development of European societies calls for the integration of non-indigenous groups in the labour force of those societies because of the ageing of the indigenous population;

WHEREAS both indigenous and non-indigenous groups in disadvantaged positions should benefit from employment measures in order not to increase prejudice against affirmative action for minorities;

**WHEREAS** research has shown that among non-indigenous groups unemployment rates are proportionately much higher than among indigenous groups and that in certain areas of industry employment for non-indigenous groups has diminished proportionately more than for indigenous groups;

**WHEREAS** furthermore, research has repeatedly shown that discrimination on grounds of race or ethnic origin is a major obstacle for members of non-indigenous groups in their access to the labour market,

**PROPOSES** that the European Union, in its strategy to combat racism and xenophobia:

- support innovative initiatives geared at job creation for deprived groups in certain sectors and place emphasis on employment schemes for such groups in deprived urban areas;
- support employment measures which are to the benefit of indigenous and non-indigenous deprived groups, while also fostering measures aimed at eliminating racism specifically through promoting codes of conduct and if necessary strong legislative measures (e.g.: contract compliance);
- use the European Structural Funds to stimulate measures in the well-defined areas mentioned above (with special emphasis on Objective 4 and the Community "URBAN" initiative);
- devote special attention to the vocational training of non-indigenous groups, with concrete measures such as those mentioned in the LEONARDO programme with special emphasis on, inter alia, the position of unemployed youngsters from ethnic minorities;
- set an example, together with the Governments of the Member States, notwithstanding the responsibility of all social institutions (including private enterprise), in stimulating employment for non-indigenous groups by making public service posts available for third-country nationals.

### CHAPTER III

#### FREEDOM OF MOVEMENT

##### A. INTRODUCTION

1. The European Union stresses in various places the importance of democratic values and respect for fundamental rights. We refer, inter alia, to the third paragraph of the preamble to the Union Treaty and Article F(2) of that Treaty, under which fundamental rights as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and flow from the common constitutional traditions of the Member States – must be respected as general principles of Community law. <sup>(1)</sup>

The right to equal treatment and protection against discrimination must be considered one of the most important fundamental rights of each person, as well as protection against violations of fundamental rights <sup>(2)</sup>. This protection includes combating racism and xenophobia.

2. By virtue of the Community commitments undertaken with regard to the general principles of law and particularly with regard to the fundamental rights, the principles and the rights upon which is based the constitutional law of the Member States, themselves inscribed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, racism and xenophobia constitute manifest violations of Human Rights. <sup>(3)</sup>

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- (1) This desire is also expressed in the Joint Declaration by the European Parliament, the Council and the Commission of 1977 (OJ No C 103, 1977, p. 1). The obligation to respect fundamental rights also forms, moreover, a confirmation of the case law of the Court (see, inter alia, the following cases: judgment 17 December 1970, No. 11/70, *International Handelsgesellschaft*, Reports 1970, 1125, legal grounds 4; judgment 14 May 1974, No 4/73, *Nold* Reports 1974, 491, legal grounds 13; judgment, 13 December 1979, 3727, legal grounds 15; judgment, 18 June 1991, No. 260/89, *ERT*, Reports 1991, I-2925, legal grounds 41; judgment, 4 October 1991, No 159/90, *Grogan*, Reports 1991, I-4685, legal grounds 31.
  - (2) Of interest in this regard is the interim report of the Consultative Commission on Racism and Xenophobia. From this, too, it appears that human rights must be understood as civil rights within the meaning of the Union Treaty.
  - (3) As expressed in the interim report of the Consultative Commission on Racism and Xenophobia (Principle 1).

3. The Union has an imperative obligation to combat racism and racial discrimination. Indeed, as long as immigrants from non-EU countries are denied Community residential status, the process of their integration will be retarded and their segregation prolonged. Segregation generates prejudice and nurtures preconceptions.
4. For the removal of discrimination between EU citizens and non-EU citizens within the European Union, which is a multi-faceted process, and more specifically as far as its European dimensions are concerned, it would be unjustifiable to wait until one factor, namely the control of, and coping with, the immigration movements from outside the European Union, is completely achieved.
5. From the recent developments in the European context, it appears that nations and states are now secondary notions and that the aspect of solidarity is more related to such things as bonds of kinship with citizens of a Member State <sup>(1)</sup> and residence than with the aspect of nationality. The question arises as to why ties with persons but not straightforward ties with the territory should carry the right to freedom of movement.
6. The inclusion within the scope of Community law of a group of citizens from other countries who do not have the nationality of any of the Member States and who reside permanently in the territory of one of the Member States would be a logical step in the completion of the internal market. It is not logical that persons involved in the economic process of the Community either as consumers or as service providers should fall outside Community law. This would appear to conflict with the principle of the free movement of persons and goods.
7. It must nonetheless be recognized, particularly in relation to cross-frontier racist and anti-semitic activities, that free movement may be restricted on a limited basis on grounds of public security and public policy.

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(1) This concerns, however, only a derived right.

**B. PROPOSALS**

Having regard to comments 1 to 6, we fully realize that the gradual achievement of freedom of movement is called for.

We accordingly propose that the Council of Ministers:

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 relating 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 resident, five years' legal residence in a Member State is required. <sup>(1)</sup>

Consideration should also be given to the possible extension of citizenship of the Union to all persons who have resided permanently in the territory of one of the Member States for five years.

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(1) In the law of several Member States, five years' residence is required to obtain a residence permit; see also Article 6, paragraph 1 of Directive 68/360.

**CHAPTER IV****HARMONIZATION OF LEGISLATION  
AND THE ROLE OF THE POLICE IN TACKLING RACISM  
AND XENOPHOBIA****A. Introduction**

1. In its interim report the Commission emphasized the key role played by the police and the judiciary in enforcing anti-discrimination legislation and in the fair and non-discriminatory discharge of their duties. The Commission proposed to make further recommendations in its final report with regard to the role and function of the police and judiciary in tackling racism.
2. In the meantime, the Commission notes the important work being carried out in the framework of the third pillar, and warmly welcomes the report reflecting the outcome of this work.
3. In that report one of the areas considered was training of the police service. It was held that one of the fundamental aims of training was to improve the understanding of different cultures and different attitudes. The Consultative Commission welcomes that recognition, and notes that if police cooperation between Member States is to be improved in order to combat racism and xenophobia, it is important to step up the exchange of experience between the police forces of the Member States. This could be achieved in a variety of ways, including special seminars for heads of training establishments and services. Here the common democratic value system and the tradition of human rights throughout Member States should provide the "Leitmotif" for all such seminars. The Consultative Commission notes that an exchange of information would be valuable at all levels of the police service, and through a variety of bilateral routes.
4. Other topics which are under consideration within the third pillar include statistical surveys, the definition of xenophobia/racist/anti-semitic offences, communication procedures and research. The Consultative Commission welcomes cooperation among the Member States in these areas. At the same time the Commission would warn against departing from the definitions of and approaches to racist and anti-semitic offences as given in international human rights instruments which have been ratified by a majority of EU Member States, in order to remain close to the guiding principles which are common to the democratic societies of the EU Member States.



5. The Consultative Commission considers that combating crimes of a racist or xenophobic nature should form part of Europol's mandate.
6. Furthermore, the Consultative Commission deems it of the utmost importance that to encourage and develop cooperation in these areas, the Member States take into account the results of the work already undertaken by eminent specialists. It strongly recommends that further work in these areas be based on the achievements of the work of those specialists.
7. In the area of judicial cooperation it is suggested that an examination of the possibilities of approximating legislation and practices with respect to combating racism and xenophobia be undertaken on the basis of a questionnaire.
8. The Consultative Commission deems it important that protection against racism and xenophobia through improved cooperation in the area of police and justice should aim at a gradual harmonization of national legislation and administrative practices. In view of the work already undertaken and the progress made within the third pillar, the Consultative Commission does not deem it appropriate to set out in detail procedures and mechanisms for such harmonization. The Consultative Commission would, however, recommend principles to be taken into account in the process of harmonizing legislation and administrative practices with a view to enhancing cooperation between the Member States.
9. Hence, the Consultative Commission would like to address firstly the issue of harmonization of legislation and secondly the role of the police and the judiciary.

**B. Legislation**

10. Fighting racism and xenophobia through the police and judicial systems of Member States should cover all the three principal manifestations: incitement to hatred, discrimination and racist violence.
11. International human rights instruments, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the national legislation of EU Member States, lay down the necessary definitions and guiding principles to elaborate the framework for harmonizing legislation covering these manifestations.
12. National and EU legislation should provide a legal framework for the police and judicial systems to counter manifestations of racism and xenophobia.

Efforts gradually to harmonize legislation within the framework of the European Union could benefit from inventories of national legal instruments to combat racism and xenophobia, such as the 1992 study commissioned by the European Commission as well as the work conducted in the framework of the Council of Europe. It is important that Member States share the experience they have developed and the problems they have faced in this area.

13. The Consultative Commission has identified several issues which are not yet included explicitly in the legislation of all EU Member States. In order to make police and judicial cooperation more effective, these issues need to be considered as elements for potential incorporation into national legislation, which might have to be adapted for that purpose:

- a clear prohibition on incitement to racial hatred should be explicitly and unequivocally included in criminal law;
  - it should be possible within the law to curb the activities of groups with a record of racist activities, where those activities threaten the security or safety of ethnic minority groups;
  - there should be specific offences of Holocaust-denial and the trivialisation of other crimes against humanity;
  - the law should provide for penalty enhancement for racially motivated crimes;
  - the law should provide for the prohibition of demonstrations, publications and other public expressions of opinion which incite racial hatred;
  - not only individuals but also interest groups should be allowed to bring proceedings against the perpetrators of racist acts;
  - national legislation should be harmonized regarding the control of racist material and publications of all forms. Special steps must be taken to control any cross-border distribution of such material within the EU.
14. The legal systems of all EU Member States as well as the international human rights instruments to which the Member States are parties allow for such restrictions as mentioned above of the freedom of expression and association, provided these are lawful and necessary to protect the rights of others.<sup>(1)</sup> Moreover, various international human rights instruments to which most EU Member States are parties prohibit by law the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>(2)</sup>

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(1) See for example article 19.3b of the United Nations Covenant on Civil and Political Rights (ICCPR, 1966)

(2) See article 20.1 ICCPR.

### **C. The role of the police and judicial systems**

15. The credibility of a programme to combat racism is based on the efficacy of law enforcement by the police. The police are in the front line. They embody authority, as well as representing the social principles of any society. The police act both above and between parties and must interact with all groups in society. They represent the law and should guarantee equal treatment before it where at the same time trying to ensure that every person also respects the law.
16. The gap between legislation and implementation is often felt by members of minority communities to be large, even in countries where anti-discrimination legislation is comprehensive and was introduced many years ago. The number of cases concerning racial discrimination that have been brought to court has been low in the past and remains so owing, possibly, to the small number of complaints lodged by victims. That might be accounted for by the fact that complaints about racial discrimination are not dealt with in a uniformly serious manner by the police and the public prosecutions departments in different countries. It is also of great importance that the law provide protection for those who appear as witnesses in trials concerning racial hatred, discrimination or violence.
17. The police service's contribution to good community and race relations is an integral part of its quality-of-service programme. For the police service, good relations with all sections of the community are seen as essential to ensure that:
  - the cooperation of the public in preventing and detecting crime is secured,
  - the value to the community of a police service which is sensitive to their needs is recognized and
  - constructive relationships with and within communities are strongly encouraged.
18. In order to play its key role effectively the police should be guided by the following principles:
  - the general policy on discrimination should be aimed at ensuring that the enforcement of the criminal law and the implementation of preventive measures and sanctions under civil and administrative law all make a real contribution to defining legal and moral standards. Government guidelines should stress that the public prosecution department and the police must be active and vigilant in this policy area.

- there should be close coordination between the police, the courts, the local authorities and the anti-discrimination centres;
- all information and complaints concerning discrimination filed with the police should be drawn up in the form of an official report. The police should be encouraged to investigate such complaints actively. Those guilty of discriminatory offences reported to the public prosecution departments should be prosecuted whenever possible;
- the public prosecutor's offices should report annually on the number of cases that have been reported to them involving discrimination and the ways in which these cases have been dealt with. The Ministries of Justice should send an annual report to the proposed EU Observatory;
- the police service is one of many organizations that have a special role to play in a multi-cultural society to prevent and to solve tensions arising between various groups and between ethnic minorities and the police. This implies that special attention should be paid to prevention, conflict control and combating discrimination. This means that the organisational structures should enable the police to operate close to the citizen and in a highly visible manner. This is particularly important in the so-called "difficult districts";
- the police should have the explicit task of contributing to the social integration of marginalized groups, whether or not stemming from different ethnic backgrounds. It should play a role in developing an integrated, preventive security policy in close cooperation with other local authority services, commercial circles and the public. The willingness of citizens to become involved in initiatives which have a positive social effect goes hand in hand with the sense of security and back-up from the police;
- relationships between ethnic minorities and the police are in some ways contradictory. On the one hand the police have to protect all residents against discrimination and have to deal with complaints lodged by victims of racial discrimination. On the other hand research shows that members of the police force themselves show discriminatory behaviour. Research has shown time and again that police officers can show bias on grounds of skin colour when conducting an investigation or making an arrest. Members of the police service should behave in an exemplary manner. Discriminatory behaviour by the police cannot be justified and cannot be tolerated under any circumstances. Members of the police force demonstrating racist sympathies or racist behaviour should be disciplined or even dismissed;

- complaints about racist police behaviour should be dealt with in an open, independent, accessible and prompt manner;
- ethnic minorities are largely under-represented in the police force. Hence too the police force should play an exemplary role and reflect the representation of the various ethnic and social groups in society. Recruitment from ethnic minority groups should be energetic, with the use of specific programmes, setting clear targets (not quotas) for the attainment of equitable representation matching that of the local community as a whole;
- admission to the police force should be based on legal residence, not on nationality.

19. Specific methods of improving the ability of the police to tackle discrimination and to serve its proper function in policing the needs of minority and other social groups could include the following elements:

**Recruitment**

Central Government policy and police force initiatives should reflect an awareness of the need to encourage ethnic minorities to join the police service. Each force should be responsible for its own recruitment, including initiatives to encourage greater numbers of members of ethnic minorities to join the police service. Research should be carried out into the success of various initiatives to recruit members of ethnic minority communities.

**Training**

As evidence of their commitment, all police officers should receive training in community and race relations matters within their forces as part of their initial training, continuing with in-service training.

Consideration could be given to establishing specialist centres which can provide training courses in this subject for police instructors and training managers.

**Consultation and delivery**

All forces should be required to set up arrangements whereby the public are consulted about policing matters. These arrangements should take a variety of forms, reflecting local circumstances. Local communities, including travellers, and local Government offices should be involved in this process. They could be asked to produce, after public consultation, policing plans of which the chief officer of police must take account.

**Monitoring and inspection**

There should be performance indicators for the management of community policing, which could form the background against which national policy can be developed. It is important that the police service judge the success of their policies by considering the impact of those policies on the communities it is their function to protect. Any such process should be open, and directly involve members of the community.

**D. Elements for a long-term European Union strategy**

20.

- (i) The Council of Justice and Home Affairs Ministers should step up the harmonization of the relevant legislation of EU Member States, taking into account the principles listed in II. It is therefore strongly recommended that they use the definitions and guiding principles of the international human rights instruments to which most EU Member States adhere.
- (ii) The Council of Justice and Home Affairs Ministers should enhance cooperation between the police and judicial systems within the framework of Justice and Home Affairs cooperation, based on the principles listed in III.
- (iii) Each year the Council of Justice and Home Affairs Ministers should receive a report from the proposed European Observatory (see section on institutional measures) on the progress of the policies listed in IV.1 and IV.2 and discuss the measures necessary to implement those policies progressively.
- (iv) Police organizations/forces themselves are actively seeking ways of improving their performance in combating discrimination and making equal-opportunities policies within the police force a success. Police organizations should therefore be actively involved in developing strategies in the framework of the European Union to fight against racism and xenophobia through the police and judicial systems. The European Union should support financially any promising projects set up by the police and encourage the sharing of experiences throughout the forces within the Union.
- (v) The competence of Europol should be extended to international organized racist and xenophobic crime in the EU. At the same time, Europol should be mandated to make a regular analysis of xenophobic crime in the EU Member States on the basis of the statistics on racist, anti-semitic and xenophobic crimes collated throughout the EU.



**CHAPTER V****THE CRIMINAL JUSTICE SYSTEM****Racial motivation**

**Principle:** Racial motivation is a serious aggravating factor in any crime, and measures should be introduced to ensure that any evidence of such motivation is placed before the courts and is taken into account in sentencing.

**Proposal:** 1. Member States should introduce measures to ensure that racial motivation is treated as a serious aggravating factor in sentencing.

If adopted, this proposal would give a powerful signal to victims, to the wider community and to those individuals that perpetrate racially motivated crimes. It would make it clear that such acts will not be tolerated in a just and civilized society.

2. It should be the duty of the prosecuting authorities to place before the courts any material which shows that an offence had a racial element/component.

This places a duty on the prosecution to disclose to the court any racial element in an offence. In many cases at present it is not. This is often the case when the offender pleads guilty to a lesser charge or to an agreed charge.

3. Guidance and training are also vital in ensuring that the racial elements of a crime are highlighted at every stage of the judicial process. These measures are, however, insufficient to ensure that material relating to the racial element of a crime is always placed before the court. When used together, appropriate guidance and training and a duty of disclosure would ensure that the relevant evidence was taken into account by the courts.

**Discrimination in the Criminal Justice System**

**Principle:** It is essential that those involved in a country's criminal justice system should be committed to treating people equally and are aware of the implications in their work of allowing or encouraging discrimination on grounds of race or any other illegal grounds.

**Proposal:** Member States should contemplate arrangements to ensure that persons involved in the administration of criminal justice are fully aware of the implications of their decisions for good race relations, by agreeing to publish such information as they consider appropriate to facilitate those persons' performance of their duty to avoid discrimination on grounds of race or ethnic origin.

## **D. AD HOC WORKING PARTY on Treaty Amendment and Institutional Questions**

### **Community Competence and Treaty Amendment**

In the Consultative Commission's Interim Report it was stated that the Commission was discussing

"...the inclusion in the Treaty on European Union of Articles aimed at extending Community competence to cover the elimination of all forms of discrimination based on race, ethnic origin or religion."

The Consultative Commission understands that there are different opinions as to the present extent of Community competence in this area. Having considered the matter carefully, it has reached the conclusion that **amendment of the Treaty to provide explicitly for Community competence must be regarded as an essential element in any serious European strategy aimed at combating racism and xenophobia.**

We are conscious that our terms of reference require us to make recommendations "on cooperation between governments and the various social bodies", which are "geared as far as possible to national and local circumstances". In order to be effective, cooperative action needs to be complemented, supported, underlined and reinforced by firm action at Community level. The fight against racism and xenophobia is both a national and a Community responsibility, requiring a combination of educative and cooperative measures, reinforced by a clear understanding of what constitutes unacceptable behaviour and a firm message that such behaviour will not be tolerated. This message needs to be promulgated and enforced at Community as well as at national level. An explicit Treaty change, confirming Community competence, will be the clearest expression of the European Union's real intention of combating, not merely protesting against, the rising tide of racism and xenophobia.

In view of the importance attached to the principle of subsidiarity, even the question of making Community competence explicit is sensitive. We are convinced that the arguments for confirming Community competence in this area are both compelling and urgent. The fundamental principles upon which the battle against racism and intolerance are to be fought – the principles of non-discrimination and tolerance – lie at the heart of the European Union. They are historically part of the reason for its existence, and any serious breakdown in them represents a threat to its body politic. It is now accepted that the Community has a general responsibility to support democracy in Europe by promoting respect for human rights, one of the core principles of which is that of equal treatment.

We cannot emphasize too strongly the dangers which the current rise in xenophobic and racist sentiments and behaviour represents for the stability of the Union. While there may be some room for national differences in the way in which expression is given to the principles of tolerance and non-discrimination, there can be no departure from the principles themselves nor any room for hesitancy, political expedience or compromise in the support for them at national level.

Apart from the broader moral and political case for Community competence, more specific Community objectives are threatened if discrimination is not controlled at Community level. We agree with the European Commission that "the Union must act to provide a guarantee for all people against the fear of discrimination if it is to make a reality of free movement within the single market." (White Paper on European Social Policy: A Way Forward for the Union. COM(94) 333 of 27 July 1994, Ch. VI, para. 27). Racist or discriminatory behaviour towards minorities, especially in employment and housing, inhibits free movement, and may distort the labour market or undermine educational and other exchange programmes within the Community. Equally, Community-wide measures against discrimination in employment are needed to avoid a situation in which undertakings which adopt a policy of non-discrimination (in relation, for example, to persons who do not have the nationality of an EU Member State) suffer a competitive disadvantage in relation to those which are prepared to exploit vulnerable minorities. This is the same consideration which has justified widely-approved Community action against sexual discrimination.

Effective action in these areas requires Community competence. Vital Community interests are involved. We are not satisfied that action taken by individual Member States to combat racism and xenophobia has weakened the European political consensus on the need to combat racism and xenophobia and facilitate progress in areas of the Community where narrow electoral considerations may have weakened the will for firm action.

It is our view that Community competence in relation to racism and xenophobia should be firmly established within the first pillar. It is not appropriate to limit Community competence to action under the third pillar. The principle of non-discrimination should be established as a basic principle of Community law. This is consistent with the adherence by the European Court of Justice to the principles of fundamental rights derived from the constitutional laws of Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is vitally important, especially in the area of racism and xenophobia, that the European Court of Justice should have the possibility of overseeing the uniform application of Community law by national courts in respect of claims of discrimination by individual citizens of the European Union and the award of damages and other remedies. Competence under the first pillar also makes possible enforcement measures by the European Commission and otherwise under the Treaty.

There is no doubt that Community Institutions are well placed to take the necessary measures. The Parliament, the Council and the Commission have been in the forefront in bringing to the attention of Member States the scale and implications for Europe of the rise in racism and xenophobia. The Parliament carries on regular monitoring of the situation, and the Commission has already invested considerable time and effort in building up a picture of the laws in force in Member States, and of their degrees of effectiveness. It is well placed to assess what additional measures are necessary at Community level. The recent decision by the President of the Commission to concentrate responsibilities in respect of racism and xenophobia within the remit of the Commissioner with responsibility for social affairs is an important step in achieving the necessary coordination in this area. The Community has already shown how effective it can be in combating discrimination on the basis of sex; it is appropriate that it should be given a similar mandate, and that it should adopt similar measures, to combating discrimination on grounds of race, religion or ethnic or national origins.

### **Proposal for a Treaty Amendment**

The need for a Treaty amendment arises from uncertainty about the Community's current competence to take action, and from our conviction that such competence should be clearly and unambiguously affirmed. It is not our intention at this stage to discuss the technicalities involved in such an amendment, or to propose specific wording. We confine ourselves to a broad outline of what we would like to see achieved and made possible through such a change.

The amendment should be directed towards the elimination of all forms of discrimination against persons or groups of persons, whether citizens of the European Union or not, on grounds of race, skin colour, birth, religion, language, or national, social or ethnic origin. This should be without prejudice to measures adopted for the purpose of redressing disadvantages or removing existing inequalities affecting such persons or groups.

The amendment should impose an obligation on Member States to ensure the elimination of such discrimination. It should give the Council power, acting in accordance with the procedure laid down in Article 189b of the Treaty, to issue Directives and make Regulations containing the measures required to eliminate such discrimination.

The Directives should have the same potential effect as the existing Equal Pay and Equal Treatment Directives in terms of providing widely available remedies, including compensation, to the victims of discrimination, that can be enforced in national courts throughout the Community.

The 1996 Intergovernmental Conference will provide the ideal opportunity for Governments to consider these proposals, and we recommend that the question of a Treaty amendment to provide explicitly for Community competence in respect of racism and xenophobia be placed formally on the agenda for that Conference.

### **Institutional Arrangements**

The explicit and unequivocal recognition of the European Community's competence to combat racism and xenophobia, which we have recommended and which could be achieved by an amendment of the Treaty on European Union following the 1996 Intergovernmental Conference, will be the basis on which the Community should subsequently adopt concrete measures in this area. This applies to both substantive and institutional measures.

As regards institutional measures more particularly, the Consultative Commission has recommended the establishment of a **European Observatory on Racism and Xenophobia**. In the light of the long experience gained from setting up new Institutions under the aegis of the Community, in our view the Observatory should be established as an independent body attached to the European Commission.

It is also recommended that, pending the establishment of the more permanent institutional arrangements outlined above, the mandate of the **Consultative Commission on Racism and Xenophobia** should be prolonged and extended. The Commission should continue to work under its existing mandate for a clearly delimited period of time, and should, in the light of the decisions taken by the European Council (in June 1995) regarding the European Union's overall strategy in combating racism, xenophobia and anti-semitism, provide further elaboration and advice in relation to recommendations made in this Report which are approved in principle, including in particular recommendations concerning new institutional structures.

In support of this recommendation, it should be emphasized that the Consultative Commission has been obliged to complete its Report in a relatively short period of time, and, while we are satisfied that it has been possible during this period to identify the broad areas where action is required, we are conscious that much detail remains to be considered. The legal basis on which the European Council could decide to extend the mandate of the Consultative Commission should be the same as that used for its establishment by the European Council at Corfu in June 1994. The members of the Consultative Commission should continue to sit on an individual and independent basis, so that the Commission does not become a Committee within the meaning of Article 19 of the Council's rules of procedure.

#### **IV. FINAL CONSIDERATIONS**

In conclusion to this report, the Consultative Commission would point out that, owing to the limited time available, it has not been able to express as adequately as it would have wished all its thoughts on racism and xenophobia, a phenomenon with multiple causes and sometimes tragic effects.

By focusing this report squarely on the tangible aspects of the phenomenon, the Commission wished to demonstrate that racism and xenophobia occur – albeit to varying degrees – in all the countries belonging to the Union and that, although they have always existed, they have now become a burning issue as will be clear from the examples given in part II of the report.

The Commission realizes that its report is only one of many contributions to the formulation of an overall European Union strategy by the Foreign Affairs Council; it pays tribute to the work done in the various Council bodies. The Commission is also aware of the role played by the Council of Europe, notably its ECRI (European Commission against Racism and Intolerance), and emphasizes the need to coordinate the proceedings of the various bodies.

Likewise, the Commission wishes to highlight the major role played by the European Parliament, which has been both vigilant and effective in drawing constant attention to the need for general awareness in the fight against racism and xenophobia. The Consultative Commission has most certainly benefited from the presence of representatives of the European Parliament and the Council of Europe.

In conclusion, the Commission draws attention to the solutions proposed (in part III D above) for future action, either within its present framework, pending the installation of the European Observatory, or at a subsidiary level within the European Union's Institutions, which could finalize and implement the proposals set out in this report.

Thanks to the creation of common Institutions the Union will be celebrating 50 years of peace in 1995.

It has not forgotten the suffering caused by intolerance, hatred, racism and anti-semitism; it remembers the death camps and the extermination campaigns prompted by considerations of race, colour, religion or national and ethnic origin.

It calls for the mobilization of public opinion in order to avoid racist and xenophobic acts being regarded as normal occurrences.

It considers that Member States ought to prepare better for a constructive dialogue with the NGOs concerned, which they should help develop.

It stresses that the European Union must, ultimately, act in close concert with other competent European organizations and calls for closer cooperation on the matter between Member States on the basis of Articles K.2 and K.5.

It is convinced that the fostering of feelings of mutual tolerance and comprehension is essential if we are to achieve our common goal, viz. an ever-closer union between the peoples of Europe marked by ever-increasing strength and solidarity.

At its meeting on 7 April 1995 the Consultative Commission adopted this report with 14 votes in favour and one abstention.

The Consultative Commission's mandate (8462/94 JAI 30) provides that minority opinions may be included in its reports.

The reasons for Baroness Flather's abstention are **annexed** to the report.

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**STATEMENT BY BARONESS FLATHER,  
REPRESENTATIVE FROM THE UNITED KINGDOM**

I have always made it very clear that what I sought from the Consultative Commission were practical, sensible initiatives which could, if accepted, begin to improve the situation of minority communities within Member States of the European Union immediately. I was anxious to ensure that my sub-committee concentrated on exactly these issues. I would like to thank all of those members who contributed to the final report of my sub-committee; a report which, I believe, proposes practical changes and improvements.

I have also always made it very clear that I have had grave reservations about some of the wider proposals which the Consultative Commission was considering. I find the proposals made in the report from the Education sub-committee particularly difficult to accept. I have a long and committed background in education and I feel that the proposals made are unimaginative and impractical. They reflect many strands of thought which are old fashioned and have, certainly in the United Kingdom, proved to be unworkable. As they stand I could not, therefore, support these recommendations.

I also expressed some doubts about the value of the "Observatory" proposal because it seemed to me that it would do little in the short term other than to allow the growth of an additional bureaucracy. I do not see that members of minority communities will gain any immediate, or possible even long-term, benefit from this. Having said that I think that other elements of the report from the Media sub-group could provide some practical help and I was consequently able to support their views.

As far as Treaty amendment is concerned, I understand the strongly held views of some of my colleagues that there is a need for political commitment at the European level, but I believe that we should be entitled to ask for that commitment under existing arrangements. I cannot accept that pinning all of our strategy on Treaty amendment is a replacement for immediate and effective action to tackle the real problems of racism, intolerance and discrimination which thousands of members of minority communities, many of whom are European Union citizens, face every day.

I am surprised that the option of using the Third Pillar was dismissed so lightly. We should at least have been prepared to consider what action could be taken under these arrangements. It could for instance have provided a focus for action and cooperation by Member States. It would be a considerable improvement on the current rather awkward ad hoc handling of these issues under the present provisions for cooperation in the fields of justice and home affairs (Title VI) where there is no specific mention of racism. It might also enable the European Union to tackle the problems in ways which reflect the very different origin and nature of racism in different parts of Europe. While we must have common goals, the best means to reach them may vary considerably in different Member States. It is, in my view, unrealistic to expect the Council of Ministers to consider the major political change of an extension to the first pillar, without first examining carefully any other possible measures which could help address the issues.

I am not in any way criticizing the commitment and contribution of my colleagues. I respect the fact that their views are deeply held and that is why I have not directly opposed any part of the Commission's final report. But this is an area which is too central and too important to me, one which has affected every aspect of my life for me actively to support recommendations which, in my view, will not provide the real improvements which I want to see made.

I am very proud of the recommendations made by my own sub-committee, and am very happy to be identified with them. But I regret that, for all of the reasons set out above, I am not able to endorse the Consultative Commission's final report, or to make it unanimous. My decision stems from my genuine desire to confront these problems in a manner which will see immediate results. It is not a simple rejection of my colleagues' work: I am honoured to have taken part in the work of the Commission with them.



**Feasibility study for a European Monitoring Centre  
for Racism and Xenophobia**



## **Feasibility study for a European Monitoring Centre for Racism and Xenophobia**

### **I. INTRODUCTION**

1. The European Council, meeting in Madrid on 15 and 16 December 1995, was pleased with the Consultative Commission's work; the Commission was asked to continue on the basis of its interim report and complete the feasibility study on the European Monitoring Centre for Racism and Xenophobia in time for the European Council in Florence on 21 and 22 June 1996.

The Consultative Commission continued its proceedings throughout the first half of 1996 (at five meetings) under the chairmanship of Mr Jean Kahn.

It set up two subcommittees:

- a subcommittee responsible for studying the tasks, methods, structure and scientific and technical aspects of the future European Monitoring Centre, with the Austrian Member of the Commission, Mr Anton Pelinka, acting as rapporteur;
- a subcommittee responsible for studying the legal and institutional aspects, with the Greek Member of the Commission, Mr P.N. Stangos, acting as rapporteur.

In keeping with the Cannes European Council's wish that this feasibility study be conducted in close cooperation with the Council of Europe, the Consultative Commission has heard the views and suggestions of the Council of Europe delegation both at specific meetings held before its plenary meetings and during the latter and at subcommittee meetings, in which Council of Europe representatives played an active part. The position of the Council of Europe delegation is given in Annex 1 to this report. The position of the European Parliament is given in Annex 2.

In compiling this report, the Consultative Commission has been able to draw on technical studies by Mr Almenara (University of Seville), Mr Salt (University College London) and Mr Scandamis (University of Athens). The Commission is grateful to the Council for providing the funds necessary to conduct these technical studies.

Round tables on racism and xenophobia were organized in the Member States of the European Union. The findings of those round tables are set out in 7690/96 RAXEN 26.

## 2. General declaration

The Consultative Commission is concerned at the persistence and spread of violent or insidious racist phenomena, from which no Member State is free.

It considers that a better knowledge of the number and nature of these many-faceted phenomena is urgently needed, so that the European Union can develop its own identity in the fight against racism and xenophobia and adopt practical solutions to combat them as part of an overall strategy.

It confirms the need to ensure that the Union makes progress towards a People's Europe, a "Europe with a moral dimension", effectively observing human rights and displaying solidarity and tolerance.

It notes that, although studies to improve knowledge of racist and xenophobic phenomena are proliferating, it is necessary to coordinate the many activities going on in this area.

### 3. Principal Tasks and Features of the Monitoring Centre

The dual role of the Monitoring Centre will be to:

- take stock of and evaluate racist and xenophobic phenomena and analyze their causes; and
- formulate concrete, practicable proposals to combat such phenomena.

It is emphasized that, while it would be the principal task of the Centre to engage in the scientific collection and analysis of data, it must also function actively to maintain vigilance, alerting the European Union to any significant developments and ringing early warning bells where necessary.

The Monitoring Centre should be conceived as a permanent and independent agency within the framework of the Union. It should be directed by independent persons of high moral standing, with appropriate expertise and experience in the field of human rights. This will help to ensure its scientific objectivity and to invest it with the necessary moral authority.

The Monitoring Centre will be an institution fostering the participation of the organizations of civil society, recognizing the role of citizens' networks, and acting in cooperation with the Community institutions, the States of the Union, non-governmental organizations, other international bodies, and persons with responsibility for combating racism and xenophobia.

The Monitoring Centre will in its scientific work act in cooperation with other bodies, including competent authorities in Member States, international bodies, university research centres and non-governmental organizations, and especially with the Council of Europe. It will seek to coordinate data collection and research and avoid duplication of effort.



#### 4. Cooperation with the Council of Europe

The Consultative Commission has throughout its deliberations recognized the importance of the closest possible cooperation with the Council of Europe. It is conscious of the considerable expertise which the Council of Europe has built up in relation to racism and xenophobia. The Consultative Commission is well aware of the international dimensions of the problems of racism and xenophobia which affect the European Union, and of the importance of analysing these problems in a pan-European, as well as an international, context. It is also conscious of the importance of avoiding any unnecessary duplication between the European Union and the Council of Europe, and of the need to contain expenditure.

**For these reasons we are recommending that the establishment of the Monitoring Centre within the European Union should be followed rapidly by the negotiation of an agreement concerning cooperation with the Council of Europe, with the purpose of coordinating efforts, avoiding unnecessary duplication, and arranging for Council of Europe representation within the Monitoring Centre.**

Very serious consideration was given to a Council of Europe proposal that the Monitoring Centre should be established from the outset as a joint venture between the European Union and the Council of Europe. A substantial majority within the Consultative Commission, while recognizing certain advantages in this approach, are opposed to the idea. The principal concern is that this would lead to loss of focus in relation to the serious problems of racism and xenophobia which exist within the States of the Union – the very problems which led to the establishment of the Consultative Commission by the European Council. The majority believe that there is a need for a Monitoring Centre to be established firmly within the framework of the Union which, while cooperating to the maximum possible extent with the Council of Europe and while treating the problems of racism and xenophobia within the Union in their regional and international context, will concentrate its efforts on developing an effective response to racism and xenophobia within the Union. The Monitoring Centre is needed as a watchtower within the Union, providing an essential resource for the States and the institutions of the Union, and forming an integral part of the Union's strategy to combat racism and xenophobia.

The seriousness of the problems which confront the Union demands this level of concentration. This is not to ignore the broader European context, but rather to recognize that the Union must begin by putting its own house in order.

## II. THE CENTRE'S POWERS AND TASKS

### 1. The Centre's tasks

As stated in decisions taken at the European Councils in Corfu, Cannes and Madrid, the Centre is to help the Union progress towards a "Europe with a moral dimension".

The Centre is relevant to all three pillars of the Union: dealing with the problem of racism affects the first pillar (e.g. social and educational aspects) and the second and third pillars alike (threat to internal security).

Broadly speaking, the Centre's remit is to keep a critical watch on the incidence of racism and xenophobia in Europe, analyze their causes and draw up proposals for submission to the Union or to other bodies (the Council of Europe, for example), and in particular to individual national governments.

The Centre must be able to call on the best available scientific techniques, as highlighted in the University of Seville's feasibility study. Racism and xenophobia are being perpetrated through more and more up-to-date techniques, such as the Internet, as has been discussed in the Consultative Commission. The Centre is needed to counter this trend, and it needs the latest scientific techniques to do so.

The remit can be subdivided into more detailed areas:

#### 1.1. Integration of existing data and research:

Without compromising the independence of existing institutions, the Centre should aim at a synergistic effect by networking them, thus permitting maximum utilization of ongoing research.

To facilitate such integration, there should be a network of responsible persons or bodies in the individual Member States (national coordinators), including the Council of Europe in particular, but also other international organizations (such as the OSCE). Organizing regular "round tables" at national level should enable groups with an interest – NGOs for example – to take part. This is also a way of ensuring that the Centre takes the fullest account of existing establishments and their findings, and of avoiding duplication.

The feasibility study by University College London offers an initial insight into the potential for networking. The study gives a typology of the various groups active in the fields of racism and xenophobia that could serve as a basis for the integration of ongoing activities. In total, it lists over 70 bodies (many of them NGOs), which could be seen as an initial basis for networking, though the list will of course have to be constantly improved and supplemented.

1.2. Information on the extent, causes and consequences of racism and xenophobia and the effect of particular counter-strategies:

The Centre should be an accessible, usable source of sound scientific information, basically for the Union, but also for the Council of Europe, the OSCE, national governments, NGOs and others. The research into the means of action, in particular, will be of major importance: for example, what are the consequences of certain activities aimed at stirring up racial hatred and what potential does, for instance, an education system have to counteract it effectively?

One way of providing this information will be publications, in particular annual reports on the situation regarding racism and xenophobia, and on the effectiveness of counter-measures taken at national and European level. These annual reports may serve as a basis for scientific discussion and political debate on the dynamics of racist and xenophobic tendencies; they would be in the nature of a scientifically based "situation report".

The feasibility study by University College London lists the main types of source material available to the Centre: directories, scientific networks (such as the European Commission against Racism and Intolerance – ECRI) and electronic data links (WWW - World Wide Web), as proposed by the University of Seville. It will be the Centre's task to make these sources accessible, after suitable processing, not only to researchers but also to scientists and politicians.

### 1.3. Encouraging research:

After making an inventory of gaps in research, the Centre should establish priorities for research into racism and xenophobia and thus stimulate scientific activity. This should be done in cooperation with, and within, the Union's various scientific and research programmes.

One way of accomplishing this task is to hold regular scientific conferences. The University of Seville's feasibility study focuses on this under the headings "Activities" and "Service".

This task can and should provide a regular opportunity for proposing research projects and exchanging research findings. The Centre can thus serve as a catalyst for all the institutions and individuals working in the field and be of use for their work.

### 1.4. Carrying out research:

Even though – in view of the desired "streamlined" structure of the Centre – most of the priority surveys and analyses will have to be carried out by other institutes, the Centre will also need the capability, and the authority, to carry out research of its own.

For specific research projects the Centre will accordingly be able to call on the best qualified staff of individual institutes, linked to the Centre through individual national coordinators. The Centre will also be able to use special research facilities of the Union and of international and national organizations and foundations.

In order to take on this task the Centre needs a (small) nucleus of scientifically qualified staff able to transform the information input received at the Centre into its own scientific output. The "fresh knowledge" to be produced by the Centre, as referred to in the University of Seville's feasibility study, will be reflected in this research expertise.

### 1.5. Recommendation of specific measures:

The Centre should make itself useful without running the risk of being mistaken for a quasi-judicial body or some sort of super-authority laying down the law to the Member States. The main recipient of its recommendations will be the Union, or in fact the Council of the Union, the body responsible for deciding to set it up. Recommendations will also go to the European Commission and the European Parliament. In addition, the Centre must also be able to make recommendations to national governments, e.g. on education policy (addressing xenophobic stereotypes at school), on (internal) security policy (connection between police conduct and xenophobic violence), on social policy (correlation between fear of sliding down the social scale and racial hatred).

If the Centre is to be effective, it is essential that its remit should include making recommendations. This is the only way of guaranteeing that it will have an impact: without the ability to recommend practical political measures, the Centre would degenerate into a scientific talking shop. Only the task of making specific recommendations can provide the link between documentation and science on the one hand and policy on the other. The recommendations must not therefore be confused with the political measures themselves; they should be understood as suggestions, of an advisory rather than a mandatory nature.

## 2. Structure of the Centre

The structure of the Centre should make for maximum efficiency. Over and above the scientific quality of its work, the Centre needs to operate under conditions which afford it the maximum room for manoeuvre and maximum acceptance. Special care will need to be taken to coordinate with bodies working on related subjects, in particular in the Union and the Council of Europe, e.g. with the Commission's planned Migration Monitoring Centre.

The Centre should be structured on the following principles:

## 2.1. Independence:

In the interests of gaining acceptance, the Centre should not be bound by any instructions whatsoever; only in this way can its credibility be guaranteed. Independence is crucial, especially to the task of formulating political recommendations on a sound scientific basis. Since the Centre will be institutionally (and financially) dependent on the Union (or on the Member States, and possibly also the Council of Europe) its independence involves certain requirements: a maximum of goodwill on the part of the Union (or of the Council of Europe, but in particular of their Member States); and on the part of the Centre, maximum ability to tread the line between the necessary political legitimacy (conferred above all by the European Union), political effectiveness (i.e. acceptance of its activities) and political sensitivity in dealing with political interests.

Political sensitivity should not mean bowing to any particular taboos, or accepting a political veto. On the contrary, it should help to overcome such taboos. Admittedly, the fact that highly diverse interests are at stake and also the existence of differing traditions and historical backgrounds must first be recognized if the Centre is to be able to use its independence to the full. To give an example, in addressing how to deal with racism that is not directly violent (incitement of racial hatred, neo-Nazi propaganda, etc.) differing historical experiences will need to be taken into account.

## 2.2. Legitimacy:

The Centre should enjoy maximum recognition in the international, national and non-governmental spheres. To achieve legitimacy, its performance needs to be of top quality, but it also needs wide acceptance. This means ensuring the involvement of international interested parties (the Union, but also the Council of Europe and other organizations), national governments and parliaments and the various NGOs working in this area. None of these parties must feel that the Centre is automatically directed against it, despite the fact that individual activities of the Centre will result in a critical analysis of existing circumstances.

Legitimacy is the key to the effectiveness of the Monitoring Centre. Only if it is universally accepted will its recommendations be effective and enforceable against opposing interests. Independence must be able to build on the declared intentions of governments and the Union if it is to become effective.

Legitimacy must also be achieved with the committed sections of European civil society. The Centre's structure must therefore be manifestly open to NGOs working in the area. NGOs active in the human rights field must see the Centre as a partner, not as a competitor.

### 2.3. Permanence:

The Monitoring Centre must be more than a commission; otherwise there will be no element of innovation compared with existing establishments (such as ECRI). The Centre needs a nucleus of highly qualified scientific and administrative staff to form the requisite "critical mass", capable of winning scientific esteem for the Centre.

The Monitoring Centre must be in a position to attract people with the highest qualifications who also see a career opportunity in working for the Centre. In addition to political legitimacy, the Centre therefore also needs a structure which lends it scientific legitimacy. The structure must reflect the diversity of the scientific disciplines whose findings come together in the Centre. The following disciplines must at least have a clearly recognizable counterpart in the Centre itself: anthropology, demography, psychology, education, sociology, political science, law and economics <sup>(1)</sup>.

### 2.4. Streamlined structure:

Despite its permanence, the Monitoring Centre must, on principle and on practical grounds, start as a small institution and remain so. The Centre must not lay itself open to the criticism that it is an oversized, top-heavy, centralist institution. A convincing cost-benefit ratio must be ensured. On these grounds the Centre should consist of only a very small number of staff. The Consultative Commission has been working on the basis of an upper limit of 25 people, being a mixture of scientific and administrative

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<sup>(1)</sup> See also European Commission, pre-feasibility study on the possible establishment of a European Migration Observatory, 1994, pp. 7-9.

staff, who would form the requisite "critical mass" and keep to the desired "streamlined" structure.

The principle of a streamlined structure is further apparent in that the Centre will need to seek specific project funding to finance its research work. Some of the costs will therefore not be shown as charged to the permanent budget. In addition, this would be a specific incentive to performing well and would confer a legitimacy which would act as a corrective to any tendencies towards bureaucratization. The University of Seville's feasibility study sets out some ideas on the quality and quantity of the staff needed for the Centre; these form a basis for discussion which could be useful in working out further details.

### 3. Summary

By virtue of its functions and internal structures the Centre would be neither a supranational authority nor a judicial body. The Centre must earn recognition through the quality of its scientifically corroborated recommendations and its moral credentials. It can accept no geographical or political restrictions: racism and xenophobia cannot be confined to particular regions. The increasing dissemination of racist propaganda by electronic means shows that the problem must be tackled across frontiers.

The Monitoring Centre should, by its convincing performance, become a European watchdog, tracking the development of racism and xenophobia, constantly alerting the European institutions, the governments of the Member States and political opinion and urging specific political measures.

The Monitoring Centre also opens up possibilities connected with the further development of the Union, including, specifically, the 1996 Intergovernmental Conference. Activities begun in the European Parliament (in particular by Mr Ford and Mr Oostlander, the EP representatives on the Consultative Commission) highlight the possibility of this new capacity.

If the Union is serious about a Europe that also feels responsible for moral standards in society, then that Europe needs a policy against racism and xenophobia.



### III. LEGAL BASES FOR ESTABLISHING THE MONITORING CENTRE

The European Community has no explicit powers for establishing the European Monitoring Centre for Racism and Xenophobia as an agency under Community law. In accordance with the conclusions of the study carried out by the University of Athens the Consultative Commission therefore proposes basing the Monitoring Centre's constitution on Article 235 of the EC Treaty and extending its remit by means of a joint action adopted in accordance with Article K.3(2)(b) of the EU Treaty.

#### 1. *Establishment of the Monitoring Centre on the basis of Article 235 of the EC Treaty*

The Consultative Commission considers the use of a Community legal instrument based on Article 235 of the EC Treaty in order to set up the Monitoring Centre to be a legally sound procedure for founding an institution. As far as the distribution of powers is concerned, this would lead to *competence* being *shared* between the Member States and the Community in the Monitoring Centre's field of activities, i.e. collecting, processing and disseminating information and data on racism and xenophobia.

In this connection, the *first crucial requirement* for ensuring that the Community is vested with these new powers is a clear statement in the Monitoring Centre's constitution that this new institution will, in relation to its object, *add value* to the activities already being conducted by existing national institutions (whether governmental or non-governmental) and international institutions. The inclusion of such a statement will ensure compliance with the requirement that any new activity or new powers granted to the Community respect the *principle of subsidiarity*, as stated in the second paragraph of Article 3b of the EC Treaty. For, as the Edinburgh European Council (December 1992) <sup>(1)</sup> made clear, from entry into force of the Treaty on European Union (which introduced subsidiarity into the EC Treaty as a general principle of Community constitutional law), that principle provides a guide as to how Article 235 of the Treaty is to be applied.

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<sup>(1)</sup> Edinburgh European Council, Presidency conclusions, 11 and 12 December 1992, Annex 1 to Part A.

The *second requirement* that has to be fulfilled in order to vest the Community with new powers to set up the Monitoring Centre as an agency under Community law is to *provide proof* that the establishment of the Monitoring Centre under Article 235 fulfils the first requirement of that Article, i.e. that the proposed measure is *necessary* to attain one of the objectives of the Community; in other words, it must be consonant with pursuit of the Community's objectives.

General statements already implicitly recognize the Community as having powers under the EC Treaty to take action against racism and xenophobia (this has been affirmed implicitly by the Council <sup>(1)</sup> and explicitly by the European Parliament <sup>(2)</sup>); beyond such general statements, however, any action taken by the Community in this field, including setting up the Monitoring Centre (which by collecting information for and making proposals to the Community's institutional bodies would be preparing the ground for the Community to develop its own action to reduce and neutralize racism and xenophobia) can be regarded as *necessary* within the meaning of Article 235 of the EC Treaty because that activity would be in keeping with the spirit and logic of the internal market and with the key practical component of that market, *the free movement of persons* (Articles 7a and 48 to 58 of the EC Treaty) and particularly of migrant workers (Articles 48 to 51 of the EC Treaty).

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(<sup>1</sup>) In a Resolution adopted on 23 October 1995 on the response of educational systems to the problems of racism and xenophobia (OJ No C 312, 23.11.1995, p. 3), the Council and the Representatives of the Member States meeting within the Council "note (...) the action already completed" by the European Commission "under existing Community programmes" against racism and xenophobia and "invite" the Commission to "ensure coherence among all (such) Community programmes" and "to ensure (...) appropriate cooperation in combating racism and xenophobia (...) between the Community and international organizations".

(<sup>2</sup>) See in particular the Resolution on racism and xenophobia adopted at the sitting of the European Parliament on 27 October 1994 (summary of proceedings of the EUROPEAN PARLIAMENT, PE 184.353, p. 9). See also Resolutions on "the growing number of crimes connected with fascism, racism and xenophobia in Community countries" of 18 July 1987 (OJ No C 190, 20.7.1987, p. 108), "the revival of racism and fascism in Europe" (OJ No C 68, 14.3.1988, p. 29), "the Joint Declaration against racism and xenophobia and an action programme by the Council of Ministers" of 14 February 1989 (OJ No C 69, 20.3.1989, p. 40), "measures to combat racism and xenophobia" (OJ No C 175, 16.7.1990, p. 178), "racism, xenophobia and anti-semitism" of 30 October 1992 (OJ No C 305, 23.11.1992, p. 590) and "racism, xenophobia and the danger of right-wing extremist violence" of 21 April 1993 (OJ No C 150, 31.5.1993, p. 127).

In its communication of 13 December 1995 on racism, xenophobia and anti-semitism <sup>(1)</sup> the European Commission stressed the close relationship between combating racial discrimination and achieving the free movement of persons within the Community, stating that:

The tasks of the European Community include "the raising of the standard of living and quality of life" (Article 2 ECT), and the objectives of the European Union include the promotion of economic and social progress through the strengthening of economic and social cohesion (Article B TEU). Moreover, the Treaties already impose a general obligation on the Union to respect fundamental human rights (Article F(2) TEU), and a general obligation on the Community to establish the right of freedom of movement of persons, and freedom from discrimination on grounds of nationality (Article 6 ECT).

The European Commission continues:

Combating racism and xenophobia is an integral part of all policies which, whilst fully respecting human rights and fundamental freedoms, aim to ensure the free movement of people inside the Community. This covers Community migrant workers (who may become victims of racist prejudice and behaviour) and the members of their families (who may be nationals of third countries), but also the nationals of certain third countries who under certain association agreements enjoy the right to be integrated into their host country, after a certain period of regular employment.

It concludes:

The Joint Declaration by the European Parliament, the Council, the representatives of the Member States, meeting within the Council, and the Commission against racism and xenophobia, of 11 June 1986 clearly reflects the existence of such shared Community/Member States competence to combat racism and xenophobia.

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<sup>(1)</sup> Commission of the European Communities  
see COM(95) 653 final, 13.12.1995, p. 20 – circulated by the General Secretariat of the Council under reference 4581/96 SOC 16 EDUC 6 RAXEN 2.

The Council of the European Union has also acknowledged the link between free movement of persons within the Community and the elimination of racism and xenophobia. In 1980 in its reply to a parliamentary question about legal penalties for acts of racialism or xenophobia, the Council stated that it "considers that the question raised (...) falls within the realm of the public policy of the Member States", but went on to say that this was the case "unless there are any effects on freedom of movement, in particular as regards workers" <sup>(1)</sup>. Moreover, this link may be regarded as having been implicitly acknowledged by the Court of Justice in the reference which it made, in two judgments of 1974 and 1975, to the fifth recital of Council Regulation No 1612/68 on freedom of movement for workers within the Community, whereby "the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires (...) that obstacles to the mobility of workers shall be eliminated" <sup>(2)</sup>.

In its Final Report of 1995 the Consultative Commission has stated that:

racist or discriminatory behaviour towards minorities, especially in employment and housing, inhibits free movement, and may distort the labour market or undermine educational and other exchange programmes within the Community. Equally, Community-wide measures against (racial) discrimination in employment are needed to avoid a situation in which undertakings which adopt a policy of non-discrimination (in relation, for example, to persons who do not have the nationality of an EU Member State) suffer a competitive disadvantage in relation to those which are prepared to exploit vulnerable minorities <sup>(3)</sup>.

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<sup>(1)</sup> OJ No C 206, 11.8.1980, p. 15.

<sup>(2)</sup> Court of Justice of the European Communities: judgment of 3 July 1974 in Case 9/74 (Casagrande), ECR 1974, p. 778, paragraph 3, and judgment of 29 January 1975 in Case 68/74 (Alamo), ECR 1975, p. 113, paragraph 4.

<sup>(3)</sup> EUROPEAN UNION – THE COUNCIL, 6906/1/95 REV 1, RAXEN 24, of 23 May 1995, p. 58.

2. **Extending the Monitoring Centre's sphere of operation under Title VI of the Treaty on European Union**

As regards extending the Monitoring Centre's sphere of operation in the areas of activity covered by Title VI of the EU Treaty (cooperation in the fields of justice and home affairs), the Consultative Commission considers that, in view of the political agreement reached in the JHA Council on 19 and 20 March 1996 on a joint action concerning action to combat racism and xenophobia and in view of the link which has just been demonstrated between the free movement of persons – one of the objects of the Community as defined by the Treaty – and the fight against racism and xenophobia, the Monitoring Centre's sphere of operation can indeed be extended, by means of a *joint action* adopted under Article K.3(2)(b) of the EU Treaty, to certain areas designated by Article K.1 as "matters of common interest" for the intergovernmental cooperation that has been established in the fields of justice and home affairs. According to the introduction to Article K.1 of the EU Treaty, certain fields are "considered" by Member States as "matters of common interest" solely "for the purposes of achieving the objectives of the Union, in particular the free movement of persons". However, the fight against racism and xenophobia is not mentioned by Article K.1 of the EU Treaty as a "matter of common interest". Consequently, the mooted extension of the Monitoring Centre's sphere of operation cannot come about unless provision is made in the joint action to the effect that the Monitoring Centre will supply information and data on specific measures that may be carried out against racism and xenophobia under Title VI of the EU Treaty, especially as regards the policy on Member States' nationals when they cross external borders (Article K.1(2)), the policy on third-country nationals (Article K.1(1) and (3)) and judicial cooperation in criminal matters (Article K.1(7)).

#### IV. DRAFT STATUTE OF THE CENTRE

##### Article 1

The European Monitoring Centre for Racism and Xenophobia (hereinafter referred to as "the Centre") is hereby established within the European Union with the objective of carrying out the activities defined in Article 2.

##### Article 2

##### Objective and Tasks

1. The prime objective of the Centre shall be to maintain vigilance as to the dangers for the Union of increasing racism and xenophobia, including anti-semitism, and to provide the institutions of the European Union and its Member States with objective, reliable and comparable data at European level on the phenomena of racism and xenophobia in order to develop and implement the necessary policies to combat them.
2. In three fields – the extent and development of the phenomena and manifestations of racism and xenophobia, including anti-semitism, analysis of the causes, consequences and effects thereof and examples of good practice in dealing with them – the Centre shall:
  - (a) collect, record and analyze information and data (including that resulting from scientific research) communicated by the Member States as well as that emanating from Community sources, non-governmental sources and relevant international organizations, in particular those referred to in Article 4;
  - (b) build up cooperation between suppliers of information and develop a policy for concerted use of their data bases in order to foster wide distribution of information;
  - (c) carry out scientific research and surveys, preparatory studies and feasibility studies, together with any pilot projects necessary to accomplish its tasks. It shall organize meetings of experts and whenever necessary set up ad hoc working parties;
  - (d) set up documentation resources open to the public, assist in the promotion of information activities and encourage scientific research;

- (e) formulate conclusions and set out recommendations capable of being used as a basis for policy-making in the institutions of the European Union and its Member States;
  - (f) publish an annual report on the situation regarding racism and xenophobia in the European Union (also highlighting examples of good practice) and on the activities and finances of the Centre;
  - (g) set up and coordinate a "European Racism and Xenophobia Information Network" (Raxen) consisting of the Centre's own central unit, which shall cooperate with national university research centres, non-governmental organizations and specialist centres set up by other national or international organizations referred to in Article 7. The network shall make use of, inter alia, an autonomous computer system linking all the parties involved;
  - (h) facilitate and encourage the organization of regular Round Tables or meetings of other, existing, permanent advisory bodies, within the Member States, with the participation of the social partners, research centres and representatives of competent public authorities and other persons or bodies involved in dealing with racism and xenophobia. The Centre shall take the findings of national Round Tables or of other, existing, permanent advisory bodies into account in its annual report on the situation regarding racism and xenophobia in the European Union.
3. The Centre's conclusions and recommendations shall be published as and when necessary in a variety of forms.

### Article 3

#### Working methods and priorities

1. The Centre shall progressively carry out its tasks in the light of the objectives adopted in its annual programme and with due regard to the available resources.
2. In pursuing its activities, the Centre shall, in order to avoid duplication, take account of activities already carried out by other institutions, bodies and relevant international organizations, particularly the Council of Europe, and shall ensure that it adds to their value.

3. The information and data to be collected and processed, the scientific research, surveys and studies to be conducted or promoted and the conclusions or recommendations to be made to the relevant institutions shall relate to the extent, development, causes and effects of racist and xenophobic phenomena, in particular in the following areas:

- (a) culture;
- (b) education, vocational training and youth;
- (c) information and communication;
- (d) employment;
- (e) free movement of persons within the European Community;
- (f) preventive measures and means of action in the field of police and judicial cooperation to counter racism and xenophobia, including racial violence;
- (g) social exclusion.

#### Article 4

##### European Racism and Xenophobia Information Network (Raxen)

1. To enable the network provided for in Article 2(2)(g) to be established as rapidly and efficiently as possible, the Member States shall forward a list of the competent administrative bodies referred to therein to the Centre. They may also forward a list of the other bodies and organizations which in their judgment could make a useful contribution to the Centre's work.
2. The Centre's Management Board shall designate the bodies which are to be parties to the network after consulting the Member State in whose territory they are located. The decision of the Management Board shall be subject to a favourable opinion from the Centre's Scientific Committee.
3. The Centre may enter into contractual relations, in particular subcontracting arrangements, with the bodies referred to in paragraph 2, in order to accomplish any tasks which it may wish to entrust to them.



The Centre may also enter into contractual relations, on an ad hoc basis and for specific tasks, with bodies which are not part of Raxen. It shall inform the Member State(s) concerned accordingly.

The allocation of such tasks shall appear in the Centre's annual programme.

## Article 5

### Protection and confidentiality of personal data

1. The Centre shall act in accordance with national and Community laws and regulations concerning the protection of personal data.
2. Where personal data are forwarded to the Centre pursuant to this Statute and in accordance with national law, such data may be used only for the stated purpose and under the conditions prescribed by the forwarding authority. This provision shall apply mutatis mutandis where personal data are communicated by the Centre to the competent authorities of the Member States or to international or European organizations.
3. Data on racist and xenophobic violence supplied to or by the Centre may be published subject to compliance with Community and national rules on the dissemination and confidentiality of information.
4. Member States or national bodies cooperating with the Centre shall be under no obligation to provide information classified as confidential under their national legislation.

## Article 6

### Legal personality and capacity

The Centre shall have legal personality. It shall enjoy, in each of the Member States, the most extensive legal capacity accorded to legal persons under their laws. In particular, it may acquire or dispose of movable and immovable property and may be a party to legal proceedings.

## Article 7

### Cooperation with competent organizations or bodies

1. To help it carry out the tasks referred to in Article 2, the Centre may operate and work with other national or international, governmental or non-governmental organizations competent in the field of analysing racist and xenophobic phenomena or of combating racism and xenophobia.
2. The arrangements for this cooperation shall be subject to the unanimous approval of the Management Board, after consultation of the Scientific Committee.
3. The European Community may enter into an agreement, on behalf of the Centre, with the Council of Europe for the purpose of establishing close cooperation between it and the Centre. Such cooperation shall include in particular the appointment of a Council of Europe representative to the Centre's Management Board.

## Article 8

### Headquarters

The Centre shall have its headquarters in ....

## Article 9

### Management Board

1. Without prejudice to Article 7(3), the Centre's Management Board shall consist of one independent person appointed by each Member State of the European Union, one person appointed by the European Commission and one appointed by the European Parliament. The members of the Management Board shall be independent persons with appropriate experience in the field of human rights and combating racism and xenophobia. Each member shall have a deputy appointed on a similar basis. They shall have a term of office of three years, which shall be renewable once. Any vacancy shall be filled by the appointing State or institution up to the end of the current term of office.
2. The names of the members and deputy members of the Management Board shall be notified to the Secretary-General of the Council of the European Union for publication in the Official Journal of the European Communities.

3. The Management Board shall take the decisions necessary for the operation of the Centre. In particular, it shall:

- (a) determine the Centre's annual programme of activities in accordance with the budget and the resources available and after consultation of the Scientific Committee; this programme may be reviewed if necessary;
- (b) adopt the Centre's annual report and its conclusions and recommendations and forward them to the Council of the European Union, the Commission and the European Parliament; it shall have the annual report published;
- (c) appoint the Centre's Director and, if applicable, Deputy Director;
- (d) adopt the Centre's annual budget;
- (e) approve the Centre's accounts;

4. Each member of the Management Board, or in his absence his deputy, shall have one vote. Decisions shall be taken by a two-thirds majority of the votes cast.

5. The Management Board shall elect a Chairman and two Vice-Chairmen and the other members of the Executive Board specified in Article 10.

6. The Management Board shall adopt its rules of procedure.

7. The Management Board shall meet at least twice a year.

#### Article 10

##### Executive Board

1. The Executive Board shall be composed of the Chairman of the Management Board, the two Vice-Chairmen and a maximum of three other members of the Management Board, plus the Director of the Centre in an advisory capacity.

2. The Executive Board shall supervise the work of the Centre, monitor the preparation and execution of programmes and prepare the meetings of the Management Board with the assistance of the Centre's Director. The Executive Board shall also perform any task entrusted to it by the Management Board, in accordance with the latter's rules of procedure.

## Article 11

### Scientific Committee

1. The Management Board and the Director shall be assisted by a Scientific Committee of up to eight members, preferably from different States. The members of the Committee shall be independent and particularly qualified or experienced in analysing racism and xenophobia.
2. The members of the Scientific Committee shall be appointed by the Management Board, which shall also ensure that it is multidisciplinary in its composition. Members shall have a term of office of three years, renewable once.
3. The Scientific Committee shall elect a Chairman and a Vice-Chairman.
4. The Scientific Committee shall be convened by its President. It shall adopt its opinions by a simple majority of the votes cast, each member having one vote. Divergent opinions shall be notified to the Management Board.
5. The Scientific Committee shall adopt its rules of procedure.

## Article 12

### Director and staff

1. The Centre shall be headed by a Director, assisted, if necessary, by a Deputy Director. They shall be appointed for a period of four years, which shall be renewable. The relevant costs shall be borne by the budget of the Centre.
2. The Director shall be responsible for:
  - (a) performance of the tasks referred to in Article 2;
  - (b) preparing and implementing the Centre's annual work programme;
  - (c) the preparation of the reports, conclusions and recommendations provided for in this Statute;
  - (d) the preparation of a statement of revenue and expenditure and the implementation of the budget;
  - (e) all staff matters and matters of day-to-day administration.

3. The Director shall be accountable for his activities to the Management Board and shall attend its meetings. He shall be the Centre's legal representative.

4. The Centre shall have a complement of not more than 25 staff. The staff may be on temporary or fixed-term contracts or may be on secondment from specialist bodies within or outside the European Union.

5. Staff of the Centre shall be recruited without any discrimination on grounds of nationality.

### Article 13

#### Resources

1. The Centre's financial resources shall consist of:

- (a) annual contributions by the European Community;
- (b) voluntary contributions from the European Union's Member States;
- (c) the Centre's own income, if any;
- (d) funds entrusted to it by organizations referred to in Article 7 with which it cooperates;
- (e) unconditional contributions from bodies or natural or legal persons;
- (f) the credit balance of the last closed and approved financial year.

2. The Centre's assets shall be acquired and held on behalf of the European Community and shall benefit as such from the privileges and immunities applicable to the European Community. The Centre's assets may not be amalgamated with other European Community assets. The Centre's contracts shall be concluded on behalf of the European Community.

3. In the event of dissolution of the Centre, the European Community, acting as treasurer, shall continue to hold its assets, with the exception of contributions in kind by the European Community, which shall revert to the latter. The European Community may claim equitable compensation on the basis of its share of contributions to the budget.

4. The Financial Regulation of the European Community shall apply unless otherwise provided for in this Statute.

Article 14

(to be reviewed in due course)

During the third year following the entry into force of this Statute, the European Commission shall forward to the European Parliament and the Council of the European Union a progress report on the Centre's activities, together with proposals, if appropriate, to modify or extend its tasks, taking into account, in particular, the evolution of Community powers in the field of racism and xenophobia.

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**NB:** Ms W Samuelsson, Swedish member of the Consultative Commission, asked for the following statement to be included:

"During the Consultative Commission's proceedings I argued in favour of a pan-European approach, covering the problem of racism and xenophobia in all European countries. I believe that the most effective way of achieving this objective would be to create a Monitoring Centre jointly with the Council of Europe. However, the majority of the Consultative Commission's members concluded that the Centre should be an agency of the European Union, with the possibility of negotiating a cooperation agreement with the Council of Europe. I hope that negotiations for such an agreement will start as soon as possible so that, from the outset, the Centre will be able to benefit from the Council of Europe's considerable experience."

## V. AMENDMENT OF THE TREATY ON EUROPEAN UNION

1. The Consultative Commission wishes to reaffirm the view expressed in its Final Report (23 May 1995) that amendment of the Treaty to provide explicitly for Community competence to take action against discrimination based on race, ethnic origin or religion, must be regarded as an essential element in any effective European strategy aimed at combating racism and xenophobia.

We note the growing volume of support for an appropriate amendment of the Treaty establishing the European Community. The report from the Reflection Group on the Intergovernmental Conference notes general support for inclusion in the Treaty of express condemnation of racism and xenophobia, as well as a general clause prohibiting discrimination on grounds of gender, religion, opinion, sexual preferences, etc. In its Resolution of 27 April 1995 on racism, xenophobia and anti-semitism <sup>(1)</sup>, the European Parliament proposed that the Treaty should contain a clear rejection of, inter alia, racism, xenophobia and anti-semitism, as well as adequate legal protection against discrimination for all individual residents within the European Union. The European Commission, in its communication on racism, xenophobia and anti-semitism <sup>(2)</sup>, proposes the inclusion in the Treaty of a general non-discrimination clause, and has, in its White Paper on Social Policy of 27 July 1994, called for specific powers to combat racial discrimination to be included in the Treaty.

2. Because of the importance which we attach to the matter, we repeat here the arguments for Treaty amendment contained in the Consultative Commission's Final Report of 23 May 1995 (pages 57 to 60):

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<sup>(1)</sup> OJ No C 126, 22.5.1995, p. 75.

See also European Parliament Resolution of 9 May 1996 entitled "1997: European year against racism".

<sup>(2)</sup> COM(95) 653 final of 13.12.1995, pp. 18 and 19.

In order to be effective, cooperative action needs to be complemented, supported, underlined and reinforced by firm action at Community level. The fight against racism and xenophobia is both a national and a Community responsibility, requiring a combination of educative and cooperative measures, reinforced by a clear understanding of what constitutes unacceptable behaviour and a firm message that such behaviour will not be tolerated. This message needs to be promulgated and enforced at Community as well as at national level. An explicit Treaty amendment, confirming Community competence, will be the clearest expression of the European Union's real intention of combating, not merely protesting against, the rising tide of racism and xenophobia.

In view of the importance attached to the principle of subsidiarity, even the question of making Community competence explicit is sensitive. We are convinced that the arguments for confirming Community competence in this area are both compelling and urgent. The fundamental principles upon which the battle against racism and intolerance are to be fought – the principles of non-discrimination and tolerance – lie at the heart of the European Union. They are historically part of the reason for its existence, and any serious breakdown in them represents a threat to its body politic. It is now accepted that the Community has a general responsibility to support democracy in Europe by promoting respect for human rights, one of the core principles of which is equal treatment.

We cannot emphasize too strongly the dangers which the current rise in xenophobic and racist sentiments and behaviour represents for the stability of the Union. While there may be some room for national differences in the way in which expression is given to the principles of tolerance and non-discrimination, there can be no departure from the principles themselves nor any room for hesitancy, political expedience or compromise in the support for them at national level.



Apart from the broader moral and political case for Community competence, more specific Community objectives are threatened if discrimination is not controlled at Community level. We would emphasize once more the link between the fight against racism and xenophobia and the free movement of persons <sup>(1)</sup>. We agree with the European Commission that "the Union must act to provide a guarantee for all people against the fear of discrimination if it is to make a reality of free movement within the single market." <sup>(2)</sup> This is the same reasoning which has justified widely approved Community action against discrimination between men and women.

Effective action in these areas requires Community competence. Vital Community interests are involved. We are not satisfied that action taken by individual Member States to combat racism and xenophobia has weakened the European political consensus on the need to combat racism and xenophobia and facilitate progress in areas of the Community where narrow electoral considerations may have weakened the will for firm action.

It is our view that Community competence in relation to racism and xenophobia should be firmly established within the first pillar. It is not appropriate to limit Community competence to action under the third pillar. The principle of non-discrimination should be established as a basic principle of Community law. This would be consistent with the adherence by the Court of Justice of the European Communities to the principles of fundamental rights derived from the constitutional laws of Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is vitally important, especially in the area of racism and xenophobia, that the Court of Justice of the European Communities should have the possibility of overseeing the uniform application of Community law by national courts in respect of claims of discrimination by individual citizens of the European Union and the award of damages and other remedies. Competence under the first pillar also makes possible enforcement measures by the European Commission and other forms of action under the Treaty.

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<sup>(1)</sup> See page 20.

<sup>(2)</sup> White Paper on European Social Policy: a Way Forward for the Union, COM(94) 333 of 27 July 1994, Chapter VI, paragraph 27.

There is no doubt that Community institutions are well placed to take the necessary measures. The European Parliament, the Council and the European Commission have been in the forefront in bringing to the attention of Member States the scale and implications for Europe of the rise in racism and xenophobia. The European Parliament carries on regular monitoring of the situation, and the European Commission has already invested considerable time and effort in building up a picture of the law in force in Member States, and of their degrees of effectiveness and is well placed to assess what additional measures are necessary at Community level. The recent decision by the President of the European Commission to concentrate responsibilities in respect of racism and xenophobia within the remit of the Commissioner with responsibility for social affairs is an important step in achieving the necessary coordination in this area. The Community has already shown how effective it can be in combating discrimination on the basis of sex; it is appropriate that it should be given a similar mandate, and that it should adopt similar measures, to combat discrimination on grounds of race, religion or ethnic or national origins.

### 3. Proposed amendment of the Treaty

The need for a Treaty amendment arises from uncertainty about the Community's current competence to take action, and from our conviction that such competence should be clearly and unambiguously affirmed. At this stage we would like to propose a specific wording (see below, paragraph 4).

The amendment should be directed towards the elimination of all forms of discrimination against persons or groups of persons, whether citizens of the European Union or not, on grounds of race, colour, birth, religion, language, or national, social or ethnic origin, without prejudice to measures adopted for the purpose of redressing disadvantages or removing existing inequalities affecting such persons or groups.

The amendment should impose an obligation on Member States to ensure the elimination of such discrimination. It should give the Council power, acting in accordance with the procedure laid down in the current Article 189b or 189c of the Treaty, to adopt the measures required to combat such discrimination.

Any such Directives should have the same potential effect as the existing Equal Pay and Equal Treatment Directives in terms of providing widely available remedies, including compensation, to the victims of discrimination, that can be enforced in national courts throughout the Community.

The Intergovernmental Conference will provide the ideal opportunity for Governments to consider these proposals, and we recommend that the question of a Treaty amendment to provide explicitly for Community competence in respect of racism and xenophobia be placed formally on the agenda for that Conference.

#### 4. Specific proposals for Treaty amendment

Having given further consideration to the matter, we propose the following specific amendments to the Treaty on European Union, for consideration at the Intergovernmental Conference.

1. An amendment which would add the prohibition of racial discrimination to the tasks set out in Article 3 of the EC Treaty. This could be in the form of an addition to Article 3 of Title II of the Union Treaty, as follows:

"(u) the prohibition of discrimination on grounds of race, colour, religion, or national, social or ethnic origin."

2. A further amendment giving clear competence for the adoption of Community rules to combat racism and xenophobia, which would also place direct obligations on Member States. This could be in the form of a new Article in Title II, as follows:

"6a. Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, discrimination on grounds of race, colour, religion, or national, social or ethnic origin shall be prohibited.

The Council, acting in accordance with the procedure referred to in the current Article 189b or 189c, may adopt rules designed to prohibit such discrimination."

It should be noted that Community action would be subject to the principle of subsidiarity, in that the Community would take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States.

## VI. CONCLUSIONS

The Consultative Commission:

1. requests the European Council to reiterate its determination to combat racism and xenophobia within the European Union by all possible means;
  2. requests the European Council to approve the establishment without delay of a European Monitoring Centre for Racism and Xenophobia along the lines set out in this report;
  3. requests the European Council, following the establishment of the Monitoring Centre, to initiate negotiations with the Council of Europe with a view to concluding an agreement on close cooperation in the area of racism and xenophobia;
  4. requests the European Council to submit the amendment to the Treaty on European Union, as proposed in this report, to the Intergovernmental Conference;
  5. requests the European Council to instruct the Consultative Commission on Racism and Xenophobia to continue operating until the European Monitoring Centre has been set up.
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## POSITION OF THE COUNCIL OF EUROPE

The Council of Europe, which participated in the work of the Consultative Commission, submitted a proposal for a Monitoring Centre which would be set up jointly by the European Union and the Council of Europe. This proposal, based in particular on the Council of Europe's expertise in the field of human rights, was intended to pool efforts in order to combat racism and xenophobia more effectively by involving all European States. It also took into account the need for sound management of public funds by deploying in a rational way the resources available.

The Council of Europe considers that the primary function of a Monitoring Centre should be to act as a resource centre and support instrument for the existing institutions, by providing relevant data for defining and implementing policies to combat racism and xenophobia. The efficiency of this Monitoring Centre will be ensured through:

- its pan-European nature, as regards both the scope of data and the results of research collected and processed, and its method of functioning;
- its independence in the execution of its functions;
- its neutral collection and processing of the data and results of research.

In the view of the Council of Europe, the development of the Monitoring Centre should be an evolving process, with an ongoing evaluation and consolidation. As regards its methods and structures, they should be as simple and lightweight as possible.

The Council of Europe transposed this proposal into a preliminary draft statute of a Monitoring Centre in the form of a joint venture, which was submitted to the Consultative Commission. The Council of Europe remains convinced that the joint approach presents clear advantages in terms of economic and political effectiveness. Finally, a European Monitoring Centre with a pan-European mission must involve the full and equal participation of all the European countries, including those which are not members of the European Union, for which its work is relevant.

The Council of Europe's position on this matter has been communicated by the Chairmanship of the Committee of Ministers of the Council of Europe to the Presidency of the Council of the European Union (\*).

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(\*) *Letters sent by Mr Niels HELVEG PETERSEN, Chairman of the Committee of Ministers, to Mr Felipe GONZALEZ MARQUEZ, President of the European Council (November 1995) and to Ms Susanna AGNELLI, President of the Council of the European Union (March 1996).*

### POSITION OF THE EUROPEAN PARLIAMENT

At its session on 9 May the European Parliament approved with 145 votes in favour, 16 against and 9 abstentions Mr Arie Oostlander's report on the communication from the Commission on racism, xenophobia and anti-semitism (COM(95) 0653-C4-0250/96).

The relevant paragraphs relating to the work of the Consultative Commission are as follows:

- having regard to the final report of the Consultative Commission on Racism and Xenophobia for the Cannes European Council of 26 and 27 June 1995
- having regard to the interim report of the Consultative Commission on Racism and Xenophobia for the Madrid European Council of 15 and 16 December 1995
- having regard to the interim report from the Council concerning the feasibility study for a European Monitoring Centre on Racism and Xenophobia as submitted to the European Council in Madrid in December 1995,

Endorses the establishment of a Monitoring Centre for Racism and Xenophobia, as proposed in the final report of the Consultative Commission on Racism and Xenophobia for the Cannes European Council (Kahn Commission), and wishes this Monitoring Centre to form the centre of a network of existing organizations, to be answerable to the Commission;

Hopes that the Monitoring Centre will work closely with the Council of Europe, particularly in respect of manifestations of racism and xenophobia at the periphery of the Union and where manifestations cross the frontiers of the Union to adjacent countries which are members of the Council of Europe;

Believes that this Monitoring Centre will help to fight against racism and xenophobia within our society;

Recognizes that, if the Monitoring Centre is to be taken seriously by victims of racism, its statute cannot limit recruitment to Member State nationals;

Believes that the annual report and other publications of the Monitoring Centre should not be limited to reportage but should propose policies which can be pursued by local authorities, national governments and the Union.

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**Declaration by the Consultative Commission on  
Racism and Xenophobia on  
"1997 - European year against Racism"**





**DECLARATION  
BY THE  
CONSULTATIVE COMMISSION ON RACISM AND XENOPHOBIA  
ON "1997 - EUROPEAN YEAR AGAINST RACISM"**

The Consultative Commission on Racism and Xenophobia set up by the European Council, in accordance with its own manifesto and with the resolutions approved by the plenary meeting, hereby makes public its opinion on the declaration making **1997** the "**EUROPEAN YEAR AGAINST RACISM**".

1. The Consultative Commission congratulates the European Commission, the European Parliament and the Council for their political will in declaring 1997 as "European Year against Racism" and exhorts them to ensure that all the measures planned by the European Commission, which will be taking place throughout the year, are carried out while providing all the effort needed to resolve any difficulties which might arise.
2. We note with concern the development in the member countries of the Council of Europe and of the European Union of extreme right-wing political parties whose leaders are capable of attracting numerous individuals by using populist slogans couched in neo-fascist phraseology.
3. Rooted more or less deeply in the European mentality, depending on the period in history, racist phenomena are still present in our era. Europe, and indeed the world, have not been cured of these ills. On the contrary, events are taking place which are a ceaseless source of concern to all those to whom the words "freedom" and "dignity" have any meaning and who are consequently prepared to commit themselves to defending those values.
4. We denounce the "revisionist" theories of those who shed doubt on the historical reality of the gas chambers or the extermination of the Jews and of other ethnic and cultural minorities during the second world war. Indeed, we believe that the memory of that barbaric period must serve to ensure that human beings never again forget the principles of respect and dignity to which all persons are entitled, whatever the colour of their skin or their mores and traditions.

5. Racism, xenophobia and anti-Semitism are the gravest threat to the defence of human rights and to the economic and social cohesion of the Community. This is why we believe it is necessary to encourage thought and discussion about measures to combat these phenomena and to promote exchanges of experience at local, national and European levels.
6. The nature of racism and xenophobia varies, not only as between Member States, but also as between regions of any Member State. We believe that local and regional authorities are best placed to identify and tackle the problem of racism and xenophobia. For this reason, we appeal for the collaboration of those involved in combating racism and xenophobia as part of concrete programmes to eliminate marginalization, poverty and social exclusion.
7. The causes of racism and xenophobia are complex. Nonetheless, it may be stated that racism, xenophobia and anti-Semitism arise in societies or places in which levels of unemployment, poverty or social deprivation are high. Consequently, racism may to some degree be seen as a symptom of those social problems. The struggle against poverty, unemployment and marginalization must be a fundamental and priority aspect of combating racism. In this connection, the Consultative Commission would emphasize the importance of maintaining harmonious relations between all sections of the population.
8. With a view to promoting effective policies to prevent racist and xenophobic phenomena, more emphasis should be placed on subjects in the field of education linked to the defence of human rights. Continued training in this field for teaching staff would make it possible to pass on to young people the knowledge needed to help them to combat any racist, neo-fascist or xenophobic temptations.
9. The credibility of Governments' commitment and of their exemplary role in combating racism depends on effective application of both legislation and other legal measures intended to combat discrimination.

The police and judiciary are in the front line, and act in concert with all sections of society. They should ensure equal treatment for all and, at the same time, should ensure that everyone obeys the law.

10. Combating racism and xenophobia is not the exclusive preserve of the public authorities; on the contrary, it is civil society which must at all times take its stand at the forefront of the fight. The role which NGOs can play is fundamental for the purpose of attaining the objectives pursued by the declaration making 1997 the "European Year against Racism". The Community authorities and authorities of the Member States of the EU should secure for those organizations the means that will enable them to attain their objectives more effectively.
  11. The collaboration of the mass media in order to propagate anti-racist messages is essential in combating racism. Those responsible for the mass media must adopt a positive and convincing attitude against any indirect forms of racism, particularly in advertising. The communication media, and particularly television, must endeavour throughout this year to avoid racial stereotypes.
  12. The Consultative Commission reaffirms its firm desire, as stated in previous Reports, to see the amendment of the Treaty confirm and strengthen the European Union's competence to act at Community level against racism and xenophobia and to outlaw racial discrimination in connection with all the subject-matter of the Treaties.
  13. The Consultative Commission gratefully welcomes the EU Council's conclusions of 6 December 1996 on the setting-up of a European Monitoring Centre on Racism and Xenophobia. The setting-up of the Monitoring Centre, together with appropriate amendments to the Treaty, will secure the basis necessary for developing firm, effective and sustained action by the European Union against racism and xenophobia over the years to come.
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