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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	Judicial responses and the fight against impunity regarding crimes committed in connection with Russia's war of aggression against Ukraine - State of play

The Council, together with the other EU institutions and agencies, acted rapidly after the beginning of Russia's war of aggression to support the fight against impunity regarding war crimes and the other most serious crimes. Justice Ministers discussed the situation already on 4 March 2022, and they discussed this topic at each subsequent meeting. The last discussion took place at the informal meeting in Prague in July, in the presence of the prosecutor of the International Criminal Court (ICC), the Ukrainian Minister of Justice and the chair of the LIBE Committee of the European Parliament.

The Presidency also initiated discussions on this topic at other high-level meetings, such as the meeting of the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) on 21 September 2022.

In its conclusions of 30 and 31 May 2022, the European Council stated that it ‘commends all those helping to gather evidence and to investigate war crimes and the other most serious crimes, and supports the intensive work of the Prosecutor of the ICC in this respect. It also salutes the work being carried out by Ukraine’s Prosecutor General with financial and capacity-building support from the European Union and its Member States.’

The main efforts and initiatives in this field can be summarised as follows :

- Fourteen Member States have opened investigations into crimes committed in connection with Russia’s war of aggression in Ukraine, either on the basis of personal jurisdiction (e.g., a victim or the perpetrator (also) has the nationality of a EU Member State) or on the basis of universal jurisdiction.
- On 25 March 2022, a joint investigation team (JIT) was established between the Polish, Lithuanian and Ukrainian judicial authorities, with the support of Eurojust. It aims to facilitate the exchange of information and evidence and to support the criminal investigations into the crimes committed in Ukraine. On 25 April 2022, the Office of the Prosecutor of the ICC announced its participation in the JIT. On 30 May 2022, the Estonian, Latvian and Slovak judicial authorities formally joined the JIT. Eurojust continues to provide crucial operational, legal and financial support to the JIT.
- In addition, on 13 April 2022 the Council amended the mandate of the EU Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine).¹ Under the amended mandate, EUAM Ukraine also provides support to Ukrainian authorities to facilitate the investigation and prosecution of any international crimes committed in the context of Russia’s unprovoked and unjustified military aggression against Ukraine.

¹ Council Decision (CFSP) 2022/638 of 13 April 2022 amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine), OJ L 117, 19.4.2022, p. 38–39.

- The role of Eurojust as a coordinating body between Member States' judicial authorities is essential in the context of the collection of evidence of war crimes and other most serious crimes, especially since Eurojust hosts and provides the secretariat for the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ('Genocide Network') and has established close ties with Ukraine through the presence of a Liaison Prosecutor for Ukraine. In that context, it appeared essential to allow Eurojust to fully fulfil that important coordinating role by preserving and analysing evidence to support the various investigations that have been initiated. Following a proposal of the Commission, and within very tight deadlines under an exceptional emergency procedure, the Council and the European Parliament adopted Regulation (EU) 2022/838 on the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences.² The Regulation entered into force on 1 June 2022. Eurojust is currently setting up the necessary infrastructure to apply the Regulation; on request by the Presidency, it regularly reports on that process in the Council preparatory bodies.³

- On 21 September 2022, Eurojust, the Genocide Network and the Office of the Prosecutor at the ICC published guidelines for civil society organisations: 'Documenting international crimes and human rights violations for criminal accountability purposes'. The guidelines, which are available on the website of Eurojust, aim to assist in fighting impunity and have been drawn up building on the expertise of the Office of the Prosecutor at the ICC, Eurojust, the Genocide Network, civil society organisations, national prosecutors and international partners.

² Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences (OJ L 148, 31.5.2022, pp. 1-5).

³ Recently at the COPEN meeting on 16 September; see also WK 12104/22.

- Europol supports competent authorities in investigating and prosecuting war crimes and other most serious crimes through the processing and analysis of information in the context of its dedicated system on international crimes, referred to as ‘Analysis Project Core International Crimes’. Eurojust is cooperating with Europol in order to ensure the agencies’ optimal complimentary function in support of investigations.
- In view of the increased workload triggered by the situation in Ukraine, the ICC has made a call for additional financial contributions, and assistance in the form of human resources that can help with the investigations (i.a. seconded prosecutors, investigators, experts). Efforts of the Council were therefore dedicated to the coordination of action by the Member States in this field. In total, more than 7 million euros have been provided to the ICC as additional financial support, and various Member States have sent experts to The Hague to help the ICC in its important work.
- Through the Integrated Political Crisis Response (IPCR), the Presidency has also assisted in the coordination of forensic support to the Ukrainian authorities for the collection of evidence of international crimes. Member States have been encouraged to continue contributing actively to international crimes investigations by channelling their offers of forensic support through the ICC, which is well equipped to coordinate such offers. In fact, through its rotation model, the ICC pools the offers and matches them with Ukrainian needs. The ICC’s rotation model presents several advantages for Member States in terms of legal basis, immunity, logistical support, security, insurance, reduction of costs, etc.⁴ The ICC cooperates closely with EUAM Ukraine in this field.

A more extensive and detailed description of the various efforts and initiatives is found in document WK 5731/22, regularly updated.

To be noted also that the Presidency endeavours to get the Council Decision regarding the addition of the violation of restrictive measures in Art. 83(1) TFEU adopted as soon as possible, following the European Parliament’s consent. Once the proposal for a Directive on criminal penalties for the violation of restrictive measures has been submitted by the Commission, the Presidency will also make every possible effort to ensure that that proposal be treated with urgency in the Council.

⁴ On 30 September 2022, the Office of the Prosecutor of the ICC released a brochure with information for potential contributing countries on forensic field deployment with the ICC.

The Presidency will continue to make sure that the Council, cooperating closely with the Commission, EEAS and other stakeholders, will continue to provide support to the Member States in their efforts to efficiently collect evidence of war crimes and other most serious crimes committed in Ukraine, while exploring potential synergies and avoiding duplication.

In order to further develop and streamline all these efforts, the Presidency has submitted draft Council conclusions on the fight against impunity regarding crimes committed in connection with the Russian aggression in Ukraine.⁵ The discussions on these draft conclusions have recently started.

⁵ 12756/22.