



Council of the
European Union

Brussels, 24 November 2023
(OR. en)

15658/23

LIMITE

JAI 1517
COPEN 400
RELEX 1346
IPCR 62
COJUR 57

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	13632/23
Subject:	Judicial responses and the fight against impunity regarding crimes committed in connection with Russia's aggression against Ukraine – State of play

Delegations will find attached a note by the Presidency on the abovementioned subject.

Judicial responses and the fight against impunity regarding crimes committed in connection with Russia's aggression against Ukraine – State of play

Since the beginning of Russia's war of aggression against Ukraine, the Council has regularly been provided with a state of play regarding judicial responses and the fight against impunity. The previous state of play was provided for the meeting of the JHA Council on 20 October (doc. 13632/23). It highlighted in particular the start of activities of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) and the development of the Core International Crimes Evidence Database (CICED) at Eurojust as well as the ministerial Conference in Riga of 11 September, the Conference of Participants of the Register of Damage, also in Riga, of 12 September, and developments on legislative instruments.

On 26-27 October, the European Council recalled that Russia and its leadership must be held fully accountable for waging a war of aggression against Ukraine and other most serious crimes under international law. The European Council called for work to continue, including in the Core Group, on efforts to establish a tribunal for prosecuting the crime of aggression against Ukraine that would enjoy the broadest international support and legitimacy, and towards the establishment of a future compensation mechanism. Moreover, the European Council expressed its support for the work of the International Criminal Court and condemned Russian attempts to undermine its international mandate and functioning.

With a view to the JHA Council of 4 December, the Presidency would like to draw the attention of delegations to the following aspects:

Support for the activities carried out by the joint investigation team on alleged core international crimes committed in Ukraine (JIT) and ICPA, both established at and assisted by Eurojust, continues to grow.

On 5 October, Europol joined the JIT as a participant, with a view to providing analytical and forensic support to the members of the JIT, particularly in the field of open-source intelligence (OSINT). This association represents tangible progress in ensuring coordinated support from Eurojust and Europol for the national authorities investigating core international crimes in Ukraine. In line with Regulation 2002/838, the two agencies are working together to identify further practical and dynamic cooperation mechanisms.

Since the start of operations of the ICPA, Eurojust has worked with ICPA members on defining a prosecution strategy, analysing the existing evidence and possible gaps. ICPA members meet at Eurojust on a weekly basis to discuss these matters and identify additional support needs, including possible future contributions from experts.

Following the signature on 3 March 2023 of a memorandum of understanding with the JIT's seven national authorities (Estonia, Latvia, Lithuania, Poland, Romania, Slovakia and Ukraine), the U.S. officially announced it would provide USD 1 million to the ICPA. This financial contribution will be channelled via the Union budget instrument which provided the kick-off funding (Foreign Policy Instruments). This is a further step towards the internationalisation of the ICPA. At the same time, Eurojust is working on the gradual roll-out of the CISED, to which so far 13 countries – including Ukraine and the U.S. – have contributed. The Spanish Presidency continues to encourage all Member States to contribute to the CISED.

Capacity and expertise building activities have further intensified. On 19 October, the Genocide Network published a paper entitled 'The crime of aggression in the national laws of EU Member States, Genocide Network Observer States and Ukraine'. The document provides an overview of national definitions of the crime of aggression in the EU Member States, Genocide Network Observer States and Ukraine, and related jurisdiction provisions. This provides useful background to the work of ICPA, complementing their operational efforts.

Eurojust and Ukraine are co-chairing the Dialogue Group’s workstream on national investigations, which aims to promote understanding of the key challenges in national investigative work and jointly identify solutions at a policy level. In its second meeting, on 26 October, the workstream discussed evidence-related challenges of investigations following the input by national competent authorities which participate in the workstream. In this context, procedural challenges, in particular admissibility of evidence, were highlighted.

Regarding information collected and preserved by civil society organisations (CSOs) on international crimes, it still appears that it is difficult for this to be considered admissible before national courts, for various reasons, including the fact that admissibility requirements of evidence vary between Member States.

This topic was discussed by representatives from judicial authorities and 20 CSOs from Ukraine and partner countries at the 4th *ad hoc* meeting on the war in Ukraine organised by the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (‘Genocide Network’) on 9 November. Meeting discussions focused on the role of CSOs in collecting and analysing information – including on the crime of aggression and crimes committed by private military actors – and their cooperation with national judicial authorities.

Regarding efforts to establish a tribunal for the prosecution of the crime of aggression, the issue is handled within the Council by the Public International Law (COJUR) Working Party, which discussed the matter on 6 October. At international level, the forum where discussions are held at national level is the Core Group, a group of like-minded states. 40 states took part in the last meeting of the Core Group, in Berlin on 16 November. The next meeting of the Core Group will take place in January 2024.

The Register of Damage for Ukraine will serve as a record of claims and evidence on damage, loss or injury caused by the Russian Federation's internationally wrongful acts in or against Ukraine. The 3rd meeting of the Conference of Participants took place on 16 November in Strasbourg. It elected the seven members of the Board of the Register, adopted the annual budget for 2024 and the provisional budget for 2025 and agreed on an outreach strategy to expand the Register's membership to third countries. The Board is one of the principal bodies of the Register and is critical in terms of launching the Register's main work, namely proposing the rules and procedures governing the work of the Register and making ultimate determinations on eligible claims that can be recorded in the Register. The Register's initial focus will also be on developing its digital platform. The goal is to begin its main operations – taking in claims – in the first quarter of 2024.

The Presidency has given high priority to achieving progress on the two legislative instruments on the table in the justice sector which have a link with the effectiveness of EU restrictive measures.

The first instrument is the proposal for a Directive on violations of restrictive measures which sets out minimum rules on the definition of criminal offences and types and levels of sanctions. The second trilogue for this took place on 26 September. The objective of both the co-legislators is to reach a full agreement under the Spanish Presidency. A third and possibly final trilogue is planned for 30 November.

The second instrument is the proposal for a Directive on asset recovery and confiscation which will extend the possibilities for confiscation, including of 'unexplained wealth', and reinforce the action of national asset recovery offices. It will be applicable, among other things, to offences covered by the Directive relating to violations of restrictive measures. The objective of both the co-legislators is to reach an agreement under the Spanish Presidency. Work continued at technical level after the second trilogue which took place on 3 October. A third and possibly final trilogue is planned for 12 December.
