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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Judicial responses to the situation in Ukraine
	- Discussion Paper

(Courtesy translation)

Delegations will find attached a discussion paper from the Presidency in view of the meeting of Coreper on 1 June and the meeting of the Council (Justice and Home Affairs) on 9 June 2022.

*Discussion Paper***Judicial responses to the situation in Ukraine**

Since the Russian Federation started a war of aggression against Ukraine, the European Union has been fully mobilized to ensure a response commensurate with the seriousness of these circumstances.

On 24 February 2022, the European Council condemned this aggression in the strongest terms and called for rapid and concrete responses¹. Several series of sectoral and individual restrictive measures, including the freezing of assets of Russian and Belarusian nationals, were thus adopted on the basis of Articles 29 TEU and 215 TFEU.

In the area of justice, the fight against impunity has emerged as a major issue, particularly in the context of recurring allegations of war crimes and crimes against humanity on the Ukrainian territory. During the JHA Council of 4 March 2022, the Ministers of Justice expressed their concern and solidarity with the Ukrainian people and agreed²:

- that it was justified, given the seriousness of Russia's actions, not to process requests for cooperation in criminal matters sent by Russia and Belarus, without prejudice to a case-by-case assessment;
- on the importance of strengthening the fight against impunity for possible war crimes and crimes against humanity committed in this context, supporting the investigation initiated by the International Criminal Court (ICC), and stressing the importance of Eurojust's coordinating role; and

¹ [European Council conclusions, 24 February 2022](#)

² [Press Release of the JHA Council, 4 March 2022.](#)

- on the need to ensure the effectiveness of restrictive measures taken against Russian and Belarusian natural and legal persons.

Replying to requests regularly expressed in this regard, including at the CATS meeting on 5 May 2022, the French Presidency of the Council has endeavored, in close cooperation with the Commission and the European External Action Service, to coordinate in the best possible way the action of the Member States, in particular by ensuring a fluid exchange of information on the judicial aspects of the situation in Ukraine³ and the modalities of financial and operational support to the ICC. Important work has also been done to coordinate operational support to the Ukrainian judicial authorities, including by sending experts to Ukraine in the context of the investigations opened under the authority of the Ukrainian judicial authorities and the investigation opened by the Prosecutor of the International Criminal Court.

Furthermore, numerous actions have been undertaken, both by the judicial authorities at national level, and by the Council and the Commission at European level⁴:

- In several Member States, criminal investigations have been opened on the alleged crimes, on the basis of universal or personal jurisdiction. In particular, on 25 March 2022, a joint investigation team was set up between the Polish, Lithuanian and Ukrainian judicial authorities, under the aegis of Eurojust. It aims to facilitate the exchange of information and evidence and to support the criminal investigations of international crimes committed in Ukraine. On 25 April 2022, the ICC Prosecutor's Office announced its participation in the JIT; on 30 May 2022, the Estonian, Latvian and Slovak judicial authorities confirmed their participation in the joint investigation team.
- In addition, the Council amended the mandate of the EU advisory mission on civilian security sector reform in Ukraine (EUAM Ukraine). Under the amended mandate, the EUAM Ukraine will also support the Ukrainian authorities in facilitating the investigation and prosecution of any international crimes committed in the context of Russia's unprovoked and unjustified military aggression against Ukraine.

³ Tables WK 5667/22 and WK 5728/22, which are regularly updated.

⁴ Table WK 5731/22 gives an overview of the actions taken at Union level.

- Eurojust's role as a coordinating body between the judicial authorities of the Member States is essential in this context, especially since Eurojust hosts and provides the secretariat for the Genocide Network and has established close ties with Ukraine through the presence of a Ukrainian liaison prosecutor. In this context, it appeared essential to allow Eurojust to fully ensure this major coordination role by preserving and analyzing evidence to support the various investigations opened. Thus, on 25 April 2022, the European Commission adopted a proposal for a regulation to amend Regulation 2018/1727 with regard to the collection, preservation and analysis of evidence relating to investigations of genocide, crimes against humanity and war crimes by Eurojust. Given what is at stake and in full consultation with all the actors concerned, including the European Parliament, the Presidency organized the discussions very quickly, in order to allow the adoption of this text within very tight deadlines according to an exceptional emergency procedure; thus, the Regulation was published on 31 May 2022, with entry into force the following day.
- Besides, the European Commission has set up a "Freeze and Seize" task force to ensure the coordinated and effective implementation of the restrictive measures adopted against Russian and Belarusian individuals and entities, including follow-up in the judicial field. This general task force is currently divided into three sub-working groups: the first one deals with restrictive measures to freeze assets, the second with criminal investigations and confiscations, and the last one with the creation of a common European trust fund.

In this context, the question of the effectiveness of the restrictive measures imposed arises, particularly with regard to possible circumvention of these measures. On 25 May 2022, the Commission has adopted a package containing a proposal for a directive aimed at strengthening the European arsenal for freezing and confiscating criminal assets, a proposal to extend the list of the "eurocrimes" in Article 83 TFEU to violations of the Union's restrictive measures, and a recommendation containing the first elements of a possible future directive on substantive criminal law in this area.

On 30 and 31 May, the European Council welcomed "the efforts made by Member States to provide in their national law for appropriate confiscation measures and calls on the Council to swiftly examine the recent Commission proposal on criminal law measures in case of violation of EU sanctions". The European Council also affirmed it "supports further options in line with EU and international law being actively explored, including options aimed at using frozen Russian assets to support Ukraine's reconstruction"⁵.

- The situation in Ukraine raises further questions, regarding the reception of children. The protection of displaced minors, in particular the ones separated from their families, against all risks of illegal adoption, abduction or exploitation, requires an effective legal framework, reinforced by the European and international judicial cooperation already in place, and guaranteeing the rights of children. A coordinated and harmonized response from the Member States is indeed essential to ensure the same degree of protection in the European judicial area. To this end, discussions have been initiated within the "IPCR" group, the "Civil Law Matters - General Affairs" group and the European Judicial Network in civil and commercial matters, following in particular the proposal transmitted by Ukraine to twenty Member States to sign a memorandum of cooperation. This project includes proposals on the care of Ukrainian minors, their temporary protection, their social protection and their return once the armed conflict is over, some of which fall within the exclusive external competence of the Union. In this context, the Presidency considers that a political response at the Union level should be envisaged, in addition to national responses that could be based on the guidelines already proposed by the Commission.

⁵ [European Council conclusions on Ukraine, 30 May 2022](#)

In the light of the above, the Permanent Representatives Committee is invited to recommend that the Council replies to the following questions:

- 1. Do you identify any coordination measures other than those implemented by the Presidency, the Commission and the European External Action Service that should be taken to enable a more effective judicial response to the current situation in Ukraine? In particular, do you confirm that a political response at EU level to the draft Memorandum of Cooperation on the protection of displaced minors should be envisaged by the Presidency in cooperation with the Commission?*
 - 2. On 25 May 2022, the European Commission proposed to extend the list of crime areas of Article 83 TFEU to violations of the Union's restrictive measures; given the exceptional situation and the need to ensure the effectiveness of Union sanctions, do you consider the extension of the list of Article 83 TFEU and a harmonization of criminal offenses and sanctions to be necessary?*
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