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- Discussion paper

Delegations will find attached a Presidency discussion paper with a view to the meeting of the Justice and Home Affairs Council on 9 June 2022.

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

Since the beginning of the war of aggression by the Russian Federation against Ukraine, the European Union has been fully mobilised to ensure a response commensurate with the gravity of the circumstances.

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

In the area of justice, the fight against impunity has emerged as a major issue, particularly in the context of recurrent allegations of war crimes and crimes against humanity on Ukrainian territory. At the meeting of the JHA Council on 4 March 2022, Justice Ministers expressed their concern for 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 submitted 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 that context, by supporting the investigation initiated by the International Criminal Court (ICC), and by stressing the importance of Eurojust's coordinating role; and
- on the need to ensure the effectiveness of the restrictive measures taken against Russian and Belarusian natural and legal persons.

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

² [JHA Council press release, 4 March 2022.](#)

Responding to requests regularly expressed to that effect, including at the CATS meeting on 5 May 2022, the French Presidency of the Council, in close liaison with the Commission and the European External Action Service, has endeavoured to coordinate the action of the Member States as effectively as possible, in particular by ensuring a smooth exchange of information on the judicial aspects of the situation in Ukraine³ and the arrangements for financial and operational support to the ICC. A significant amount of 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 initiated by the Prosecutor of the International Criminal Court.

Furthermore, numerous actions have been taken, 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 initiated into the alleged crimes on the basis of universal or personal jurisdiction. In particular, on 25 March 2022, a joint investigation team (JIT) was established 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 into the international 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 announced their participation in the JIT.
- In addition, the Council amended the mandate of the EU Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine). Under the amended mandate, EUAM Ukraine will also support the 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.

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

⁴ The table attached to WK 5731/22 provides an overview of actions at EU level.

- The role of Eurojust as a coordinating body between Member States' judicial authorities is essential in that 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 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 had been initiated. Thus, on 25 April 2022, the European Commission adopted a proposal for a Regulation amending 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 stakeholders concerned, including the European Parliament, the Presidency organised the discussions very quickly in order to allow this text to be adopted within very tight deadlines under an exceptional emergency procedure; thus, the Regulation⁵ was published on 31 May 2022 and entered into force on 1 June 2022.

- In addition, 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 persons and entities, including judicial follow-up. This general task force is currently divided into three sub-working groups: the first one deals with restrictive asset-freezing measures, the second with criminal investigations and confiscations, and the third with the creation of a common European trust fund.

⁵ 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).

In that context, the question of the effectiveness of the restrictive measures imposed arises, particularly with regard to possible circumvention of those measures. On 25 May 2022, the Commission adopted a package containing a proposal for a directive to strengthen the European arsenal for freezing and confiscating criminal assets, a proposal to extend the list of ‘EU crimes’ as set out in Article 83 TFEU to include infringements of EU restrictive measures, and a recommendation containing the first building blocks for 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 call[ed] 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 ‘support[ed] 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’⁶.

- The situation in Ukraine raises further questions regarding the reception of children. The protection of displaced minors – in particular those separated from their families – from all risks of illegal adoption, abduction or exploitation requires an effective legal reception framework, reinforced by the European and international judicial cooperation already in place, and safeguarding the rights of children. A coordinated and harmonised response from the Member States is indeed essential to ensure the same degree of protection in the European judicial area. To that end, discussions have been initiated in the FoP IPCR, the Working Party on Civil Law Matters – General Affairs and the European Judicial Network in civil and commercial matters, in particular following the proposal submitted by Ukraine to 20 Member States to sign a memorandum of cooperation. This project includes proposals on the provision of care for Ukrainian minors, their temporary protection, their social protection and their return once the armed conflict is over, part of which falls under the exclusive external competence of the Union.

⁶ [European Council conclusions, 30 and 31 May 2022.](#)

In that context, the Presidency considers that a political response at Union level should be envisaged, in addition to the national responses which could be based on the guidelines already proposed by the Commission.

In the light of the above, the Council is invited to respond to the following questions:

- 1. Can 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 allow for a more effective judicial response to the current situation in Ukraine? In particular, can you confirm that a political response at EU level to the draft Memorandum of Cooperation on the protection of displaced minors should be considered by the Presidency in cooperation with the Commission?*
- 2. On 25 May 2022, the European Commission proposed to extend the list of areas of crime as set out in Article 83 TFEU to include infringements of EU restrictive measures; given the exceptional situation and the need to ensure the effectiveness of EU sanctions, do you consider that the extension of the list set out in Article 83 TFEU and harmonisation of criminal offences and sanctions is necessary?*
