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NOTE

from:	Presidency
to:	Delegations
Subject:	Strengthening efforts to combat impunity within the EU and its Member States for serious international crimes – renewed engagement in the field of Justice and Home Affairs

Strengthening efforts to combat impunity within the EU and its Member States for serious international crimes – renewed engagement in the field of Justice and Home Affairs

The EU has a fundamental role to play in ensuring that its Member States can effectively investigate and prosecute serious international crimes, namely the crime of genocide, crimes against humanity, war crimes and torture. In the Stockholm programme¹ the European Council invites the Union institutions "*continue to support and promote Union and Member States' activity against impunity and fight against crimes of genocide, crimes against humanity and war crimes; in that context, promote cooperation between the Member States, third countries and the international tribunals in this field, and in particular the International Criminal Court (ICC), and develop exchange of judicial information and best practices in relation to the prosecution of such crimes through the European Network of Contact Points in respect of persons responsible for crimes of genocide, crimes against humanity and war crimes*".

¹ OJ C 115 of 4 May 2010, p. 1 (section 2.1).

The EU has already demonstrated its commitment to tackling these crimes through the establishment of the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes ("the EU Genocide Network") in 2002¹, by calling on Member States to strengthen cooperation in investigating and prosecuting these crimes,² establishing the EU Genocide Network Secretariat at Eurojust in 2011³, and through its strong dedication to external actions, in particular the cooperation between the EU and the International Criminal Court⁴, the EU policy on human rights⁵ and the 2013 Joint Staff Working Document on advancing the Principle of Complementarity⁶.

Significant progress has been made in recent years thanks to initiatives by some Member States to establish specialised teams of police and/or prosecutors⁷ and the increased sharing of best practice, experience and facilitating cooperation through the EU Genocide Network. This has resulted in several successful prosecutions of perpetrators of genocide, crimes against humanity, war crimes and torture in certain Member States.

¹ Council Decision 2002/494/JHA of 13 June 2002 (OJ L 167 of 26 June 2002, p.1).

² Council Decision 2003/335/JHA of 8 May 2002 (OJ L 118 of 14 May 2003, p. 12).

³ Article 25a of the Decision on Eurojust as amended by Council Decision 2009/426/JHA of 16 December 2008 (OJ L 138 of 4 June 2009, p. 14).

⁴ See e.g. Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court (OJ L 76 of 22 March 2011, p. 56), and its Action Plan of 12 July 2011 (Council doc. 12080/11).

⁵ See e.g. the Joint Communication of the European Commission and the High Representative of the EU for Foreign Affairs and Security Policy "Human Rights and Democracy at the Heart of EU External Action – Towards a more effective approach", COM (2011) 886, p. 16; EU Strategic Framework on Human Rights and Democracy and the EU Action Plan on Human Rights and Democracy of 25 June 2012 (Council doc. 11855/12); Council Decision 2012/440/CFSP of 25 July 2012 appointing the EU Special Representative for Human Rights (OJ L 200 of 27 July 2012, p. 21).

⁶ SWD (2013) 26 of 31 January 2013.

⁷ Dedicated units specialised in crimes under international law have been established within the police and/or prosecution services of Croatia, Belgium, Denmark, France, Germany, the Netherlands and Sweden. Also in Norway, Switzerland, the US and Canada, which attend meetings of the Network as observers.

However, despite these positive developments, National Contact Points of the EU Genocide Network, in their capacity as practitioners and experts, have together with the Secretariat highlighted a number of challenges in their efforts to bring perpetrators to justice:

- The continued presence of victims, witnesses and suspects of serious international crimes within the EU area. This includes persons already resident within the EU, visiting EU Member States or those arriving from conflict-affected areas such as Afghanistan, Syria, Iraq and DR Congo¹. It has also been documented that a significant number of suspected perpetrators of genocide, crimes against humanity, war crimes and torture are present within several Member States;²
- A continuing need for improved cooperation and coordination among law enforcement services, criminal justice authorities and other relevant actors such as immigration authorities, foreign affairs authorities and civil society to increase the exchange of information on suspected perpetrators, victims, witnesses and other evidence located throughout different EU Member States and to establish secure databases in order to avoid duplication of work;
- Inadequate implementation of Council Decision 2003/335/JHA in relation to exchange of information between immigration and prosecution authorities as well as setting up designated specialist units;
- Insufficient realisation of the Stockholm programme and its Action Plan that mandated the European Commission to evaluate the implementation of internal instruments on fighting impunity by 2011;
- A constant demand for trainings and additional resources at national level as investigation and prosecution of serious international crimes is highly complex and specialized;
- Unbalanced approach to the EU fight against impunity as the internal aspects has so far not received the same attention at the EU level as the external aspects.

¹ 28 005 persons from Afghanistan, 24 110 from Syria, 19 695 from Pakistan, 13 175 from Iraq and 8 285 from DR Congo sought international protection in the EU in 2012, while the total number of applicants in 2012 was 335 365; see Annual report on the Situation of Asylum in the EU in 2012, European Asylum Support Office (EASO), 8 July 2013.

² For example, figures provided by the UK Home Office to the BBC in July 2013 (see <http://www.bbc.co.uk/news/uk-23495314>) indicated that in 2012 alone, UK immigration authorities took action against 99 people who had applied for British citizenship, asylum or leave to remain in the UK on the basis of suspected involvement in crimes under international law. However, only nine current police investigations were based on referrals from immigration authorities.

Existing efforts to fight impunity should be reinforced by a renewed commitment of the EU and its Member States to ensure that they do not provide a safe haven for suspected perpetrators of serious international crimes.

A comprehensive and effective approach to the fight against impunity within Europe would require strengthened EU engagement in the field of JHA. This would include a call to the European Commission to conduct an evaluation of efforts to combat impunity within the EU addressing existing weaknesses and further identifying areas for improvement. Furthermore, it would require the establishment of an Action Plan with a target date and detailed steps to be taken by EU institutions and the Member States, similar to those in the EU external policy, to enhance national investigations and prosecutions; the designation of the Network Secretariat as the EU Focal Point on Crimes under International Law, supporting its capacity to develop into a centre of expertise for facilitating cooperation, sharing best practice, developing expertise among national authorities investigating and prosecuting serious international crimes and for coordination with other EU institutions and agencies; production of EU annual reports on impunity; and awareness raising on serious international crimes and activities to bring perpetrators to justice.

Delegations are invited to express their views on possibilities for strengthening efforts to combat impunity for serious international crimes within EU Member States and ways to improve engagement in the field of Justice and Home affairs.