



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MEDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان



EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS



29 October 2013

Re: Strengthening efforts to combat impunity within EU Member States for crimes under international law and renewed engagement in the field of Justice and Home Affairs

Dear Contact Points,

We write to you ahead of the 15th meeting of the EU Genocide Network to draw your attention to a new initiative regarding EU responses to challenges faced by EU practitioners in the effective investigation and prosecution of crimes under international law.

On 24 September 2013 civil society organisations convened a meeting in Brussels, attended by experts as well as the Head of the EU Genocide Secretariat, to discuss the current status of EU efforts in the fight against impunity within Europe for crimes under international law including genocide, crimes against humanity and war crimes. Please find a brief summary of the meeting's main conclusions further below.

Given your expertise as the key practitioners specialised in this field and as National Contact Points, we welcome your contributions and recommendations on how renewed engagement at the EU level could support and address the challenges in the fight against impunity, particularly when it comes to addressing gaps in accountability within the EU. We hope that you can assist this initiative by calling on the EU Council – through its working groups in the field of Justice and Home Affairs (JHA) – to debate this issue and to commit to concrete engagement based on the suggestions set out below.

We look forward to discussing this with you at the 15th meeting of the EU Genocide Network, and thank you in advance for your assistance on this important matter.

Yours sincerely,

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Strengthening efforts to combat impunity within EU Member States for crimes under international law: renewed engagement in the field of Justice and Home Affairs

The EU has made important contributions to the fight against impunity within the EU, particularly through the continuous development of the EU Genocide Network and, more recently, the establishment of its Secretariat. These contributions underline that EU policy has a fundamental role to play in ensuring that Member States can effectively investigate and prosecute crimes under international law. However, Member States continue to face a number of challenges which could be addressed by further engagement on this issue within EU policy, in particular within the field of JHA.

Many of these challenges have been repeatedly highlighted by the National Contact Points of the EU Genocide Network¹, including:

- The continued presence of victims, witnesses and suspects of crimes under international law within EU Member States. This includes persons already resident within the EU, visiting EU Member States or those arriving from conflict-affected areas such as Syria and Afghanistan²;
- A continuing need for improved cooperation and coordination among criminal justice authorities and other relevant actors such as immigration authorities³ and civil society to increase the presently small number of cases which proceed to prosecution;
- Uneven implementation of existing EU instruments on impunity by Member States and EU Institutions⁴;
- Insufficient implementation of Network recommendations and conclusions by Member States and EU institutions;
- Ensuring continuity of the achievements of the EU Genocide Network, e.g. continued organisation of biannual meetings by rotating presidencies.

Our organisations propose that to address these challenges, concrete steps should be taken to ensure that existing legal instruments and tools are implemented effectively, and to clarify the responsibilities of EU institutions and national authorities. We consider that the most effective means of doing so is to work toward the adoption of an “EU Action Plan on Combating Impunity within the EU for crimes under international law” within the field of Justice and Home Affairs.

Such an EU Action Plan would build on existing EU policy, taking into account the recommendations of specialised practitioners and the EU Genocide Network, and consolidating existing legal tools and

¹ For an overview of topics discussed, issues raised and challenges identified to date, see the [Implementation Table of Past Meetings of the EU Genocide Network](#), 18 April 2012, prepared by the Secretariat for the 12th Meeting of the EU Genocide Network.

² 28,005 persons from Afghanistan and 24,110 from Syria sought international protection in the EU in 2012; [Annual Report on the Situation of Asylum in the EU 2012](#), European Asylum Support Office (EASO), 8 July 2013.

³ For example, [figures provided by the Home Office to the BBC in July 2013](#) 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.

⁴ Council Decisions [2002/494/JHA](#) and [2003/335/JHA](#); the [Stockholm Programme](#) and its [Action Plan](#) mandated the European Commission to evaluate implementation of these decisions by 2011; for an overview see REDRESS, [EU Update on International Crimes](#), July 2013 at p7.

instruments which can assist practitioners in their work. These include the EU's existing commitments to support the ICC⁵ and to enhance cross-border criminal and judicial cooperation⁶. It is also important to recognise the situation of survivors of crimes under international law in the context of implementing the new EU Directive on minimum standards for victims of crime.⁷

Bearing the above discussion points in mind, a proposed Action Plan should address three key areas:

A. *Clarifying and formalising the responsibilities of EU Institutions:* EU institutions should have clearly-defined roles to play in combating impunity within Europe for crimes under international law. This can include:

- The European Commission should conduct an evaluation of efforts to combat impunity within the EU with a view to identifying areas requiring reform or further engagement⁸;
- The European Parliament has an important role to play in raising awareness and debating EU responses to impunity within the EU itself, including the presence of suspects and the rights of victims of crimes under international law. This could include consideration of annual reports on impunity within the EU as prepared by Council working groups;
- Rotating Presidencies should convene biannual Network meetings and ensure that meeting conclusions are debated at the Council, resulting in an annual report on the EU Genocide Network and impunity within the EU to be presented to the European Parliament.

B. *Promoting cooperation and best practice among national authorities:* existing EU instruments on impunity and criminal law, in addition to the wealth of experience developed among practitioners, provide practical and cost-effective means to improve efforts to combat impunity through investigation and prosecution within the EU of crimes under international law:

- An Action Plan could include best practice guidelines on the investigation and prosecution of crimes under international law, such as those developed by the Network. For example, recommendations for cooperation measures between immigration and criminal justice authorities⁹;
- An Action Plan could promote the application of existing EU instruments for judicial and police cooperation as well as criminal investigation, in the fight against impunity, such as joint investigation teams, European arrest warrant, exchange of criminal records, freezing and confiscation orders.

C. *Safeguarding the EU Genocide Network:* an Action Plan could include recommendations to continue the recent advancements of the Network to safeguard its achievements for the future, raise its profile and acknowledge the authoritativeness of its recommendations. This can include organisation of biannual meetings; ad hoc meetings organised by Contact Points; production of regular reports for the EU Council; and coordination with other regional or international criminal mechanisms.

⁵ See for example [the Council Decision on the ICC](#) and its [Action Plan](#), and the 2013 [Joint Staff Working Document on Advancing the Principle of Complementarity](#).

⁶ See the [European Protection Order; Regulation](#) on mutual recognition of civil protection orders; Framework Decisions on [exchange of criminal records](#), [freezing](#) and [confiscation](#); proposed [European Investigation Order](#).

⁷ [Directive 2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime, which came into force in November 2012.

⁸ This was mandated by the Stockholm Programme (2010-2014) and Action Plan, note 4, above.

⁹ See for example the Conclusions of the 12th Meeting of the EU Genocide Network, April 2012.