

REDRESS

Ending Torture. Seeking Justice for Survivors

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

23 December 2013

REDRESS thanks the European Commission for conducting [this public consultation – in conjunction with the Assises de la Justice forum](#) – with a view to shaping future justice policy in the EU. We are pleased to provide input in response to the questions set out in your discussion paper on EU Criminal Law.¹

REDRESS believes that the EU should consider including **accountability for crimes under international law such as torture, war crimes, crimes against humanity and genocide in its future priorities for criminal justice policy**. We consider that concrete steps should be taken to enhance the ability of criminal justice actors to effectively identify, investigate and prosecute suspected perpetrators of such crimes who are present in the territories of Member States. We suggest that the most effective means of doing so is to work toward the adoption of an **EU Action Plan on Combating Impunity for Crimes under International Law** within the field of Justice and Home Affairs (JHA).

The lack of a proactive, coordinated and effective response to impunity for international crimes as a European criminal justice priority leads to risks that suspected perpetrators of these crimes can enjoy safe haven in Member States. The EU's strong commitment to combating impunity in its external policy – particularly through its longstanding support for the International Criminal Court² – should be matched with efforts to address this issue within its own borders. In 2014 the EU will adopt strategic guidelines to lay the foundations of its future JHA policy. This provides a significant opportunity to close any gaps, and ensure that Europe's criminal justice authorities are able to respond effectively to the challenges they face in investigating and prosecuting these crimes.

We therefore encourage the Commission to explicitly recommend including an EU Action Plan on Combating Impunity in the JHA priorities which will be agreed in 2014.

Why is impunity for international crimes a matter of concern for EU Institutions and Member States?

Council Decision 2003/335/JHA recognised that Member States are confronted on a regular basis with persons who were involved in crimes under international law and who are trying to enter and

¹ See the European Commission, [Assises de la Justice, Discussion Paper 2: EU Criminal Law](#), which asks 1. What further development of criminal law at EU level is needed? 2. What initiatives at EU level would best strengthen mutual trust between Member States?

² See [Council Decision 2011/168/CFSP on the International Criminal Court](#), and the [Action Plan to Follow Up on the Decision on the International Criminal Court](#) of 12 July 2011.

reside in the European Union.³ In addition, persons from conflict-affected areas who may be victims and witnesses of such crimes are also present within, or are entering, the territories of Member States in large numbers.⁴

Most Member States have now taken steps to incorporate crimes under international law into their national criminal codes and to establish jurisdiction over such crimes, so that they can be prosecuted within their national legal systems even if they were committed abroad.⁵ In addition, a number of Member States have established specialised war crimes units comprised of police and/or prosecution teams to investigate and prosecute suspected perpetrators of these crimes.⁶ Member States are further supported by the 'European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes' ("EU Genocide Network")⁷, which plays an important role in facilitating cooperation, developing best practice and building mutual trust among criminal justice authorities in Member States.

However, despite these advances, only a small number of individuals have been prosecuted, and only a small percentage of these prosecutions has resulted in convictions. Investigations and prosecutions of international crimes are legally and evidentially complex, often involving multiple jurisdictions, and to obtain evidence and identify and access victims and witnesses can be difficult. Improved cooperation and coordination is still needed among criminal justice authorities, as well as with other relevant actors such as immigration authorities and civil society. Insufficient implementation of EU Genocide Network recommendations and conclusions⁸, as well as existing EU instruments on impunity⁹, by Member States and EU institutions has led to inconsistent approaches to this issue across Europe. Many of these challenges could be addressed by further engagement on this issue within EU policy, specifically within the field of JHA.

Why is this a key moment for the EU to focus on crimes under international law within its criminal justice policy?

On 11 December 2013, the **European Parliament** adopted its "Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter". This included a call

³ See Recital 6 of Council Decision 2003/335/JHA on the investigation and prosecution of genocide, crimes against humanity and war crimes. 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 police investigations into international crimes were based on referrals from immigration authorities. In the Netherlands, there were [160 cases of persons suspected of involvement of international crimes](#) pending before the Immigration and Naturalization Service at the end of 2012.

⁴ 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.

⁵ See REDRESS and FIDH, [Extraterritorial Jurisdiction in the European Union: A Study of the Law and Practice in the 27 Member States of the European Union](#), December 2010.

⁶ Such units have been established in countries including Croatia, Belgium, Denmark, France, Germany, the Netherlands and Sweden.

⁷ Established by Council Decision 2002/494/JHA; see more on the [EUROJUST website](#).

⁸ 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 for the 12th Meeting of the EU Genocide Network by the Network Secretariat.

⁹ Council Decisions 2002/494/JHA and 2003/335/JHA; see below for details of the Stockholm Programme.

on the EU and its Member States “to increase their efforts to **fight impunity within the EU’s own borders**”. Member States and EU institutions were also encouraged “to take into consideration the recommendations of the [EU Genocide Network]”.¹⁰

On 30 October 2013 the **National Contact Points of the EU Genocide Network** discussed and recommended the adoption of an EU Action Plan on Combating Impunity for Crimes under International Law.¹¹ The Contact Points emphasised that such an Action Plan could be an important tool to encourage cooperation and exchange of best practice at the national and regional level to enhance investigations and prosecutions. The Network’s discussions were supported by submissions made by a group of civil society organisations, including REDRESS, which illustrated the practical assistance which such an instrument could provide for investigators and prosecutors across Europe.¹² In its Conclusions, the Network established a Task Force drawn from the Contact Points to explore and propose further steps for increasing efficiency in combating impunity in the EU.

On 27 November 2013, the Network’s Conclusions were debated in a meeting of **GENVAL, the ‘Working Party on General Matters including Evaluation’** of the General Secretariat of the Council of the EU. GENVAL is responsible for developing and discussing EU policy related to serious and organised crime within the area of JHA. In its ‘Outcomes of Proceedings’, GENVAL took note of the proposal to strengthen efforts to combat impunity through an Action Plan, following supportive interventions by delegations including Belgium, France, the Netherlands, Slovakia and Slovenia. The Presidency of the Council – held by Lithuania – stated that this issue would be kept on the agenda, and the Commission declared that it would examine possible follow-up to the discussion.¹³

REDRESS welcomes the Commission’s undertaking to follow up on this issue, given that the Commission is already engaged in reflection and planning on the future of criminal justice in Europe. The **Stockholm Programme**, Europe’s roadmap for the area of JHA between 2010 and 2014, will soon expire. As part of negotiations towards JHA priorities for the post-Stockholm era, the Commission will present a Communication on future initiatives in the field of JHA policies in spring 2014¹⁴, which will be examined at the European Council in June 2014.¹⁵

REDRESS therefore reminds the Commission that the Stockholm Programme provided that:

- The “Union is an area of shared values [...] which are incompatible with crimes of genocide, crimes against humanity and war crimes”;

¹⁰ See 104, European Parliament resolution of 11 December 2013 on the Annual Report on Human Rights and Democracy in the World 2012 and the European Union’s policy on the matter, [2013/2152\(INI\)](#).

¹¹ [Conclusions of the 15th Meeting](#) of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes, 29 – 30 October 2013.

¹² See [Civil Society letter to the National Contact Points of the EU Genocide Network](#), 29 October 2013.

¹³ See Item 7, “Outcome of Proceedings”, Working Party on General Matters Including Evaluation (GENVAL), 17164/13, GENVAL 87, 4 December 2013.

¹⁴ See European Commission, “[Completing the European area of Justice: Tell us what comes next](#)”, Press Release of 7 October 2013.

¹⁵ In its 27-28 June 2013 conclusions, the European Council mandated future Presidencies to begin discussion on these guidelines with a view to its June 2014 meeting; planning of post-Stockholm guidelines was further discussed at a JHA Council meeting in December 2013. See [Council of the European Union, Press Release, Provisional Version of 5 and 6 December 2013](#), at p20.

- EU Institutions should “continue to support and promote Union and Member States’ activity against impunity”, particularly by promoting “cooperation between the Member States, third countries and the international tribunals in this field, and in particular the International Criminal Court (ICC)”;
- There should be “exchange of judicial information and best practices in relation to the prosecution of such crimes through the [EU Genocide Network]”;
- Overall, “**The Union must play the role of facilitator**”.¹⁶

The Action Plan on Implementing the Stockholm Programme mandated, in turn, that **by 2011 the European Commission was to prepare an evaluation report** on the implementation of Council Decision 2003/335/JHA. The Decision recommended that Member States cooperate in their efforts to investigate and prosecute suspected perpetrators, consider establishing specialised war crimes units, and take measures to ensure that criminal justice actors work effectively with immigration authorities to address impunity.¹⁷ As of December 2013, the European Commission has yet to prepare such an evaluation report.

What are the next steps that EU institutions, including the European Commission, should take?

With a view to building on these recent developments as well as the EU’s existing instruments on crimes under international law, the **European Commission should recommend that the EU proactively take steps to combat impunity within its own borders**. This should include:

- Restating the commitments which were made in the Stockholm Programme in the new guidelines for criminal justice policy to come into play in 2015;
- Recommending the EU establish an EU Action Plan with a target date and detailed steps to be taken by EU institutions and Member States to enhance investigations and prosecutions.

Evaluation of Member States’ current efforts to combat impunity is an important first step towards identifying the form and content of a potential Action Plan. This could properly assess the current extent of impunity within the EU, and identify where there is room for action at the EU level. Accordingly, the **Commission should prepare an evaluation report** which includes:

- Evaluating current cooperation mechanisms and practice among criminal justice practitioners on a national and regional level;
- Examining criminal justice actors’ cooperation with immigration authorities and other relevant actors in identifying suspected perpetrators and bringing them to justice;
- Identifying current shortcomings, best practices and prevailing challenges, with a view to formulating recommendations to Member States;
- Identifying the role which EU institutions could play, based on the principle of subsidiarity, to enhance and support the efforts of Member States;

¹⁶ *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, Official Journal of the European Union (2010/C 115/01); see 2.1, “A Europe Built on Fundamental Rights”. For an overview see REDRESS, [EU Update on International Crimes, July 2013](#) at p7.

¹⁷ *Delivering an area of freedom, security and justice for Europe’s citizens; Action Plan Implementing the Stockholm Programme*, European Commission, COM(2010) 171 Final; see p10.

- Assessing the EU Genocide Network and its Secretariat, with a view to identifying how it could play a stronger role in facilitating cooperation between Member States and EU institutions, and developing expertise and best practice.

Other EU institutions also have an important role to play in addressing current challenges in ensuring an effective and consistent EU-wide approach to crimes under international law. For example, it is important that the **incoming Greek Presidency of the Council and future presidencies thereafter** ensure that this initiative remains on the agenda of JHA working parties including CATS¹⁸ as well as GENVAL. The Commission should also coordinate closely with the presidencies in discussing the findings of its evaluation report, and subsequently, in formulating and discussing proposals for an EU Action Plan.

Further information

The attached discussion paper¹⁹, prepared by the General Secretariat of the Council of the EU, provides further information on how an Action Plan could address practical challenges faced by criminal justice authorities working on crimes under international law. This includes:

- Designation of the EU Genocide Network Secretariat as the EU Focal Point on Crimes under International Law, so that it can act as a centre of expertise, facilitate cooperation among national authorities, and coordinate with other EU institutions and agencies;
- Drafting annual reports on impunity within the EU, which could be presented to and debated by the European Parliament;
- Awareness-raising about crimes under international law and the necessary activities to bring perpetrators to justice.

The EU and Member States have a fundamental role to play in ensuring that the EU does not become a safe haven for suspected perpetrators of crimes under international law. We hope that the Commission will use this opportunity to back that role, by making an explicit call for an EU Action Plan on Combating Impunity for Crimes under International Law.

[The Redress Trust \(REDRESS\)](#) is an international human rights NGO based in London, with a mandate to assist survivors of torture and crimes under international law to seek justice and reparation. REDRESS has a long-standing track-record of working to ensure that the rights of these victims are effectively protected and respected, and takes cases on behalf of survivors before national, regional and international human rights mechanisms, courts and tribunals. Since 2003, REDRESS has implemented European Commission-funded projects which have sought to strengthen the ability of Member States to investigate and prosecute such crimes within their own national legal systems, as well as to protect and support victims and survivors.

¹⁸ Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS).

¹⁹ [“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”](#), 16340/13, GENVAL 69, 19 November 2013.