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Delegations will find in the Annex the Presidency's report of the EU Day Against Impunity of genocide, crimes against humanity and war crimes on 23 May 2018 in the Hague.

## **Presidency report of the 3<sup>rd</sup> EU Day Against Impunity of genocide, crimes against humanity and war crimes**

### **I) Introduction**

The third EU Day Against Impunity took place on 23 May 2018. The event was co-organised by the Bulgarian Presidency, the European Commission, Eurojust and the Network for investigation and prosecution of genocide, crimes against humanity and war crimes, and hosted by the International Criminal Court (ICC). Approximately 200 participants attended the event, representing national authorities, Eurojust, Europol, the European Parliament, the European Commission, the ICC, the diplomatic community, academia, international criminal tribunals and civil society.

Since 2016, the objective of the EU Day Against Impunity is to raise awareness of the most heinous crimes of genocide, crimes against humanity and war crimes. Moreover, the event provides the opportunity to promote national investigations and prosecutions, and to appropriately recognise the common efforts of the Member States and the European Union in enforcing international criminal law. Finally, this day provides an occasion to address the position and participation of victims in criminal proceedings for these crimes and to reinvigorate the Europe-wide commitment to continue fighting against impunity.

In light of the 20<sup>th</sup> anniversary of the Rome Statute, the discussion focused on the shared responsibility of national jurisdictions and the ICC to investigate and prosecute core international crimes. Considering the lack of jurisdiction of the ICC in certain areas in the world affected by armed conflict, the event highlighted the responsibility of EU Member States to domestically investigate and prosecute crimes committed in the context of those conflicts to bring perpetrators to justice and pay respects to victims of atrocities.

## II) Programme

The participants were welcomed by the ICC Vice-President, Mr Marc Perrin de Brichambaut, host of the event, followed by a short introductory movie highlighting the need for cooperation between Member States to ‘provide for accountability and ensure that the EU does not serve as a safe haven for the most heinous crimes’.

The conference started with opening speeches by the Deputy Minister of Foreign Affairs of the Republic of Bulgaria, Mr Yuri Sterk, and the Deputy Chief Prosecutor of Bulgaria, Mr Borislav Sarafov. Both speakers highlighted the shared commitment of the European Union and its Member States in fighting impunity. They also underlined the importance of strengthening the role of national authorities and noted the significant operational added value of the Genocide Network and Eurojust. A video message from the Commissioner for Justice, Consumers and Gender Equality, Ms Věra Jourová, was broadcast, during which, after reminding viewers of the foundation of the European Union, the Commissioner reaffirmed her wish to support the victims of atrocities, regardless of their nationality or place of residence. The Vice-President of Eurojust, Mr Filippo Spiezia, stressed the importance of Eurojust and its role in supporting the competent national authorities when investigating and prosecuting core international crimes and expected increase of activities, considering the new Eurojust Regulation and Europol’s recent engagement in this crime area and its cooperation with Eurojust. Finally, the ICC Prosecutor, Ms Fatou Bensouda, insisted on the importance of the principle of complementarity and gave a general overview of the actions of the Office of the Prosecutor of the ICC. Prosecutor Bensouda and Mr Spiezia emphasized in their opening remarks that this event was the first joint event of the ICC and Eurojust, and that it will also trigger future structured cooperation/dialogue between the two institutions.

Following the keynote speeches, a panel discussion debated the theme *20 years of collective action and cooperation within the European Union to fight impunity and [the] way forward*. Panellists were the Federal Public Prosecutor of the German Federal Court of Justice, Mr Christian Ritscher, the President of the Kosovo Specialist Chambers and former Judge of the ICC, Ms Ekaterina Trendafilova, a Member of the European Parliament, Ms Marietje Schaake, the Head of the Genocide Network Secretariat at Eurojust, Mr Matevz Pezdirc, the Head of the International, Impartial and Independent Mechanism for Syria, Ms Catherine Marchi-Uhel, and the Director General for the Administration of Justice and Law Enforcement at the Dutch Ministry of Justice and Security, Ms Anita Vegter.

### **III) Conclusions**

The Bulgarian Presidency of the Council of the EU, together with the Genocide Network, has drawn the following conclusions from the panel discussion:

- All Member States have ratified the Rome Statute, but the ICC remains complementary to the national systems of criminal law. Every State is still obliged to investigate and prosecute persons responsible for the crime of genocide, crimes against humanity and war crimes. The 3<sup>rd</sup> EU Day Against Impunity allowed practitioners from the ICC and national jurisdictions to reinforce their ties and their common objective and responsibilities.
  
- The panellists underlined the increasing efforts of EU Member States in the fight against impunity – with 67 final judgements and 2 684 ongoing cases in 2017, national jurisdictions take responsibility to prevent the European territory from becoming a safe haven for perpetrators of the most heinous crimes. The pivotal role of the Genocide Network in this respect is emphasized and appreciated.

- Since the adoption of the Rome Statute 20 years ago, the European Union and the Member States have reached milestones in the fight against impunity by setting up organisations and tools for cooperation in this crime area. Eurojust, Europol and the European Asylum Support Office are the EU agencies competent to offer support to national authorities when investigating and prosecuting the crime of genocide, crimes against humanity and war crimes, in addition to the Genocide Network. Additionally, the European Arrest Warrant, European Investigation Order and other mutual recognition instruments include these crimes in the list of 32 offences. Therefore, the European Union has set up organisations and tools to support national authorities when faced with this type of complex criminality. Many Member States have established specialised or dedicated units within immigration, law enforcement and prosecution authorities to strengthen their efforts to identify victims, witnesses and alleged perpetrators and to ensure an appropriate response when investigating and prosecuting these crimes.
  
- In spite of such efforts, national jurisdictions might face procedural and legal limitations; a nexus with the alleged perpetrators is often required by national jurisdictions to initiate proceedings, legislation is not always appropriate, and immunity and resource issues constrain the scope of possible action. To tackle such difficulties, further capacity building and awareness raising, as well as the development of national war crimes units, are necessary.
  
- Cooperation is the key to ensuring accountability and should be increased both domestically, between immigration services, law enforcement and judicial authorities, and internationally, between national authorities. Tools available in this respect include joint investigation teams, European Arrest Warrants, European Investigation Orders and other EU mutual recognition instruments. Eurojust, Europol and the Genocide Network play crucial roles in bringing together national jurisdictions for further operational cooperation, best practices and knowledge-sharing.

- The panellists remarked upon the importance of such achievements and underlined the shared responsibility of national jurisdictions and the ICC to prosecute perpetrators of atrocities and assist victims. For such purposes, the panel encouraged the domestic use of the numerous cooperative, practical and analytical tools put at the disposal of EU Member States.
  
- The establishment of the International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab republic (IIIM) is an important step forward in ensuring accountability for crimes committed in Syria. In the current gap of international accountability for crimes in Syria, national jurisdictions play a crucial role in holding perpetrators responsible. In this respect, the IIIM offers a source of evidence for national investigations and prosecutions, as well as relevant analysis.
  
- The initiative for a new multilateral treaty for mutual legal assistance and extradition for the domestic prosecution of the most serious international crimes is to enhance cooperation between national authorities in the fight against impunity. The new treaty, currently under discussion and soon negotiated as a stand-alone diplomatic conference, will determine modern cooperation provisions and allow States to request witness testimony, freezing of assets, extradition and other possibilities for the crime of genocide, crimes against humanity and war crimes. The treaty is supported by more than 60 States, both parties and non-parties to the Rome Statute of the ICC.

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