

## **ACTION PLAN TO FOLLOW-UP ON THE COMMON POSITION ON THE INTERNATIONAL CRIMINAL COURT**

On 16 June 2003, the European Union replaced its 2001 Common Position on the International Criminal Court (ICC), as updated in 2002, which has guided the EU and its Member States in their activities relating to the ICC, including through initiatives contained in the Action Plan agreed upon on 15 May 2002.<sup>1</sup>

The Council also adopted several Decisions<sup>2</sup> in the area of Justice and Home Affairs, with a view to strengthening co-operation among Member States on the fight against impunity of those who have committed genocide, crimes against humanity and war crimes.

In July 2003, the European Parliament in furtherance of the revised Common Position approved a resolution on the ICC which, inter alia, called for updating the 2002 Action Plan.

This revised Action Plan, based on the 2003 strengthened Common Position, is focused on the initial period of the effective functioning of the ICC, which became fully operational in 2003, with the establishment in The Hague of all its organs and bodies.

The Action Plan is divided in three sections:

- Co-ordination of EU activities
- Universality and integrity of the Rome Statute
- Independence and effective functioning of the ICC.

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<sup>1</sup> Council Common Position of 16 June 2003, Official Journal L 150 of 18.06.2003, page 67.

<sup>2</sup> Decision 2002/494/JHA, of 13 June 2002 (OJ L 167, p. 1), setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes; Framework Decision 2002/584/JHA, of 13 June 2002 (OJ L 190, p. 1), on the European arrest warrant and the surrender procedures between Member States; and Decision 2003/335/JHA, of 8 May 2003 (OJ L 118, p. 12), concerning the investigation and prosecution of genocide, crimes against humanity and war crimes.

## **A. CO-ORDINATION OF EU ACTIVITIES**

### **1. LEGAL BASIS**

- (i) Article 4 of the Common Position entrusts the Council with the task of co-ordinating measures by the EU and its Member States for the implementation of Articles 2 and 3. Furthermore, according to Article 6 of the Common Position, the Council takes note of the Commission's intention to direct its action towards achieving the objectives and priorities of the Common Position, where appropriate by pertinent Community measures.
- (ii) These articles touch upon a number of issues, such as: (i) how to ensure that various EU bodies are informed of ICC related activities in this field; (ii) how to exchange views and ideas among EU bodies; (iii) how to avoid unnecessary duplication; (iv) how to maximise impact by co-ordinating various EU initiatives; and (v) how to "mainstream" the ICC within the EU activity in related fields.

### **2. EU FOCAL POINT**

In order to assist in ensuring effective co-ordination and consistency of information, and in adequately preparing programmes and activities of the Union in the implementation of the Common Position, an EU Focal Point will be established. The General Secretariat of the Council, in close co-operation with the Commission, will be responsible for setting-up that EU Focal Point. The terms of reference for the EU Focal Point are set out in the Annex to this Action Plan.

### **3. NATIONAL FOCAL POINTS**

- (i) Each Member State will establish a national Focal Point for its external contacts and exchange of information concerning the implementation of the Common Position. Each national Focal Point will liaise with the EU Focal Point. The EU Focal Point will make available the information flowing in from all relevant sources and in particular information concerning relevant meetings and other events, seeking to identify synergies or risks of overlap.

- (ii) National Focal Points should provide to the Union, to other Member States and to any relevant state or non-state actor, as appropriate, at their own initiative or upon request and in accordance with applicable law, any available information that may be relevant in the implementation of the EU Common Position.

#### 4. INTERNATIONAL CRIMINAL COURT SUB-AREA OF THE PUBLIC INTERNATIONAL LAW WORKING PARTY

- (i) Meetings of the ICC sub-area Working Party will be convened by the Presidency, usually twice every semester.
- (ii) Meetings of other interested Council Working Parties and, where appropriate, joint meetings of these Working Parties with the ICC sub-area may also provide an opportunity for the effective co-ordination of initiatives falling within their respective competence and concerning the ICC.
- (iii) Meetings of the ICC sub-area will also take place on any appropriate occasion and location, involving representatives of local missions as appropriate.
- (iv) Informal meetings of the ICC Sub-area with other relevant actors, such as international organisations, third countries and Non-governmental organisation may also take place whenever and wherever appropriate.
- (v) Furthermore, the Presidency should meet periodically with the Commission and the EU Council Secretariat in order to co-ordinate informally and generate ideas to update and improve the EU support for the ICC. A meeting should be held at the beginning of each presidency. Before that meeting, Member States should be invited to present their views on the priorities for the following six months.

## 5. MEMBER STATES CO-ORDINATION

- (i) Member States should also co-ordinate in all relevant multilateral fora, as appropriate and in accordance with established procedures.
- (ii) Member States are encouraged to have in their embassies in The Hague and in their missions in New York an expert dealing also with specific ICC matters.
- (iii) To promote efficiency and cost-effectiveness, Member States should endeavour to divide labour between them. Such a division of labour could relate to the relations with specific countries or organisations or to specific issues, and could concern contacts, analyses and other tasks.

## 6. COMMISSION

The Commission should continue its practice of consulting with Member States and other relevant parties, as it was the case in the conferences held in Brussels on 28 and 29 January 2002 and in Naples on 25, 26 and 27 September 2003.

## 7. EUROPEAN PARLIAMENT

The European Parliament will be kept regularly informed by the Presidency and the Commission of significant developments concerning the ICC and its views on the ICC should be duly taken into account. To the extent possible, Member States will provide information about parliamentary contacts and visits in bilateral and multilateral format, and seek through the Presidency information from the EU Parliament to this effect.

## **B. UNIVERSALITY AND INTEGRITY OF THE ROME STATUTE**

### 1. LEGAL BASIS

- (i) Article 2 of the Common Position addresses the issue of the universal participation in the Rome Statute, by committing the Union and its Member States to furthering the process of its ratification and implementation through political dialogue with third states, groups of states or relevant regional organisations, as well as through other means and, inter alia, dissemination, co-operation, technical and financial assistance.
- (ii) The above objectives will continue to be relevant until universal participation in the Rome Statute is attained. In some cases, the primary objective with regard to third countries is to maximise their political will for the ratification and implementation of the Statute in order to achieve the desired universality. The realisation of this objective requires the use of a variety of means such as political dialogue, demarches or other bilateral means, statements in the UN and other multilateral bodies and support for the dissemination of the ICC principles and rules. It may also be important to assist countries, which are willing but may encounter difficulties with ratification, accession or implementation of the Statute. This could involve, inter alia, concrete expert assistance, financial support or access to data compiled by others.
- (iii) Various initiatives have been taken and continue to be taken, ranging from political dialogue and bilateral demarches to the dissemination of the principles and rules of the ICC Statute through awareness-raising campaigns led by Non-governmental organisation and to expert assistance in drafting relevant legislation. The EU and others have been involved, directly or indirectly, as providers of funds or technical assistance for these activities. This practice should continue in a co-ordinated manner.
- (iv) Further, Article 5 of the Common Position provides that the Union and its Member States shall follow developments concerning effective co-operation with the Court, and that they shall, as appropriate, refer to the EU Guiding Principles with regard to proposals for agreements or arrangements concerning conditions for the surrender of persons to the Court.

## 2. COUNTRY-SPECIFIC OR REGION-SPECIFIC STRATEGIES

- (i) Political and technical support for the ICC should be co-ordinated with regard to different countries or groups of countries. To that end, country-specific or region-specific strategies should be developed and applied where appropriate. These strategies should address priority target-countries and take into account, inter alia, the degree of political will of the country or countries concerned, the existence of any legal difficulties, the stage of preparations, the level of local support, the availability of local or regional partners and the kind of impact that the EU action might have. Each particular strategy should include directions regarding the actions to be taken vis-à-vis the country or countries concerned (demarches, offer of technical assistance, support for local or international Non-governmental organisation, as the case may be), and the competent body to undertake the actions. These strategies should include concrete timeframes, evaluation criteria and recommendations for follow up, and should be reviewed periodically.
- (ii) Strategies should be implemented by the EU and by its Member States according to their respective competence. The absence of a specific strategy regarding a certain country or region should not be a bar to action in that country or region.
- (iii) For the purpose of facilitating decisions to develop strategies, a global review should be undertaken. That review should be based on information collected in country fact-sheets by the Focal Point according to a matrix agreed upon by partners. For that purpose, the EU Focal Point should utilise information received from the Commission and Member States. EU heads of mission may be required on a case by case basis to provide comprehensive information on the relevant process in countries concerned. This information should, as a rule, be updated periodically unless important developments suggest ad hoc reports. Further, the EU Focal Point could use information available from other interested states and international organisations and Non-governmental organisation. The fact sheets should be regularly updated and made available to the Council, the Commission and Member States.

### 3. CONCRETE MEASURES

- (i) The EU Focal Point should, whenever appropriate, suggest to the Presidency measures to be taken, based upon the strategies and other available material. This does not preclude initiatives from Member States, the Council Secretariat or the Commission. The Presidency should, as a general rule and as appropriate, submit proposals for such measures by silent procedure via Coreu.
- (ii) Wherever the EU or Member States are invited to give advice and/or support to the ratification, accession or implementation process of a third state, they will react after due co-ordination with partners. In such cases, any existing EU strategy, the needs and time frames of the third countries as well as the available means for the EU and its Member States will be taken into account. In order to facilitate this co-operation, the EU Focal Point, in close co-operation with all parties, will provide the updated lists of experts and Non-governmental organisation, relevant texts and commentaries.
- (iii) The ICC should be mainstreamed in the EU external relations. In this respect, the ratification and implementation of the Rome Statute should be brought up as a human rights issue in the negotiation of EU agreements with third countries.

These issues should also be brought up in the human rights and political dialogue (notably at summits and other high-level meetings) with third countries, including in the context of development co-operation, such as in the framework of the Cotonou Convention.

- (iv) The EU's support to the participation in and implementation of the Rome Statute should be highlighted in relevant EU statements at the UN and other multilateral fora.
- (v) Whenever appropriate, the EU should continue to use other diplomatic means, including bilateral demarches, to encourage signature, ratification, accession and implementation of the Rome Statute and related instruments such as, in particular, the Agreement on Privileges and Immunities of the ICC.

- (vi) The effect of demarches and other measures should be monitored.
- (vii) Member States should bring up the ICC in bilateral contacts with third countries, whenever appropriate, and should inform partners through the EU Focal Point of the outcome of such contacts.
- (viii) Whenever appropriate, the EU should co-operate with interested third countries and with regional and global governmental and non-governmental organisations in order to further the goal of the universality and integrity of the Rome Statute. In particular, the EU should co-operate with the ICC organs and the Assembly of States Parties to this end.
- (ix) The EU and its Member States should contribute with technical and financial assistance to the legislative work, which may be needed for the ratification and implementation of the Statute in third countries. The EU Focal Point in liaison with national Focal Points will seek to mobilise expertise to that end.
- (x) In the framework of its Common Position and of this Action Plan, the EU and its Member States should lend direct technical assistance to interested states to supporting their participation in the ICC and their access to its instruments, as well as to facilitating their co-operation with the ICC.

Technical assistance to third states could also be provided through the secondment or any other form of deployment of European experts to the relevant administrations of the requesting state. Third states could also apply for exchange programmes of experts or the detachment of their own experts to Member States' relevant Administrations, according to the relevant legislation.

For the purpose of lending assistance to countries unable to properly proceed with the investigation on the crimes within the jurisdiction of the ICC, the EU should consider establishing ad hoc teams of relevant expertise, such as judges, prosecutors, legal experts, analysts, investigators and forensic personnel. Such teams could be organised as to ensure their ready deployment at short and medium term on a case by case basis, and would be provided with operational capacity.

- (xi) With the view of enhancing the efficiency of its strategies on the ICC, the EU may provide technical assistance in any other appropriate form, including the organisation of international events or participation in any regional or national relevant activity.
- (xii) Each Member State may designate one or more experts to be included in the list of experts maintained by the EU Focal Point.

EU experts could be deployed for the accomplishment of specific missions, in the framework of actions implementing EU ad hoc strategies.

Upon the establishment of a legal basis, the use of EU financing for such missions should be examined on a case by case basis.

The EU experts may be mandated to provide technical assistance on behalf of the EU, including the following tasks:

- Co-operating with requesting third states in any technical issue related to the participation in and implementation of the Rome Statute and its instruments, and with any form of co-operation with the ICC;
- Participating in seminars, symposiums, conferences or any other national or international event, either of academic or of official character, as may be necessary for the widest dissemination of the values, principles and provisions of the Statute and related instruments, as well as for the implementation of the Common Position, and for the co-operation of the EU with the ICC;
- Any other task as may be needed for the fullest implementation of the Common Position.

(xiii) The EU and its Member States will preserve the integrity of the Rome Statute. They will monitor the situation as regards proposals for agreements or arrangements concerning conditions for the surrender of persons to the Court, the invocation of Article 16 of the Rome Statute and other developments when they might impede the effective functioning of the Court, and may take appropriate action. For that purpose, the procedures set out in sections A and B of the Action Plan with regard to the ratification, implementation and universality of the system of the Rome Statute should be applied *mutatis mutandis*, as appropriate.

## **C. THE INDEPENDENCE AND EFFECTIVE FUNCTIONING OF THE ICC**

### **1. LEGAL BASIS**

- (i) Article 1.2 of the Common Position indicates that its main objective is to support the effective functioning of the ICC and to advance universal support for it by promoting the widest possible participation in the Rome Statute.
- (ii) Article 3 of the Common Position establishes possible means of EU co-operation with the ICC in order to support its independence.
- (iii) Article 5 of the Common Position addresses the issue of effective co-operation with the Court and of developments that might impede the effective functioning of the Court, by committing the EU and its Member States to closely follow such developments.
- (iv) Article 7 of the Common Position establishes that Member States will co-operate to ensure the smooth functioning of the Assembly of the States Parties. They will also contribute to the finalisation of the work under way on the definition of the crime of aggression.

## 2. CONCRETE MEASURES

- (i) Member States should continue to encourage the establishment of transparent selection, nomination and election procedures for ICC judges and prosecutors. They should also make every possible effort to ensure that highly qualified candidates for all the staff positions are nominated and that the overall composition of the Court with regard to competences, geographic origin, legal systems and gender remains in conformity with the criteria stipulated in the Rome Statute. To that end, they will take into account the resolutions of the Assembly of States Parties. To ensure the highest standards of credibility and efficiency of the Court, the selection, nomination and election procedures should be kept under regular review.

The EU and its Member States will monitor how the ICC applies the above standards and principles to the recruitment of the Court's staff.

- (ii) The EU and its Member States should contribute to the effective and independent functioning of the ICC.
- (iii) Member States will transfer promptly and in full their assessed contributions to the ICC. They should also encourage other states parties to do likewise.
- (iv) The EU and its Member States shall endeavour to support, as appropriate, the development of training and assistance for judges, prosecutors, officials and counsels in ICC-related work. To this end, Member States may liaise directly with the ICC.

In particular, the EU and its Member States should support training programmes and such other initiatives as may be necessary for fostering the professionalism of national judges, prosecutors, officials, other staff or experts needed for the effective functioning of the ICC complementarity system.

- (v) The EU and its Member States should also continue to support the establishment of an independent representative body of counsel and legal associations in relationship with the ICC.
- (vi) The EU and its Member States should work, together with other interested states and international organisations and Non-governmental organisation, towards an effective “management of expectations”, by trying to ensure that the media and the general public understand the precise parameters of the ICC and the time framework for the effective operation of the Court
- (vii) Member States will actively contribute to the negotiations of the Special Working Group established by the Assembly of States Parties to deal with the crime of aggression.
- (viii) Member States, where appropriate, will endeavour to put in place as soon as possible legislation necessary to implement the Rome Statute. They will exchange information on their progress.
- (ix) Member States will, in keeping with their obligations under Article 86 and other related provisions of the Statute, co-operate with the Court in the investigation and prosecution of crimes within its jurisdiction, in particular through the provision of judicial assistance, compliance with requests for arrest and surrender and the enforcement of sentences.
- (x) Member States are encouraged to sign the Agreement on Privileges and Immunities of the ICC by its term of opening to signature (30 June 2004), and to ratify it without delay. They will also encourage third states to do likewise.
- (xi) Whenever appropriate the ICC sub-area Working Party will consult with the relevant Council working parties, in order to promote effective co-operation between national and European law enforcement and immigration authorities and the ICC.

(xii) Member States should work towards an effective co-operation between the ICC and the UN, in particular by supporting the early conclusion of the Relationship Agreement between the ICC and the UN and its fullest implementation.

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The EU Focal Point is mandated, inter alia, to perform the following tasks, under the guidance of the Presidency and in close co-operation with Member States and the Commission:

- (a) Establishing appropriate contacts and exchange of information from all relevant actors and sources including the ICC and other international organisations, third countries and Non-governmental organisation;
- (b) Updating the means of the communication of and within the Union, such as a dedicated web-site and an e-mail list of national Focal Points of the EU Member States and relevant personnel from the Commission and the Council Secretariat;
- (c) Making available the information disseminated, including information on relevant meetings and other events, which have taken place or will take place;
- (d) Liaising with the national Focal Points for the purpose of co-ordinating the activities of the Union and its Member States;
- (e) Maintaining the list of experts available for various forms of assistance and liaising with Member States for their secondment or any other form of deployment;
- (f) Facilitating a full exchange of information and co-ordination with all relevant Working Parties of the Council as well as seeking to promote the coherence with other EU activities;
- (g) Updating on a regular basis assessment documents and reports on the implementation of the Rome Statute and its related instruments, of the Common Position and of this Action Plan;
- (h) Preparing, as appropriate, fact-sheets, draft ad hoc strategies, including regional and country-specific strategies, as well as draft detailed projects for planned activities;

- (i) Suggesting, whenever appropriate, to the Presidency concrete measures to be taken, based upon the strategies and other available material;
- (j) Preparing, as appropriate, elements for demarches on the integrity of the Rome Statute and on the universality and effectiveness of the ICC as well as maintaining an updated list of EU demarches;
- (k) Identifying opportunities for the inclusion of the ICC on the draft list of issues to be discussed in negotiations and political dialogues.

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