

## **Informal JHA Ministerial Meeting (Justice)**

**31 January 2025, Warsaw**

### **Working Session II**

#### **Consequences of Russian war crimes in Ukraine – yesterday, today, tomorrow**

##### **Introduction**

Over the past decade, the European Union has responded actively to Russia's military aggression against Ukraine, which began with the illegal annexation of Crimea in 2014 and escalated dramatically with the unprovoked and unjustified full-scale invasion of Ukraine in February 2022. Since then, the EU has significantly intensified its response to Russia's aggression, implementing a comprehensive strategy that combines legal, economic and humanitarian measures. The EU has imposed unprecedented restrictive measures ('sanctions') on Russia<sup>1</sup>, targeting key sectors of its economy and individuals supporting, financing or implementing actions that undermine the territorial integrity, sovereignty and independence of Ukraine. To enhance the enforcement of sanctions and prevent their violation and circumvention, the EU has tightened cooperation with third countries, launched new initiatives, and adopted new legal acts. The EU has also launched humanitarian and financial programs to support Ukraine, including the Temporary Protection Directive. Additionally, the European Union Advisory Mission (EUAM) assists Ukraine's civilian security sector with strategic advice and reforms.

The EU and its Member States have taken several actions to address international crimes and human rights violations in Ukraine. Eurojust has emerged as a pivotal player in this effort, facilitating the establishment of a Joint Investigation Team (JIT), showcasing unprecedented international cooperation. To tackle the complex evidentiary challenges, Eurojust established the Core International Crimes Evidence Database (CICED) to preserve, store and analyse evidence of international crimes, significantly enhancing the capabilities of national and international investigations. Subsequently, the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) was set up. Also, the Register of Damage for Ukraine was established under the auspices of the Council of Europe to systematically document claims of damage resulting from Russia's aggression against Ukraine.

Together, these mechanisms form a comprehensive and robust support structure for the law enforcement and justice authorities. They serve as cornerstones for efforts to gather evidence and hold the perpetrators of all international crimes against Ukraine accountable.

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<sup>1</sup> *Legal acts repeatedly amended on the basis of successive sanction packages, e.g. Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, or Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.*

However, despite their significance, the EU's actions have not yet fully achieved the intended goal of stopping hostilities. The legal framework for addressing international crimes, despite improvements, continues to encounter obstacles in ensuring accountability and fighting impunity. There remains an imperative need for further action to address persistent challenges and reinforce the EU's response. The EU and its Member States should redouble their efforts to ensure the full implementation and enforcement of existing measures while simultaneously developing new initiatives to address emerging challenges. Further joint actions are needed to fight impunity, effectively restrain Russia's ability to wage war, and provide all victims with the necessary support. This approach will reinforce the EU's role as a global actor in promoting international law, human rights, and democratic values.

## **Enhancing the EU's capacity to enforce restrictive measures and prevent their violation**

### Implementation of the Directive on violation of Union restrictive measures

Directive 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures constitutes a significant step forward, making the Union more cohesive in its international actions, strengthening its position as a global leader in upholding the rule of law and combating the financing of aggression or other actions contrary to international law. Coherent and effective standards introduced by the Directive will bolster the deterrent effect of penalties for the violation of restrictive measures, curbing attempts to violate or circumvent them.

However, implementing the Directive comes with several challenges. First, the diversity of legal systems could lead to difficulties in achieving a coherent and effective transposition of the Directive. Enforcing restrictive measures in complex financial and legal structures could also be challenging. The success of EU restrictive measures depends on authorities having adequate resources and investigative tools to enforce them and fight against violations or circumvention. A common, robust EU strategy of enforcement in this area would send a much-needed message to potential and actual violators that circumventing sanctions is a serious crime.

It is also necessary to implement the asset recovery and confiscation Directive 2024/1260. Both Directives offer an opportunity to effectively confiscate assets belonging to entities attempting to avoid Union restrictive measures imposed in response to Russia's aggression against Ukraine. Nonetheless, achieving these objectives entails substantial challenges, particularly regarding the functioning of Asset Recovery Offices (AROs) and Asset Management Offices (AMOs). AROs are crucial for conducting cross-border investigations to identify and trace criminal assets, but their effectiveness depends on, for example, timely access to comprehensive databases and on efficient international cooperation. On the other hand, AMOs responsible for seized assets may encounter difficulties due to limited resources and various operational standards across the EU.

These challenges need to be tackled to make sure that the Directives have a strong impact in combating crime and the violation of Union restrictive measures. The success of the new, highly necessary EU provisions depends on their coherent implementation in Member States.

### Extension of EPPO competence

Extending the competence of the European Public Prosecutor's Office (EPPO) to cover the violation of Union restrictive measures has been under discussion since the joint statement by the Justice Ministers of Germany and France in November 2022, followed by public interventions by the European Chief Prosecutor and calls from the European Parliament. According to Article 86(4) TFEU, such an extension of the EPPO's competence requires a unanimous decision of the European Council, as well as the consent of the European Parliament and prior consultation of the European Commission. The EPPO would have to be provided with additional financial, technical and human resources and the EPPO Regulation would have to be revised to include the new tasks.

Restrictive measures are a vital instrument of the EU's foreign and security policy, and their effective enforcement is a matter of Union interest. Many breaches of restrictive measures involve cross-border elements and complex financial operations, aligning with the EPPO's expertise. Additionally, the EPPO is already competent to conduct criminal investigations into criminal offences that are 'inextricably linked' to offences affecting the Union's financial interests, so it certainly has potential in this area. A possible decision to extend the EPPO's mandate should reflect its achievements in combating crimes, in particular financial ones, which strike at the foundation of the EU.

The planned evaluation of the EPPO Regulation by the Commission presents a valuable opportunity to analyse the effectiveness and operational potential of the EPPO. It is therefore essential to initiate forward-looking discussions within the Council to identify issues such as discrepancies in implementing the rules or procedural difficulties in cross-border investigations. These reflections would enable the Council to develop a common position on possible modifications to the potential extension of the EPPO's mandate. The evaluation should also cover the EPPO's human and financial resources, in view of the growing caseload and increasing complexity of cross-border investigations. Starting the evaluation early will minimise the risk of delays in addressing potential inconsistencies or struggles the EPPO might be facing.

### **Gathering evidence and prosecuting crimes committed during Russia's war of aggression against Ukraine**

#### Special Tribunal on the Crime of Aggression

The EU plays an important role in ensuring accountability for international crimes committed in Ukraine. Through its support for Eurojust and the International Centre for the Prosecution of the Crime of Aggression (ICPA), the EU fosters international cooperation and mobilises resources to ensure the prosecution of all type of crimes committed in connection with Russia's war of aggression against Ukraine. As a leader in judicial cooperation, the EU can reinforce a broader international legal order founded on the rule of law and shared democratic values.

Recently, the Declaration of the Ministers of Justice of the Council of Europe following the conference in Vilnius in September 2024 addressed key issues of justice and accountability related to Russia's aggression against Ukraine. It stressed the necessity of creating an effective special tribunal to hold those responsible for the crime of aggression accountable. Establishing the tribunal under the auspices of the Council of Europe emerged as a viable option, gaining support during the discussions of the Core Group.

Within the Council, the discussions around the setting up of the special tribunal are handled in the Foreign Affairs formation of the Council. Some aspects are nevertheless closely linked to justice issues. In particular, the ICPA, operating with the support of Eurojust, is coordinating the collection of evidence and analyses. Eurojust also supports the ICPA in clarifying institutional mechanisms and jurisdictional frameworks amid differing domestic legislation of the ICPA members. Given the number and nature of available criminal liability mechanisms, consideration should be given to the role and methods of cooperation between international judicial bodies and national courts, as the EU could support these processes.

### Evidence gathering - CISED and JITs

The EU's engagement in collecting evidence relating to international crimes in Ukraine includes initiatives like the setting up of the Core International Crimes Evidence Database (CISED) and support to set up the Joint Investigation Team (JIT). The CISED, managed by Eurojust, serves as a central repository for evidence such as photographs, video recordings, witness testimonies and medical and military reports. The database facilitates information sharing among national and international bodies while identifying evidentiary gaps.

With the assistance of Eurojust, the JIT was set up between Ukraine, Lithuania and Poland, and promptly joined by four additional countries: Estonia, Latvia, Slovakia and Romania. The JIT is enabling close cooperation between all parties involved, and an effective and swift exchange of information and evidence. The participation of the ICC and Europol, as well as cooperation with United States, have sent a clear message that no effort will be spared in bringing those responsible for international crimes to justice.

At the same time, establishing common EU-level guidelines, combined with workshops and practical manuals, could significantly enhance authorities' ability to address the documentation of international crimes and human rights violations. A centralised evidence management approach would improve evidence quality and facilitate its later acceptance in ensuing domestic or international legal proceedings. Guidelines for how to make better use of available international crime data should also be explored, especially in relation to data transfer mechanisms, to enhance cooperation.

## **Providing more efficient support to victims of crime in this conflict**

### Support to victims in EU Member States

The EU has mobilised extensive humanitarian aid and social support for war victims, particularly Ukrainian refugees. Following Russia's aggression against Ukraine, EU Member States, in collaboration with international organisations, have ensured protection, housing, healthcare and educational access for millions of displaced persons. In the fight against impunity for international crimes, it is crucial to ensure that the needs and rights of victims are taken into account. This is particularly important in the context of ongoing investigations, where victims must be able to rely on support and protection. Prompt adoption of the current proposal for amendments to the Victims' Rights Directive could improve these activities.

The temporary protection granted to Ukrainian refugees - currently extended to March 2026 - provides residence rights, healthcare, education, and labour market access. The EU has also allocated significant funds, including REACT-EU and specialised refugee support funds, enabling Member States to offer essential services such as shelter and medical care.

Integration programmes aim to help refugees adjust to new living environments and access job markets. Initiatives like the EU Talent Pool will match refugee skills with employment opportunities. Additionally, the EU has implemented measures to protect refugees from human trafficking, including a comprehensive plan developed with Member States and EU agencies<sup>2</sup>.

### EUAM Ukraine's role in human rights and victim protection

The EUAM in Ukraine commenced a new three-year mandate in June 2024, focusing on human rights and victim protection. The EUAM supports Ukraine's authorities in investigating international crimes, including war crimes, crimes against humanity, and genocide.

Key initiatives include training and mentoring programmes to strengthen Ukrainian law enforcement and judicial authorities. These programmes target prosecutors, police officers and judicial staff, enhancing their capacity to investigate and prosecute war crimes while applying a victim-centred approach. In 2024, the EUAM organised specialised workshops and study visits for Ukrainian officials, fostering cooperation and knowledge exchange. Additionally, the EUAM held training sessions for local law enforcement and NGOs on best practices for documenting war crimes. These activities covered evidence collection, the application of international law, and victim-focused prosecution strategies. These efforts aim to create a network of professionals upholding justice and protecting victims' rights. The increased involvement of Member States in the EUAM's activities could better promote EU standards of victim support in Ukraine and ensure a more effective response to the needs of those harmed during the conflict.

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**Despite significant efforts, the EU continues to face challenges in effectively combating violations of restrictive measures, prosecuting international crimes, and providing support to victims. Addressing these complex issues requires a fresh debate on key policy questions to improve the coherence and effectiveness of the EU's response to the ongoing crisis.**

### **Questions for debate:**

1. Do Ministers see difficulties in the implementation of Directive 2024/1226 on violations of restrictive measures which could be addressed by actions at EU level? Would extending the European Public Prosecutor's Office's (EPPO) competence to the violation of restrictive measures be an appropriate action at this time?

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<sup>2</sup> The European Union Agency for Fundamental Rights (FRA) publishes numerous reports on the situation of people fleeing the war in Ukraine, e.g. Bulletin 3 – The Russian aggression against Ukraine – Displaced children finding protection in the EU.

2. Are additional EU-level actions needed to facilitate the gathering of evidence of crimes committed in connection with Russia's war of aggression against Ukraine? What are the possible methods of cooperation between international judicial bodies and national authorities regarding crimes committed in relation to the situation in Ukraine?
3. What specific measures could the EU take to provide uniform and effective support to war victims across the Member States? Could an example of such measures be increasing access to justice by providing adequate psychological and legal support to individuals reporting crimes, or providing appropriate information about victims' rights?