



## **GUIDELINES ON THE FUNCTIONING OF THE NETWORK FOR INVESTIGATION AND PROSECUTION OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES**

15 November 2018

### **1. Background**

As part of the European Union's commitment, the European Network of contact points responsible for investigating and prosecuting persons responsible for genocide, crimes against humanity and war crimes (the 'Genocide Network') was established by Council Decision 2002/494/JHA, and reaffirmed by Council Decision 2003/335/JHA<sup>1</sup>, to ensure close cooperation between the national authorities in investigating and prosecuting the core international crimes.

Article 25a of the Council Decision 2009/426/JHA on the strengthening of Eurojust and amending Council Decision 2002/187/JHA allow for the Network Secretariat to form part of Eurojust staff and to function as a separate unit. The Eurojust Regulation (*Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation*, replacing and repealing Council Decision 2002/187/JHA), adopted on 6 November 2018, restates the position of the Secretariat at Eurojust in Article 48, paragraph 2.

In November 2014, the Network adopted *The Strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States*.<sup>2</sup> The Strategy outlines measures and recommendations for improving national and EU mechanisms to fight impunity of core international crimes. On 15-16 June 2015, the Justice and Home Affairs Ministers of the Member States adopted Council Conclusions on strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes within the EU and its Member States<sup>3</sup>, inviting Member States and EU institutions to use the Strategy as a reference tool for further strengthening their commitment to combating impunity for core international crimes and to continue to cooperate closely and to increase the sharing of information at national and at EU level. With the Conclusions the Council also invited the Commission to continue supporting the Genocide Network and its valuable work as well as the competent authorities to combat impunity for the crime of genocide, crimes against humanity and war crimes in the Member States.

These Guidelines include principles aiming to supplement the legal basis, Council Decision 2002/494/JHA and Council Decision 2003/335/JHA by providing detailed framework on composition, requests from non-EU Member States to participate at meetings, the level of engagement of national contact points and the nature of different sessions and by outlining the existing practices of the functioning of the Genocide Network. Nothing in this document shall affect the flexible and practical nature of the Genocide Network or the position of the contact points in their national system. The Guidelines shall be considered as a dynamic document with possible future revisions.

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<sup>1</sup> Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 167 of 26 June 2002, p. 1) and Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes (OJ L 118 of 14 May 2003, p. 12).

<sup>2</sup> Council doc 15581/2/14, 05 February 2015.

<sup>3</sup> Council doc 15584/2/14, 12 May 2015.

## **2. Objective of the Genocide Network**

The objective of the Network is to ensure that perpetrators of core international crimes do not attain impunity within EU Member States. All EU Member States have ratified the Rome Statute but the International Criminal Court remains complementary to the national systems of criminal law, recalling the obligation of every State to investigate and prosecute persons responsible for core international crimes. The Genocide Network facilitates and improves cooperation and assistance between the Member and Observer States' law enforcement, mutual legal assistance and judicial authorities, and facilitates an exchange of information on all aspects of criminal investigation and prosecution of persons suspected of having committed or participated in the commission of core international crimes.

In seeking to meet its objective, the Network:

- a) Raises awareness of these crimes and the commitment of the European Union to ending impunity of perpetrators of core international crimes;
- b) Presents a platform of contacts between relevant national authorities, international courts, tribunals and mechanisms, relevant EU and international institutions, and civil society;
- c) Offers a forum to exchange good practices, experience, and methods relating to the investigation, judicial cooperation and prosecution of relevant crimes;
- d) Facilitates close cooperation between Contact Points, representing national authorities of Member States, Observers, and Associates, in investigating and prosecuting core international crimes;
- e) Provides capacity building on core international crimes for judges, prosecutors, investigators, and MLA officers on national and European level and other regions;
- f) Promotes the effective investigation and prosecution of core international crimes at national level by means of exchanging information on criminal investigations and prosecutions of suspects.

## **3. Membership**

### **3.1 Member Status**

Member States of the European Union are represented in the Genocide Network through national contact points designated by each national authority.<sup>4</sup> Member Status awards decision-making rights and access to all sessions of the Network meetings.

### **3.2 Observer Status**

Observer Status may be granted to States which are not Member States of the EU. Additionally, Eurojust, Europol and the Office of the Prosecutor of the International Criminal Court are also granted Observer Status. Observer Status enables participation at the open session and may allow access at the closed session of the Network meetings upon specific interest of Observer and agreement of all Member States.

### **3.3 Associate Status**

Associate Status may be granted to EU institutions and EU agencies, international law enforcement and judicial institutions and agencies, other European or international networks of practitioners, organisations and civil society. The European Commission and the General Secretariat of the Council are represented in the Genocide Network with the Institutional contact points. Associate

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<sup>4</sup> Following the notification made by the United Kingdom on 24 July 2013 in accordance with Article 10(4), first subparagraph, first sentence, of Protocol No 36 on transitional provisions, Council Decision 2002/494/JHA has ceased to apply to the United Kingdom as from 1 December 2014, pursuant to Article 10(4), first subparagraph, second sentence, of the said Protocol.

Status enables participation at the open session of the Network meetings, unless otherwise agreed by Member States.

### **3.4 Designation and notification of contact points**

Each Member State, Observer and Associates designates one or more contact points and notifies in writing the Network Secretariat and / or the General Secretariat of the Council on its contact points and any subsequent changes. The Network Secretariat, in liaison with the General Secretariat of the Council, maintains and regularly updates the list of contact points. This list is published as a Council Document.

### **3.5 External partners of the Network**

The Genocide Network may establish relations with non-EU States, EU and international organisations, bodies, agencies, networks of practitioners, and civil society organisations committed to and active in the fight against impunity with a genuine endeavour to investigate and prosecute core international crimes or with activities to raise awareness and promote the fight against impunity. Interest to attend the Network meetings can be expressed by potential partner or based on an initiative of the Contact Point of the Member State.

Request for Observer or Associate Status shall be submitted to the Network by a potential partner in written form. To allow for an informed decision of the Contact points of Member States, the request shall present mission, mandate and structure, national legislation applicable for investigation and prosecution of core international crimes, number and relevance of cases, activities and projects devoted to the fight against impunity and contact details.

In deciding upon the request, the Contact points of Member States consider general interests of the Network and, among other, criteria relating to the genuine endeavours to investigate and prosecute core international crimes; dedication, protection and promotion of human rights, international humanitarian law and the rule of law; membership in the Rome Statute of the International Criminal Court; applicable data protection standards in accordance with the EU norms; status of candidate country or potential candidate for accession to the EU; existence of cooperation agreement with Eurojust and operational agreement with Europol.

The granting of the Observer or Associate Status is subject to the unanimous decision of the Member States. Such decision is made during a plenary meeting or, between plenary meetings, by written consultations.

### **3.6 Change of Status and Exclusion**

The Member States reserve the right of discretion to change the status of any Observer or Associate, or exclude them from meetings, if their actions are contrary to the aim and objectives of the Network. Change of Status and exclusion are subject to the unanimous decision of the Member States. Such decision is made during a plenary meeting or, between plenary meetings, by written consultations.

## **4. Tasks and profile of Contact Points**

### **4.1 Contact Points of Member States**

Contact Points of Member States are representatives of judicial (investigative judges, prosecutors and mutual legal assistance officers) and law enforcement authorities responsible for the investigation and prosecution of core international crimes at national level. Contact Points should be adequately experienced, appointed for a substantial period of time, and consistently attending the Network meetings.

The national Contact Points liaise with each other, receive, request and provide information, and hence enable the coordination and a constant exchange of information between Network members

as well as national authorities regarding the investigation and prosecution of core international crimes.

Contact Points increase awareness about the activities of the Genocide Network at national level by disseminating information on topics discussed by the Network to counterparts in law enforcement, prosecution, mutual legal assistance authorities and immigration services, and to the Ministry of Justice and the Ministry of Foreign Affairs, including reporting the conclusions of the Network meetings. The Contact Points should be in a position to collect information from these services and report the information back to the Network and its Secretariat.

Contact Points coordinate with public officials representing their Member States in other EU bodies, thereby facilitating a consistent and coherent approach to combating impunity on national, regional and international level, both in internal and external policy.

#### **4.2 Contact Points of Observers and Associates**

The above mentioned functions also apply to Contact Points of Observers and Associates according to the competencies of authority or organisation they are affiliated with.

### **5. The Structure of the Genocide Network**

The Genocide Network consists of the Plenary, the Steering Board and the Secretariat.

#### **5.1 The Plenary**

The Plenary comprises Contact Points of the Member States.

The Plenary is the decision-making body of the Genocide Network. Its decisions are taken by consensus of Member States unless otherwise specified in these guidelines. Observers and Associates can address the Plenary, without decision making rights.

The Plenary:

- Determines the manner in which it conducts its affairs;
- Appoints 4 members of the Network in the Steering Board;
- Approves the work programme for the Genocide Network and the Secretariat;
- Decides on recommendations of the Steering Board relating to the admission of Observers and Associates as well as their exclusion;
- Decides on any other matter governing the business and affairs of the Genocide Network.

#### **5.2 The Steering Board**

The Steering Board is composed of the trio Presidency of the Council of the EU and four contact points representing four different Member States. The membership of the Steering Board will rotate periodically every two years with renewable terms for the four Network members and every six months for the trio Presidency.

The Representative of the Presidency of the Council of the EU is the chair of the Steering Board. One of the four contact points representing Member States is elected by the Steering Board as vice-chair for the duration of his/her own mandate to the Network.

The Steering Board:

- Assists with the administration of the Network and supports the Genocide Network Secretariat in this respect;
- Supports in preparing the agenda of the biannual meetings;
- May establish working groups after consultation with the Network Secretariat;
- Can make decisions, subject to approval by the Plenary, in the period between the biannual meetings;

- Represents and promotes the Network together with the Secretariat.

To deliver its duties the Steering Board can meet or decide by written consultations.

### **5.3 The Network Secretariat**

The Genocide Network Secretariat is hosted by Eurojust in The Hague. In accordance with Art 25a of the Eurojust Decision, the Secretariat forms part of Eurojust staff, but functions as a separate unit. The Secretariat draws on Eurojust administrative resources in order to perform its tasks.

The Genocide Network Secretariat:

- Supports the Genocide Network and its members, the Presidency of the Council of the EU, and the Steering Board in their work;
- Organises two plenary meetings of the Network convened by the Presidency of the Council of the EU and further ad hoc meeting upon request of Member States.
- Maintains and regularly updates the list of contact points, in liaison with the General Secretariat of the Council, and consistently informs all members of the Network about changes in membership;
- Informs the Network members about developments and activities through its website, which it regularly updates and services;
- Supports cooperation and assistance between its members' law enforcement and judicial authorities by facilitating exchange of information on criminal investigation, legal assistance and prosecution of persons suspected of having committed or participated in the commission of core international crimes;
- Ensures organisation and hosting of awareness-raising activities, the publication of expert papers, and the promotion of interaction between Contact Points, civil society, and other national or international bodies;
- Represents the Network and is responsible for representing, promoting and reinforcing the work of the Network in meetings, conferences or other events organized both within the EU or outside by partners in third countries or international organizations;
- The Network Secretariat is responsible for the preparation of an annual activity report and its presentation to the European Parliament in line with Article 3 of Council Decision 2002/494/JHA;
- Regularly reviews the implementation of the Network's 2014 Strategy, follows up on Network meeting conclusions and fulfils other tasks to which it is mandated by the Plenary.

## **6. Meetings**

### **6.1 Plenary meetings**

The Genocide Network organises at least two plenary meetings each year, which are convened by the Presidency of the Council of the EU.

The agenda is prepared by the Secretariat in consultation with the Steering Committee and Members of the Network. The plenary meetings take the form of a two days meeting divided into sessions:

- An open session for Members, Observers and Associates and representatives from non-EU states, EU and international organisations, bodies, agencies, networks of practitioners, and civil society organisations upon invitation to exchange best practice, knowledge and experience on topics relating to the investigation and prosecution of core international crimes.
- A closed session for Contacts Points from Members and Observers with access to the closed session to allow the exchange of confidential operational information on current investigations and requests for extradition relating to core international crimes. Associates

and national authorities from non-EU states or representatives from other organisations may participate upon invitation for a specific discussion or topic only.

- A restricted session only for Contact Points of EU Member States for confidential discussions and decisions.

### **6.2 Ad hoc meetings**

The Network can also meet on an *ad hoc* basis in the interest of at least three Members for a specific case, situation or a specific topic upon request of one or more Members. Observers and Associates can participate at *ad hoc* meetings upon invitation. Such *ad hoc* meetings may be the first step to formal Coordination Meetings provided by Eurojust.

### **6.3 Working Group meetings**

Whenever deemed appropriate, in particular to facilitate the preparation and monitoring of the activities and projects, Contact Points can meet in a smaller format of a Working Group.

## **7. Budget**

In order for the Genocide Network to carry out its tasks, the budget of Eurojust shall contain a part related to the activities of the Genocide Network and its Secretariat. This budget covers travel and accommodation costs for the participation at plenary meetings of at least one Contact Point per Member State. Observers and Associates attend the Genocide Network meetings at their own expenses. This budget also covers travel and accommodation costs for the organisation and participation at ad hoc meetings, working group meetings and meetings of the Steering Board.

## **8. Language**

English and French are the official languages of the Genocide Network, while the working language is English.

## **ANNEX**

### **Status of Observers and Associates as of November 2018**

#### **Observers**

Bosnia and Herzegovina

Canada

Norway

Switzerland

The United Kingdom

The United States of America

Eurojust

Europol

The International Criminal Court (the Office of the Prosecutor)

#### **Associates:**

European Commission

General Secretariat of the Council of the EU

International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic

International Criminal Tribunal for the former Yugoslavia

International Criminal Tribunal for Rwanda

International Mechanism for the International Tribunals

Specialist Prosecutor's Office of the Kosovo Specialist Chambers

Interpol

International Committee of the Red Cross

Redress

Human Rights Watch (HRW)

Amnesty International (AI)

Coalition for the ICC (CICC)

Track Impunity Always (TRIAL)

International Federation for Human Rights (FIDH)