

Strasbourg, 25/08/06

4th Consult/ICC (2006) 02



FOURTH
CONSULTATION
ON
THE IMPLICATIONS FOR COUNCIL OF EUROPE MEMBER STATES OF THE
RATIFICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL
COURT

EUROPEAN UNION:

1. **COUNCIL COMMON POSITION 2001/443/CFSP ON THE INTERNATIONAL CRIMINAL COURT (11 JUNE 2001)**
2. **COUNCIL COMMON POSITION 2002/474/CFSP ON THE INTERNATIONAL CRIMINAL COURT (20 JUNE 2002)**
3. **COUNCIL COMMON POSITION 2003/444/CFSP ON THE INTERNATIONAL CRIMINAL COURT (16 JUNE 2003)**
4. **AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE EUROPEAN UNION ON CO-OPERATION AND ASSISTANCE (10 APRIL 2006)**
5. **ACTION PLAN TO FOLLOW-UP ON THE COMMON POSITION ON THE INTERNATIONAL CRIMINAL COURT (4 FEBRUARY 2004)**

Council of Europe, Athens (Greece)
14-15 September 2006

OBJECTIVES OF THE ICC

The European Union fully supports the International Criminal Court (ICC). The principles of the Rome Statute of the ICC, as well as those governing its functioning, are fully in line with the principles and objectives of the Union. The consolidation of the rule of law and respect for human rights, as well as the preservation of peace and the strengthening of international security, in conformity with the Charter of the United Nations and as provided for in Article 11 of the EU Treaty, are of fundamental importance to, and a priority for, the Union.

THE EUROPEAN UNION SUPPORTS THE ICC

The serious crimes within the jurisdiction of the ICC are of concern for the European Union, which is determined to co-operate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof. In this framework, the European Union adopted, on 11 June 2001, Common Position 2001/443/CFSP on the International Criminal Court, which has been reviewed and reinforced on 20 June 2002 by Common Position 2002/474/CFSP, and on 16 June 2003 by Common Position 2003/444/CFSP.

The objective of the Common Position is to support the early establishment and effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute.

The European Union also finalised on 04 February 2004 an Action Plan to follow-up the Common Position.

Accordingly, the European Union and its Member States make every effort to further this process by, inter alia, raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute and the implementation of the Statute through démarches and statements, and in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.

Source:

http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=404&lang=EN&mode=g

COUNCIL COMMON POSITION of 11 June 2001 on the International Criminal Court
(2001/443/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

(1) The consolidation of the rule of law and respect for human rights, as well as the preservation of peace and the strengthening of international security, in conformity with the Charter of the United Nations and as provided for in Article 11 of the EU Treaty, are of fundamental importance to, and a priority for, the Union.

(2) The Statute of the International Criminal Court, adopted by the Rome Conference of Plenipotentiaries, has been signed by 139 and ratified or acceded to by 32 States and will enter into force after the sixtieth instrument of ratification, acceptance, approval or accession is deposited.

(3) The principles of the Rome Statute of the International Criminal Court, as well as those governing its functioning, are fully in line with the principles and objectives of the Union.

(4) The serious crimes within the jurisdiction of the Court are of concern for all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.

(5) The Union is convinced that compliance with the rules of international humanitarian law and human rights is necessary for the preservation of peace and the consolidation of the rule of law.

(6) The early entry into force of the Statute is therefore desirable and the Union is committed to making every effort to achieve the required number of instruments of ratification, acceptance, approval or accession, as well as contributing to the full implementation of the Rome Statute.

(7) On 19 November 1998, 6 May 1999 and 18 January 2001, the European Parliament adopted Resolutions on the ratification of the Rome Treaty to establish the permanent International Criminal Court; and on 8 May 2001, the Commission submitted to the European Parliament and the Council its Communication on the European Union's role in promoting human rights and democratisation in third countries.

(8) The Final Act of the Rome Conference has established a Preparatory Commission mandated to elaborate proposals for adoption by the Assembly of States Parties, including instruments needed for the practical functioning of the Court.

(9) The agreement reached on the Rome Statute represents a delicate balance between different legal systems and interests, and the successful finalisation of the first draft instruments on Elements of Crime and on Rules of Procedure and Evidence completed by 30 June 2000 by the Preparatory Commission was achieved with full respect for the integrity of the Statute, to which all Member States are committed.

(10) The Union recognises that the principles and rules of international criminal law embodied in the Rome Statute should be taken into account in other international legal instruments.

(11) The Union is convinced that universal adherence to the Rome Statute is desirable for the full effectiveness of the International Criminal Court and, to this end, considers that initiatives to enhance the acceptance of the Statute are to be encouraged, provided they are consistent with the letter and spirit of the Statute.

(12) The effective establishment of the Court and the implementation of the Statute requires practical measures that the European Union and its Member States should fully support,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The establishment of the International Criminal Court, for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction, is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as contributing to the preservation of peace and the strengthening of international security, in accordance with the purposes and principles of the Charter of the United Nations.

2. The objective of this Common Position is to pursue and support an early entry into force of the Rome Statute and the establishment of the Court.

Article 2

1. In order to contribute to the objective of an early entry into force of the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.

2. The Union and its Member States shall contribute to an early entry into force and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Rome Statute and related instruments.

3. The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective.

Article 3

The Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. They shall support the early creation of an appropriate planning mechanism in order to prepare the effective establishment of the Court.

Article 4

The Council shall, where appropriate, coordinate measures by the European Union and Member States for the implementation of Articles 2 and 3.

Article 5

The Council notes that the Commission intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures.

Article 6

During negotiations of the instruments of, and in carrying out the work provided for in Resolution F of the Final Act of the Rome Diplomatic Conference of Plenipotentiaries, Member States shall contribute to the early finalisation of these instruments and shall support solutions that are consistent with the letter and the spirit of the Rome Statute, taking into account the need for ensuring the widest possible participation thereto.

Article 7

The Council shall review this Common Position every six months.

Article 8

This Common Position shall take effect from the date of its adoption.

Article 9

This Common Position shall be published in the Official Journal.

Done at Luxembourg, 11 June 2001.

For the Council

The President

A. Lindh

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL COMMON POSITION
of 20 June 2002
amending Common Position 2001/443/CFSP on the International Criminal Court
(2002/474/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS COMMON POSITION:

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Article 1

Whereas:

Common Position 2001/443/CFSP is hereby amended as follows:

- (1) Article 7 of Council Common Position 2001/443/CFSP of 11 June 2001, on the International Criminal Court ⁽¹⁾ (the Court), states that the Council shall review the Common Position every six months.
- (2) On 16 April 2002 the Council took note of a resolution on the Court approved by the European Parliament on 28 February 2002 which, *inter alia*, called for the adoption of an action plan to follow up Common Position 2001/443/CFSP.
- (3) The said Action Plan was finalised on 15 May 2002 and may be adapted as appropriate.
- (4) The Statute of the International Criminal Court, hereinafter the 'Statute', adopted by the Rome Conference of Plenipotentiaries, has been signed by 139 and ratified or acceded to by 69 States and will enter into force on 1 July 2002.
- (5) All Member States of the European Union have ratified the Statute.
- (6) In view of the forthcoming entry into force of the Statute, a number of steps have to be taken before the Court can function effectively, a period during which the European Union should do its utmost to promote the early establishment of the Court, in accordance with the relevant decisions of the Preparatory Commission and the Assembly of States Parties (the Assembly).
- (7) Common Position 2001/443/CFSP should therefore be amended,

1. Article 1(2) shall be replaced by the following:

'2. The objective of this Common Position is to support the early establishment and effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute.'

2. Article 2 shall be replaced by the following:

'Article 2

1. In order to contribute to the objective of the widest possible participation in the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval of or accession to the Rome Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.

2. The Union and its Member States shall contribute to the world-wide ratification and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Statute and related instruments. In furtherance of the objectives of this Common Position, the Union shall cooperate as necessary with other interested States, international institutions, non-governmental organisations and other representatives of civil society.

3. The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective. They shall contribute, when requested, with technical and, where appropriate, financial assistance to the legislative work needed for the ratification and implementation of the Statute in third countries. States considering to ratify the Statute or to cooperate with the Court shall be encouraged to inform the Union of difficulties encountered on that path.

⁽¹⁾ OJ L 155, 12.6.2001, p. 19.

4. In implementing this Article, the Union and its Member States shall coordinate political and technical support for the Court with regard to various States or groups of States. To that end, country-specific or region-specific strategies shall be developed and used where appropriate.'

3. Article 3 shall be replaced by the following:

'Article 3

1. The Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. In particular, they shall support the early creation and operation of an appropriate planning mechanism, including an advance team of experts, in order to prepare the effective establishment of the Court.

2. Member States shall cooperate to ensure the smooth functioning of the Assembly in all respects, including the adoption of documents recommended by the Preparatory Commission. In particular, Member States shall make every effort to ensure that highly qualified candidates are nominated, *inter alia* by encouraging transparent nomination procedures for judges and prosecutors in accordance with the Statute. They shall also endeavour to achieve that the composition of the Court as a whole reflects the criteria set forth in the Statute.

3. The Union and its Member States shall consider contributing in an appropriate and equitable manner to the costs for measures needed before the first periods budget of the

Court becomes effective and the Court is fully operational. The Union, after adoption of a budget of the Court by the Assembly of States' Parties, shall encourage States' Parties to promptly transfer their assessed contributions in accordance with the decisions taken by the Assembly.

4. The Union and its Member States shall endeavour to support as appropriate the development of training and assistance for judges, prosecutors, officials and counsel in work related to the Court.'

Article 2

This Common Position shall take effect on the date of its adoption.

Article 3

This Common Position shall be published in the Official Journal.

Done at Madrid, 20 June 2002.

For the Council

The President

R. DE RATO Y FIGAREDO

(Acts adopted pursuant to Title V of the Treaty on European Union)

**COUNCIL COMMON POSITION 2003/444/CFSP
of 16 June 2003
on the International Criminal Court**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) The consolidation of the rule of law and respect for human rights, as well as the preservation of peace and the strengthening of international security, in conformity with the Charter of the United Nations and as provided for in Article 11 of the Treaty on European Union, are of fundamental importance to, and a priority for the Union.
- (2) The Rome Statute of the International Criminal Court entered into force on 1 July 2002 and the Court is now fully functional.
- (3) All Member States of the European Union have ratified the Rome Statute.
- (4) The principles of the Rome Statute of the International Criminal Court, as well as those governing its functioning, are fully in line with the principles and objectives of the Union.
- (5) The serious crimes within the jurisdiction of the Court are of concern to all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.
- (6) The principles and rules of international criminal law embodied in the Rome Statute should be taken into account in other international legal instruments.
- (7) The Union is convinced that universal accession to the Rome Statute is essential for the full effectiveness of the International Criminal Court and, to that end, considers that initiatives to enhance the acceptance of the Statute are to be encouraged, provided they are consistent with the letter and spirit of the Statute.
- (8) The implementation of the Rome Statute requires practical measures that the European Union and its Member States should fully support.
- (9) The Action Plan which was, *inter alia*, called for by a Resolution on the Court approved by the European Parliament on 28 February 2002 to follow up Council Common Position 2001/443/CFSP of 11 June 2001 on the International Criminal Court⁽¹⁾ was adopted on 15 May 2002 and may be adapted as appropriate.
- (10) It is eminently important that the integrity of the Rome Statute be preserved.
- (11) By its Conclusions of 30 September 2002 on the International Criminal Court the General Affairs and External Relations Council has developed a set of principles attached to those Conclusions to serve as guidelines for Member States when considering the necessity and scope of possible agreements or arrangements in responding to proposals regarding the conditions to surrender persons to the International Criminal Court.
- (12) In the light of the above, Common Position 2001/443/CFSP should be updated and recast.
- (13) This Common Position should be kept under review.
- (14) The European Union considers the application of this Common Position by the acceding countries and the alignment with it by the associated countries Romania, Bulgaria and Turkey and by the EFTA countries important in order to maximise its impact.

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The International Criminal Court, for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction, is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as contributing to the preservation of peace and the strengthening of international security, in accordance with the purposes and principles of the Charter of the United Nations.

⁽¹⁾ OJ L 155, 12.6.2001, p. 19. Common Position as amended by Common Position 2002/474/CFSP (OJ L 164, 22.6.2002, p. 1).

2. The objective of this Common Position is to support the effective functioning of the Court and to advance universal support for it by promoting the widest possible participation in the Rome Statute.

Article 2

1. In order to contribute to the objective of the widest possible participation in the Rome Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.

2. The Union and its Member States shall contribute to the worldwide participation in and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Statute and related instruments. In furtherance of the objectives of this Common Position, the Union shall cooperate as necessary with other interested States, international institutions, non-governmental organisations and other representatives of civil society.

3. The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective. They shall contribute, when requested, with technical and, where appropriate, financial assistance to the legislative work needed for the participation in and implementation of the Statute by third countries. States considering to become party to the Statute or to cooperate with the Court shall be encouraged to inform the Union of difficulties encountered on that path.

4. In implementing this Article, the Union and its Member States shall coordinate political and technical support for the Court with regard to various States or groups of States. To that end, country-specific or region-specific strategies shall be developed and used where appropriate.

Article 3

In order to support the independence of the Court, the Union and its Member States shall, in particular:

- encourage States Parties to transfer promptly and in full their assessed contributions in accordance with the decisions taken by the Assembly of States Parties;
- make every effort towards the signature and ratification by Member States of the Agreement on the Privileges and Immunities of the Court as soon as possible and promote such signature and ratification by other States; and
- endeavour to support as appropriate the development of training and assistance for judges, prosecutors, officials and counsel in work related to the Court.

Article 4

The Council shall, where appropriate, coordinate measures by the European Union and Member States for the implementation of Articles 2 and 3.

Article 5

1. The Union and its Member States shall follow closely developments concerning effective cooperation with the Court in accordance with the Rome Statute.

2. In this context, they shall continue, as appropriate, to draw the attention of third States to the Council Conclusions of 30 September 2002 on the International Criminal Court and to the EU Guiding Principles annexed thereto, with regard to proposals for agreements or arrangements concerning conditions for the surrender of persons to the Court.

Article 6

The Council notes that the Commission intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures.

Article 7

1. Member States shall cooperate to ensure the smooth functioning of the Assembly of States Parties in all respects.

2. During negotiations in the Special Working Group established by the Assembly of States Parties to deal with the crime of aggression, Member States shall contribute to the finalisation of the work under way and shall support solutions which are consistent with the letter and the spirit of the Rome Statute and of the United Nations Charter.

Article 8

The Council shall review this Common Position as appropriate.

Article 9

1. The Council notes that Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia intend to apply this Common Position as from the date of its adoption.

2. The Presidency will request the associated countries Romania, Bulgaria and Turkey as well as the EFTA countries to align with this Common Position.

Article 10

Common Position 2001/443/CFSP is hereby repealed and replaced by this Common Position. References to the repealed Common Position 2001/443/CFSP shall be construed as being made to this Common Position.

Article 11

This Common Position shall take effect from the date of its adoption.

Article 12

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 16 June 2003.

For the Council
The President
G. PAPANDREOU

AGREEMENT

between the International Criminal Court and the European Union on cooperation and assistance

THE INTERNATIONAL CRIMINAL COURT,

Hereinafter 'the Court',

of the one part, and

THE EUROPEAN UNION,

hereinafter 'the EU', represented by the Presidency of the Council of the European Union,

of the other part,

hereinafter referred to as the Parties,

CONSIDERING the fundamental importance and the priority that must be given to the consolidation of the rule of law and respect for human rights and humanitarian law, as well as the preservation of peace and the strengthening of international security, in conformity with the United Nations Charter and as provided for in Article 11 of the Treaty on European Union;

NOTING that the principles of the Rome Statute of the International Criminal Court, as well as those governing its functioning, are fully in line with the principles and objectives of the European Union;

EMPHASISING the importance of the administration of justice in accordance with the rule of law and procedural fairness with particular reference to the rights of the accused provided in the Rome Statute;

NOTING the special role of victims and witnesses in proceedings before the Court and the need for specific measures aimed at ensuring their security and effective participation in accordance with the Rome Statute;

RECALLING that the European security strategy, adopted by the European Council on 12 December 2003, supports an international order based on effective multilateralism;

BEARING IN MIND Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court as well as the Council's Action Plan to follow-up on such Common Position and particularly the essential role of the International Criminal Court for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction;

CONSIDERING that the European Union is committed to supporting the effective functioning of the International Criminal Court and to advance universal support for it by promoting the widest possible participation in the Rome Statute;

RECALLING THAT this Agreement must be read in conjunction with and subject to the Rome Statute of the International Criminal Court and the Rules of Procedure and Evidence;

RECALLING THAT Article 87(6), of the Rome Statute provides that the Court may ask any intergovernmental organisation to provide information or documents, and that the Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organisation and which are in accordance with its competence or mandate;

CONSIDERING THAT this Agreement covers terms of cooperation and assistance between the International Criminal Court and the European Union and not between the International Criminal Court and the Member States of the European Union;

CONSIDERING THAT, to that effect, the International Criminal Court and the European Union should agree on terms of cooperation and assistance in addition to Common Position 2003/444/CFSP, as well as to the EU Action Plan in follow-up to that Common Position,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose of the Agreement

This Agreement, which is entered into by the European Union (EU) and the International Criminal Court (the Court) pursuant to the provisions of the Treaty on European Union (EU Treaty) and the Rome Statute of the International Criminal Court (the Statute) respectively, defines the terms of cooperation and assistance between the EU and the Court.

Article 2

Definition of terms

1. For the purposes of this Agreement, 'EU' shall mean the Council of the European Union (hereinafter Council), the Secretary General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities (hereinafter European Commission). 'EU' shall not mean the Member States in their own right.

2. For the purposes of this Agreement, 'the Court' shall mean:

- (a) the Presidency,
- (b) an Appeals Division, a Trial Division and a Pre-Trial Division,
- (c) the Prosecutor's Office,
- (d) the Registry,
- (e) the Secretariat of the Assembly of States Parties.

Article 3

Member State Agreements

1. This Agreement, including any agreements or arrangements concluded under Article 11, shall not apply to requests for information from the Court which relate to information, other than EU documents including EU classified information, originating from an individual Member State. In such circumstances, any request shall be made directly to the relevant Member State.

2. Article 73 of the Statute shall be applied, *mutatis mutandis*, to requests made by the Court to the EU under this Agreement.

Article 4

Obligation of cooperation and assistance

The EU and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, as appropriate, with each other and consult each other on matters of mutual interest, pursuant to the provisions of this Agreement while fully respecting the respective provisions of the EU Treaty and the Statute. In order to facilitate this obligation of cooperation and assistance, the Parties agree on the establishing of appropriate regular contacts between the Court and the EU Focal Point for the Court.

Article 5

Attendance at meetings

The EU may invite the Court to attend meetings and conferences arranged under its auspices at which matters of interest to the Court are under discussion in order to give assistance with regard to matters within the jurisdiction of the Court.

Article 6

Promotion of the values underpinning the Statute

The EU and the Court shall cooperate, whenever appropriate, by adopting initiatives to promote the dissemination of the principles, values and provisions of the Statute and related instruments.

Article 7

Exchange of information

1. The EU and the Court shall, to the fullest extent possible and practicable, ensure the regular exchange of information and documents of mutual interest in accordance with the Statute and the Rules of Procedure and Evidence.

2. With due regard to its responsibilities and competence under the EU Treaty, the EU undertakes to cooperate with the Court and to provide the Court with such information or documents in its possession as the Court may request pursuant to Article 87(6), of the Statute.

3. The EU may, at its own initiative and in accordance with the EU Treaty, provide information or documents, which may be relevant to the work of the Court.

4. The Registrar of the Court shall, in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgements and orders of the Court, which may be of interest to the EU.

*Article 8***Protection of safety or security**

Should the cooperation, including the disclosure of information or documents, provided for in this Agreement endanger the safety or security of current or former staff of the EU or otherwise prejudice the security or proper conduct of any operation or activity of the EU, the Court may order, particularly at the request of the EU, appropriate measures of protection.

*Article 9***Classified information**

Provisions relating to the release of EU classified information by the EU to an organ of the Court are set out in the Annex to this Agreement, which is an integral part thereof.

*Article 10***Testimony of staff of the European Union**

1. If the Court requests the testimony of an official or other staff of the EU, the EU undertakes to cooperate fully with the Court and, if necessary and with due regard to its responsibilities and competencies under the EU Treaty and the relevant rules thereunder, to take all necessary measures to enable the Court to hear that person's testimony, in particular by waiving that person's obligation of confidentiality.

2. With reference to Article 8, the Parties recognise that measures of protection might be required should an official or other staff of the EU be requested to provide the Court with testimony.

3. Subject to the Statute and the Rules of Procedure and Evidence, the EU shall be authorised to appoint a representative to assist any official or other staff of the EU who appears as a witness before the Court.

*Article 11***Cooperation between the European Union and the Prosecutor**

1. While fully respecting the EU Treaty:

- (i) the EU undertakes to cooperate with the Prosecutor, in accordance with the Statute and the Rules of Procedure and Evidence, in providing additional information held by the EU that he or she may seek;
- (ii) the EU undertakes to cooperate with the Prosecutor, in accordance with Article 54(3)(c) of the Statute;

- (iii) the EU shall, in accordance with Article 54(3)(d) of the Statute, enter into such arrangements or agreements, not inconsistent with the Statute, as may be necessary to facilitate the cooperation of the EU with the Prosecutor.

2. The Prosecutor shall address requests for information in writing to the Secretary General/High Representative. The Secretary General/High Representative shall provide a written reply no later than one month.

3. The EU and the Prosecutor may agree that the EU provide the Prosecutor with documents or information on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or third parties, at any stage of the proceedings or thereafter, without the consent of the EU. The rules on classified information of Article 9 shall apply.

*Article 12***Privileges and immunities**

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if such person enjoys, according to the relevant rules of international law, any privileges and immunities, the relevant institution of the EU undertakes to cooperate fully with the Court and, with due regard to its responsibilities and competencies under the EU Treaty and the relevant rules thereunder, to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities in accordance with all relevant rules of international law.

*Article 13***Personnel arrangements**

Pursuant to Article 44(4) of the Statute, the EU and the Court agree to determine, on a case by case basis, under which exceptional circumstances the Court may employ the expertise of gratis personnel offered by the EU, to assist with the work of any of the organs of the Court.

*Article 14***Services and facilities**

Upon request of the Court, the EU shall, subject to availability, provide for the purposes of the Court, such facilities and services as may be required, including, where appropriate, support at the field level. The terms and conditions on which any such facilities, services or support of the EU may be provided shall be, as appropriate, the subject of prior supplementary arrangements.

*Article 15***Training**

The EU shall endeavour to support, as appropriate and in consultation with the Court, the development of training and assistance for judges, prosecutors, officials and counsel in work related to the Court.

*Article 16***Correspondence**

1. For the purpose of this Agreement:

(a) as regards the EU:

all correspondence shall be sent to the Council at the following address:

Council of the European Union
Chief Registry Officer
Rue de la Loi/Wetstraat, 175
B-1048 Brussels;

all correspondence shall be forwarded by the Chief Registry Officer of the Council to the Member States, to the European Commission and to the EU Focal Point for the Court subject to paragraph 2;

(b) as regards the Court,

all correspondence shall be addressed to the Registrar or the Prosecutor, as appropriate.

2. Exceptionally, correspondence from one Party which is only accessible to specific competent officials, organs or services of that Party may, for operational reasons, be addressed and only be accessible to specific competent officials, organs or services of the other Party specifically designated as recipients, taking into account their competencies and according to the need to know principle. As far as the EU is concerned, this correspondence shall be transmitted through the Chief Registry Officer of the Council.

*Article 17***Implementation**

1. The Office of the Prosecutor and the Registry of the Court and the Secretary-General of the Council and of the European

Commission shall oversee the implementation of this Agreement, in accordance with their respective competencies.

2. The Court and the EU may, for the purposes of implementing this Agreement, enter into such arrangements as may be found appropriate.

*Article 18***Settlement of disputes**

All differences between the EU and the Court arising out of the interpretation or application of this Agreement shall be dealt with through consultation between the Parties.

*Article 19***Entry into force and review**

1. This Agreement shall enter into force on the first day of the first month after the Parties have signed it.

2. This Agreement may be reviewed for consideration of possible amendments at the request of either Party. It shall be reviewed no later than five years after its entry into force.

3. Any amendment to this Agreement shall only be made in writing and by common agreement of the Parties.

*Article 20***Denunciation**

One Party may denounce this Agreement by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party, but shall not affect obligations already contracted under the provisions of this Agreement. In particular, all classified information provided or exchanged pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

IN WITNESS WHEREOF the undersigned, respectively duly authorised, have signed this Agreement.

Hecho en Luxemburgo, el diez de abril de dos mil seis.
V Lucemburku dne desátého dubna dva tisíce šest.
Udfærdiget i Luxembourg den tiende april to tusind og seks.
Geschehen zu Luxemburg am zehnten April zweitausendsechs.
Kahe tuhande kuuenda aasta aprillikuu kümnendal päeval Luxembourgis.
Έγινε στο Λουξεμβούργο, στις δέκα Απριλίου δύο χιλιάδες έξι.
Done at Luxembourg on the tenth day of April in the year two thousand and six.
Fait à Luxembourg, le dix avril deux mille six.
Fatto a Lussemburgo, addì dieci aprile duemilase.
Luksemburgā, divtūkstoš sestā gada desmitajā aprīlī.
Priimta du tūkstančiai šeštų metų balandžio dešimtą dieną Liuksemburge.
Kelt Luxembourgban, a kettőezer hatodik év április tizedik napján.
Magħmul fil-Lussemburgu, fl-ghaxra jum ta' April tas-sena elfejn u sitta.
Gedaan te Luxemburg, de tiende april tweeduizend zes.
Sporządzono w Luksemburgu dnia dziesiątego kwietnia roku dwutysięcznego szóstego.
Feito no Luxemburgo, em dez de Abril de dois mil e seis.
V Luxemburgu dňa desiateho apríla dvetisícšesť.
V Luxembourg, desetega aprila leta dva tisoč šest.
Tehty Luxemburgissa kymmenentenä päivänä huhtikuuta vuonna kaksituhattakuusi.
Som skedde i Luxemburg den tionde april tjugohundrasex.

Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Eiropas Savienības vārdā
Europos Sąjungos vardu
Az Európai Unió részéről
Ghall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen

Por la Corte Penal Internacional
Za Mezinárodní trestní soud
For Den Internationale Straffedomstol
Für den Europäischen Strafgerichtshof
Rahvusvahelise Kriminaalkohtu nimel
Για το Διεθνές Ποινικό Δικαστήριο
For the International Criminal Court
Pour la Cour Pénale Internationale
Per la Corte Penale Internazionale
Starptautiskās Krimināltiesas vārdā
Tarptautinio baudžiamojo teismo vardu
A Nemzetközi Büntetőbíróság részéről
Ghall-Qorti Kriminali Internazzjonali
Voor het Internationaal Strafhof
W imieniu Międzynarodowego Trybunału Karnego
Pelo Tribunal Penal Internacional
Za Medzinárodný trestný súd
Za Mednarodno Kazensko Sodišče
Kansainvälisen rikustuomioistuimen puolesta
För Internationella brottmålsdomstolen

ANNEX

1. Should EU classified information be requested by an organ of the Court within the meaning of Article 34 of the Statute, it may be released only in accordance with the Council's security regulations ⁽¹⁾.

For the purposes of this Agreement, classified information shall mean any information (namely, knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification (hereinafter referred to as classified information).

In particular:

- (i) the Court shall ensure that EU classified information released to it keeps the security classification given to it by the EU and shall safeguard such information, in accordance with an equivalent level of protection to that foreseen in the Council's security regulations. In this respect, the Court shall ensure that it provides the protection required by the EU in accordance with the rules, measures and procedures to be established pursuant to paragraph 4;
- (ii) the Court shall not use the released EU classified information for purposes other than those for which those EU classified information and documents have been released to the Court;
- (iii) the Court shall not disclose such information and documents to third parties without the prior written consent of the EU in accordance with the principle of originator consent as defined in the Council's security regulations;
- (iv) the Court shall ensure that access to EU classified information released to it will be authorised only for individuals who have a 'need to know';
- (v) the Court shall ensure that all persons who, in the conduct of their official duties require access, or whose duties or functions may afford access to information classified CONFIDENTIEL UE and above, are appropriately security cleared before they are granted access to such information, in accordance with arrangements to be established on the basis of objective criteria pursuant to paragraph 4;
- (vi) the Court shall ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access;
- (vii) taking into account their level of classification, EU classified information shall be forwarded to the Court by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. The Court shall notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information must be forwarded and will ensure that the addressees are security cleared;
- (viii) the Court shall ensure that all premises, areas, buildings, offices, rooms, communication and information systems, and the like, in which EU classified information is stored and/or handled, is protected by appropriate physical security measures, in accordance with the arrangements to be established pursuant to paragraph 4;
- (ix) the Court shall ensure that EU classified documents released to it are, on their receipt, recorded in a special register. The Court shall ensure that copies of EU classified documents released to it, which may be made by the recipient body, their number and distribution, are recorded in this special register. The Court shall notify to the EU the date of return of those documents to the EU or provide a certificate of their destruction;
- (x) the Court shall notify to the General Secretariat of the Council of the EU any case of compromise of EU classified information released to it. In such a case, the Court shall initiate investigations and take appropriate measures to prevent a recurrence, in accordance with the arrangements to be established pursuant to paragraph 4.

⁽¹⁾ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1).

2. In implementing paragraph 1, no generic release shall be possible unless procedures are established and agreed between the Parties regarding certain categories of information.
 3. EU classified information may be downgraded or declassified in accordance with Council's security regulations before being released to the Court. Any EU classified document containing national classified information may be consulted only by appropriately cleared Court staff or downgraded or declassified and released to the Court with the express written consent of the originator.
 4. In order to implement this Agreement, security arrangements shall be established between the three authorities designated below in order to lay down the standards of the reciprocal security protection for classified information subject to this Agreement:
 - (a) the Security Office of the Court shall be responsible for developing security arrangements for the protection and safeguarding of classified information provided to the Court under this Agreement;
 - (b) the Security Office of the General Secretariat of the Council, under the direction and on behalf of the Secretary General of the Council, acting in the name of the Council and under its authority, shall be responsible for developing security arrangements for the protection and safeguarding of classified information provided to the EU under this Agreement;
 - (c) the European Commission Security Directorate, acting in the name of the European Commission and under its authority, shall be responsible for developing security arrangements for the protection of classified information provided or exchanged under this Agreement within the European Commission and its premises;
 - (d) for the EU, these standards shall be subject to approval by the Council Security Committee.
 5. The Parties shall provide mutual assistance with regard to security of classified information subject to this Agreement and matters of common interest. Reciprocal security consultations and inspections shall be conducted by the authorities defined in paragraph 4 to assess the effectiveness of the security arrangements within their respective responsibility to be established pursuant to paragraph 4.
 6. The Parties shall have a security organisation and security programmes, based upon such basic principles and minimum standards of security which shall be implemented in the security systems of the Parties to be established pursuant to paragraph 4, to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.
 7. Prior to the initial provision of classified information subject to this Agreement, the responsible security authorities referred to in paragraph 4 must have agreed that the receiving party is able to protect and safeguard the information subject to this Agreement in a way consistent with the arrangements to be established pursuant to paragraph 4.
 8. Nothing in this Agreement shall prejudice the possibility of the EU making available to the Court information with the highest level of classification subject to the Court ensuring an equivalent level of protection to that foreseen in the Council's security regulations.
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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 2002.¹

The Council also adopted several Decisions² 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.

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

² 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.

ANNEX

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.
