

**COUNCIL DECISION 2011/168/CFSP****of 21 March 2011****on the International Criminal Court and repealing Common Position 2003/444/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) In its action on the international scene the Union seeks to advance the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter and international law, as provided for in Article 21 of the Treaty. The Union seeks to develop relations and build partnerships with, inter alia, international organisations which share these principles.
- (2) One of the objectives of the Union is to preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter.
- (3) The Rome Statute of the International Criminal Court (hereinafter the 'Rome Statute') entered into force on 1 July 2002.
- (4) All Member States have ratified the Rome Statute.
- (5) The principles of the Rome Statute, as well as those governing the functioning of the International Criminal Court (hereinafter the 'ICC'), are fully in line with the principles and objectives of the Union. The serious crimes within the jurisdiction of the ICC are of concern to the international community as a whole and to the Union and its Member States.
- (6) The Union and its Member States are determined to put an end to the impunity of the perpetrators of those crimes by taking measures at national level and by enhancing international cooperation to ensure their effective prosecution.
- (7) The Union and the ICC signed an agreement on cooperation and assistance on 10 April 2006 which entered into force on 1 May 2006 <sup>(1)</sup>.
- (8) The principles and rules of international criminal law embodied in the Rome Statute should be taken into account in other international legal instruments.
- (9) The Union is convinced that universal accession to the Rome Statute is essential for the full effectiveness of the ICC and, to that end, considers that initiatives to enhance the acceptance of the Rome Statute are to be encouraged, provided they are consistent with the letter and spirit of the Rome Statute.
- (10) It is most important that the integrity of the Rome Statute and the independence of the ICC be preserved.
- (11) By its Conclusions of 30 September 2002 on the International Criminal Court the 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 ICC.
- (12) On 25 May 2010, the Council adopted Conclusions on the Review Conference of the Rome Statute of the International Criminal Court (hereinafter the 'Review Conference'), which was held in Kampala, Uganda, from 31 May to 11 June 2010.
- (13) The Review Conference adopted amendments to the Rome Statute, in accordance with Article 5, paragraph 2 thereof to define the crime of aggression and to establish conditions under which the ICC could exercise jurisdiction with respect to that crime; adopted amendments to the Rome Statute to expand the jurisdiction of the ICC to three additional war crimes when committed in armed conflicts not of an international character; and decided to retain, for the time being, Article 124 of the Rome Statute. Those amendments are subject to ratification or acceptance and shall enter into force in accordance with Article 121, paragraph 5 of the Rome Statute. The ICC shall exercise jurisdiction over the crime of aggression subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Rome Statute.
- (14) The Union pledged at the Review Conference to review and update its instruments in support of the ICC and to continue the promotion of the universality and preservation of the integrity of the Rome Statute.

<sup>(1)</sup> OJ L 115, 28.4.2006, p. 50.

- (15) The implementation of the Rome Statute requires practical measures that the Union and its Member States should fully support.
- (16) The Action Plan which was, *inter alia*, called for by a Resolution on entry into force of the Statute of the International Criminal 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 <sup>(1)</sup> was adopted on 4 February 2004 and should be adapted as appropriate.
- (17) In the light of the above, Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court <sup>(2)</sup> should be repealed and replaced by this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The International Criminal Court (hereinafter the 'ICC'), 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, the prevention of conflicts 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 Decision is to advance universal support for the Rome Statute of the International Criminal Court (hereinafter the 'Rome Statute') by promoting the widest possible participation in it, to preserve the integrity of the Rome Statute, to support the independence of the ICC and its effective and efficient functioning, to support cooperation with the ICC, and to support the implementation of the principle of complementarity.

#### *Article 2*

1. In order to contribute to the objective of the widest possible participation in the Rome Statute, the 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 Rome Statute in negotiations, including negotiations of agreements, 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 Rome 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. In furtherance of the objectives of this Decision, 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 Rome Statute and, when appropriate, provide other forms of support to that objective. The Member States shall contribute, when requested, with technical and, where appropriate, financial assistance to the legislative work needed for the participation in and implementation of the Rome Statute by third States. The Union may, when requested, also contribute with such assistance. States considering to become party to the Rome Statute or to cooperate with the ICC 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 ICC with regard to various States or groups of States.

#### *Article 3*

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

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

#### *Article 4*

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

2. The Union shall keep under review the implementation of the Agreement between the International Criminal Court and the European Union on cooperation and assistance.

3. The Union and its Member States shall consider the conclusion, as appropriate, of ad hoc arrangements and agreements to enable the effective functioning of the ICC and shall encourage third parties to do so.

<sup>(1)</sup> OJ L 155, 12.6.2001, p. 19.

<sup>(2)</sup> OJ L 150, 18.6.2003, p. 67.

4. The Union and its Member States 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 ICC.

*Article 5*

The Union and its Member States shall, as appropriate, take initiatives or measures to ensure the implementation of the principle of complementarity at national level.

*Article 6*

The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall, where appropriate, coordinate measures by the Union and its Member States for the implementation of Articles 2 to 5.

*Article 7*

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

*Article 8*

The Union shall ensure consistency and coherence between its instruments and policies in all areas of its external and internal action in relation to the most serious international crimes as referred to in the Rome Statute.

*Article 9*

The Council shall review this Decision as appropriate.

*Article 10*

Common Position 2003/444/CSFP is hereby repealed and replaced by this Decision. References to the repealed Common Position 2003/444/CSFP shall be construed as being made to this Decision.

*Article 11*

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 21 March 2011.

*For the Council*  
*The President*  
C. ASHTON