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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Opinion No. 14 (2019) of the CCPE:

«The role of prosecutors in fighting corruption and related economic and financial crime»

I. Introduction: purpose, scope, definitions

A. Purpose

1. The Consultative Council of European Prosecutors (CCPE) was set up by the Committee of Ministers of the Council of Europe in 2005 with the task of formulating particularly opinions on matters concerning the implementation of Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system¹.
2. In accordance with the mandate given to it by the Committee of Ministers, the CCPE has prepared this Opinion on the role of prosecutors in fighting corruption and related economic and financial² crime.
3. As already highlighted in previous Opinions of the CCPE, the tasks assigned to prosecutors vary from State to State in line with the respective constitutional and legislative backgrounds and legal traditions. Thus, the criminal justice systems of some member States provide for the principle of “legality” as the basis for prosecutions, while

¹ In drafting its Opinions, the CCPE also takes into account other relevant Recommendations and instruments adopted after its creation, particularly Recommendation Rec(2012)11 of the Committee of Ministers to member States on the role of public prosecutors outside the criminal justice system.

² In some member States, the concept of economic crime covers financial crime as well.

other member States provide for the principle of “discretion” or “opportunity”; others have a mixture of these principles. Some member States entrust prosecutors with a general supervision role over police and investigators, and others do not³. In countries, where prosecutors have the general oversight of investigations, they may themselves conduct the investigations, or the latter is conducted by the police under the authority of the prosecution service.

4. Regardless of the different prosecution systems, common requirements and challenges can be identified in relation to the effective fight against crime, and when it comes to respecting the defendant’s human rights, the interests of the State regarding crime policy and the rights of victims and other participants in the criminal procedure. The present Opinion seeks to identify common guidelines and standards for how prosecutors should act in the specific field of corruption and related economic and financial crime. In member States, where prosecutors perform functions outside the criminal law field, the conclusions and recommendations of this Opinion also apply, *mutatis mutandis*, to such prosecutorial activities. Some of the findings will likely be more relevant for a given prosecutorial system than for another. However, the present Opinion does not intend to express a preference for one or the other system, but rather intends to promote improvements in all of them. The Opinion may therefore be used for inspiration for all actors involved in criminal proceedings, particularly from the point of view of bringing them together for better efficiency.

B. Scope

5. The fight against corruption and related economic and financial crime is of interest to, and requires the involvement of, many public and private actors, such as prosecutors, judges, police investigators, experts, supervisory entities, governmental agencies, mass media, NGOs and other concerned elements of civil society. The CCPE expresses the wish that the principles set out in this Opinion will, in addition to prosecutors, inspire also the actions of other interested and relevant actors in order to enhance the overall results.
6. The objective of the Opinion is to specify the particular personal and institutional approaches to be followed by prosecutors and prosecution services involved in the fight against a set of crimes, complex by nature and often involving secretive forms, such as corruption and related economic and financial crime (as defined below). The present Opinion particularly focuses on high-level criminal offences in this field, i.e. when the prosecution service and individual prosecutors face particular challenges as regards substantive law and procedure. In this regard, it is recommended that prosecution services be consulted whenever new rules or provisions are being designed by executive or legislative authorities in this domain.
7. The CCPE emphasises from the outset that an efficient and effective, and at the same time transparent and human rights-abiding, prosecutorial fight against corruption and related economic and financial crime, depends to an important extent on the political will to truly tackle and control such criminal behaviour. Therefore, member States should not only show strong commitment but also foster supportive environment for their prosecution services, as well as for the individual prosecutors dealing with this

³ See, for example, Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, para 9.

type of crime, in addition to increasing and deepening their participation in the international cooperation in this field.

8. The effective fight against corruption and related economic and financial crime, and the highly detrimental effect this kind of behaviour has on public trust, social stability and the economic well-being of a given country, and on the principles of justice and equality of all persons before the law, is not only a question of prosecuting the perpetrators. It is of utmost importance to use all proper legal, legislative and other tools for the prevention of such crimes. It is necessary that both society in general, and the prosecutors dealing with corruption and related criminal offences in particular, are perfectly aware of the extremely damaging character of such offences. Tolerance towards corruption should be continuously combatted.
9. In preparing this Opinion, the CCPE has relied in particular on its Opinion No. 1 (2007) on ways of improving international co-operation in the criminal justice field, Opinion No. 3 (2008) on the role of prosecution services outside the criminal law field, Opinion No. 7 (2012) on the management of the means of prosecution services, Opinion No. 8 (2013) on relations between prosecutors and the media, Opinion No. 10 (2015) on the role of prosecutors in criminal investigations, Opinion No. 11 (2016) on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime, Opinion No. 12 (2017) on the role of prosecutors in relation to the rights of victims and witnesses in criminal proceedings, and Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors.
10. The CCPE has also relied on the most important instruments and findings of the Council of Europe in the field of fighting and preventing corruption, most notably the Criminal Law Convention on Corruption (1999)⁴, the Civil Law Convention on Corruption (1999)⁵, Recommendation Rec(2000)10 of the Committee of Ministers to member States on codes of conduct for public officials (2000), the findings of the Group of States against Corruption (GRECO) in its five Evaluation Rounds⁶ to date, and documents of MONEYVAL, as well as the relevant case law of the European Court of Human Rights (ECtHR) on corruption and related matters⁷.
11. Anti-corruption instruments of other international organisations and mechanisms have also been taken into consideration, particularly the United Nations Convention against Corruption of 2003⁸ and Guidelines on the Role of Prosecutors of 1990, the Convention of the Organisation for Economic Co-operation and Development on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997⁹, the EU Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union of 1997¹⁰, the Model Law on Fighting Corruption, adopted by the Inter-Parliamentary Assembly of the

⁴ European Treaties Series – No. 173.

⁵ European Treaties Series – No. 174.

⁶ Notably the findings in the IVth Evaluation Round, to a large extent completed, on “Corruption prevention in respect of members of Parliament, judges and prosecutors” were of a particular interest for the CCPE in drafting the present Opinion.

⁷ E.g. in more recent times, ECtHR *Gutsanovi v. Bulgaria* – 34529/10, judgment from 15.10.2013 [Section IV]; *Apostu v. Romania* – 22765/12, judgment from 03.02.2015 [Section III]; *Tsalkitzis v. Greece* (no. 2) – 72624/10, judgment from 19.10.2017 [Section I].

⁸ UN General Assembly resolution 58/4 of 31 October 2003.

⁹ Together with the 2009 OECD Recommendation for Further Combating Bribery of Foreign Public Officials.

¹⁰ Official Journal C 195, 25.06.1997, p. 0002 – 0011.

participating countries of the Commonwealth of Independent States in 1999, the EU Council's Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector¹¹, as well as 13 publications of the Financial Action Task Force (FATF) on corruption issues¹². The CCPE also took into account the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the International Association of Prosecutors in 1999.

12. The CCPE has based itself on a draft Opinion prepared by Dr Rainer HORNUNG-JOST, Deputy Chief Prosecutor at the Lörrach Prosecution Office (Germany), former Director of the German Judicial Academy, and thanks him for his valuable expert contribution to its work.

C. Definitions

13. The CCPE underlines that there is no universally accepted definition of corruption. That said, it considers that the best reference for defining the term "corruption" within the scope of this Opinion can be drawn from the Council of Europe Criminal Law Convention on Corruption (ETS173) as it has been applied by GRECO¹³. It means that "corruption" is a concept that contains or addresses a variety of criminal offences, such as active and passive bribery in the public and private sectors and trading in influence. Phenomena such as corruption as a result of the acceptance of gifts, public procurement, or illicit enrichment are likewise detrimental to the public trust in the good functioning of a state under the rule of law.
14. In a significant number of cases, corruption offences are neatly entwined with other – often secretive – phenomena of economic and financial crime, such as fraud, tax fraud, money laundering, embezzlement, etc. Consequently, specialised prosecution services and/or prosecutors quite often do not deal only with corruption offences, but also with other related economic and financial crimes, for example, computer fraud, theft of intellectual property, violations of competition law, violations of stock market regulations, fraudulent bankruptcy and/or insolvency offences. The corruption may also be related to such crimes as trafficking in human beings, smuggling of migrants, illegal labour, environmental, land and urban planning law offences, etc.
15. As a result, for the purposes of the present Opinion, when the term "corruption" is used, it also includes related economic and financial crime.

II. Particular challenges faced by prosecution services and individual prosecutors when fighting corruption

16. Prosecutors face a series of particular challenges when fighting corruption. For example, there may be a lack of political will in some countries, especially insofar as high-level corruption by influential persons is concerned¹⁴. It may also happen that some politicians seek to exert illegal influence on investigations, particularly when the latter concern themselves personally or their families, other members of the government or the parliament, their political parties or a business friend, and the like.

¹¹ Official Journal L 192, 31.07.2003, p. 54 – 56.

¹² As a rule issued in cooperation with the G20 Anti-Corruption Working Group.

¹³ In its IIIrd Evaluation Round.

¹⁴ Often involving particularly large financial amounts.

17. Corruption involves quite often less visible but complex mechanisms, posing a real challenge for prosecutors to assess them. At the same time, defendants tend to have significant resources at their disposal, enabling them to mount a sophisticated defence strategy which may be difficult to overcome. Finally, prosecution services and prosecutors must be able to oppose possible delaying tactics while guaranteeing the principle of equality of arms. They should also have sufficient and adequate resources to properly prosecute, and courts should have available a range of appropriate and proportionate penalties for the purpose of sentencing.
18. The more serious and high-level corruption is, the higher the possibility of a close link with organised crime¹⁵.
19. The particular challenges which prosecutors face when fighting corruption, relating to its secretive and complex nature, are also valid for the fight against related economic and financial crime. Moreover, further challenges contribute to the complexity of the prosecutors' task. Combatting serious economic crime most often entails a need for an in-depth economic analysis and a need to deal with voluminous files, often focusing on a series of criminal acts. In addition, today's white-collar criminals often use their expertise in communications technologies to conceal their identity, the offences they commit and relevant evidence. Prosecution services should dispose of comprehensive and updated information including statistical data on the extent and characteristics of corruption in their respective countries.
20. Serious economic crime means by nature that one or several entities, including public and private entities, or individuals may have suffered significant financial losses. So, when dealing with this kind of crime, prosecutors have to be aware of the victims' rights and expectations and have to ensure the security of witnesses. They must also be able to handle, in line with applicable laws and rules and with celerity, the complex proceedings concerning the freezing, seizure, confiscation and recovery of criminal assets, be it for the benefit of the State, of the victims, or both.

III. Institutional requirements and safeguards

A. Legislative framework, resources, budget, staffing

21. In light of the afore-mentioned numerous challenges, a prosecution service can only properly and adequately fight corruption, and enhance people's trust in public institutions and the private commercial sector, when the respective member State provides a robust constitutional and other legislative framework allowing the prosecution to act as an independent/autonomous institution and in an effective, transparent and accountable way, free of any undue political or other external influence.
22. Since fighting corruption and economic crime can be a politically and otherwise sensitive issue, it is of utmost importance that the domestic systems of recruiting, promoting/advancing and transferring of prosecutors, as well as disciplinary procedures, offer the necessary guarantees and safeguards for independent,

¹⁵ See Opinion No. 11 (2016) of the CCPE on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime.

autonomous and transparent decision-making and are governed by transparent and objective criteria¹⁶.

23. It is each member State's obligation to provide the necessary institutional, legal and operational framework and human, financial and technical resources in order to ensure that even in the most complex corruption and economic crime cases, final decisions are taken with a view to avoid undue delay and, where appropriate, before the expiry of any statutory limitation period. The allocation of insufficient financial and human resources, which may be one of the main reasons why the prosecution may react late or may be seen to react leniently in cases of corruption, should be avoided. The same conclusions apply to other authorities involved in the process, such as the police, other law enforcement and control agencies, and the courts. In this context, the number of prosecutors assigned to the fight against corruption should be based on an assessment of the importance of this crime for the State concerned, as well as of the prosecution service's needs.
24. Investigating and prosecuting complex corruption cases also requires, in particular, the provision of modern equipment and other means, such as sophisticated hardware and software to the prosecution service¹⁷, as well as highly professional economic, banking and computer expertise.
25. The efficient use by the prosecution service of procedural tools to freeze, seize and confiscate property resulting from an offence, should be encouraged, as this recovery of property from white-collar criminals will have not only a repressive but also a preventive and deterrent effect. In addition, statutory or other regulatory instruments obliging a public official having been finally convicted for corruption to resign or to be dismissed from office and to be prevented from presenting him/herself for public office, at least for a specific period of time, also have an important repressive and preventive effect.
26. The often legally and factually complex and cumbersome process of asset recovery requires a sufficient number of highly motivated and professional collaborators. Each member State should provide the necessary budget to ensure that a sufficient number of competent prosecutors and efficient and properly trained support staff (clerks, etc.) and experts are regularly assigned to the prosecution service. The CCPE notes that several member States refinance the costs of prosecuting corruption and related economic and financial crime cases through the recovery of property and assets from white-collar crime.
27. In some member States, the law allows legal persons to be prosecuted under criminal law. Other member States introduced administrative or civil liability of legal persons for criminal acts of their high officials for the benefit of legal persons. This can also be effective in combating the corruption of individuals acting through legal persons, and in depriving a legal person, systematically involved in corrupt activities, of its incriminated gains. Administrative and/or civil mechanisms are also needed for the confiscation of assets in cases where evidence suggests that they were obtained through white-collar crimes, particularly in cases of income hidden from tax authorities.

¹⁶ For more detailed information, see Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, Recommendations ii, iii and x.

¹⁷ See Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, para 45.

28. Prosecutors, when they conduct or supervise the investigation, must have, subject to, where appropriate, judicial authorisation, effective access to all relevant sources of information, often stored in public or private databases. It is furthermore decisive to ensure the prosecution service's access to registers of property and interests or asset declarations regularly provided by public officials and other persons in accordance with national law, in order to deter potential perpetrators from committing an act of corruption and to prosecute them when such an act is committed. This is an essential tool for uncovering an existing system of corruption or associated criminal structures. Access to bank records or tax information is also of the utmost importance for the effective prosecution of corruption cases.

B. Organisational mechanisms and specialisation of prosecutors

29. The CCPE encourages member States to take all necessary measures to ensure the impartiality, professionalism and specialisation of prosecutors and other stakeholders, as appropriate, when fighting corruption.
30. A significant number of member States have put in place central anti-corruption authorities. Depending on the domestic setting, these authorities also have, sometimes exclusively, prosecutorial competencies in the investigation of this type of crime. In other countries, decentralised but specialised prosecution offices – or at least specialised units within those offices – tackle corruption. Finally, in small prosecution services, individual prosecutors specialise in fighting corruption in general, which should be seen as a minimum standard to guarantee the afore-mentioned particular professionalism expected from prosecutors dealing with these crimes.
31. In order to be able to work on complex cases of corruption, good case management by prosecutors is indispensable. Depending on the particular system, prosecutions and, where applicable, investigations by the prosecution service, may be centralised. This does not preclude the formation of teams of prosecutors in particularly complex and sensitive high-level cases, both in the investigation and in the trial phase. Given that such cases are complex and time-consuming, the most expedient and effective flow of information within the prosecution service should be ensured.
32. The best possible cooperation and flow of information are not only an internal prerequisite for the prosecution service, they are also a very important factor concerning the relations between the prosecution services and other stakeholders involved in fighting corruption. The CCPE underlines the importance of cooperation and coordination between the prosecution service, on the one hand, and law enforcement agencies, customs, financial intelligence units, and tax fraud investigation services, supervisory institutions, etc. on the other, whose professionalism and specialisation are also indispensable.
33. In particular, as regards complex and sensitive high-level cases of corruption, the prosecutors involved should have access to the necessary external expertise. This concerns, e.g., the analysis of balance sheets or computer databases and equipment held by other authorities. In given cases, it can be quite beneficial to make such non-legal experts (chartered accountants, etc.) members of an interdisciplinary team working on a specific aspect of a particular case under the supervision of the prosecutor.

C. Allocation of cases and workload

34. As a general rule, allocation of corruption cases and regulation of workload should follow an objective system of distribution in accordance with the complexity and potential difficulty of the cases, as well as the knowledge, abilities and skills of the prosecutors. Furthermore, prosecutors in charge of these cases should receive the necessary support and be allocated sufficient time corresponding to their complexity.

D. Proper and adapted investigation and prosecution tools and whistleblowers

35. High-level corruption is by nature a very serious crime and may cover a range of criminal offences. This makes it indispensable to give to prosecutors (and/or, depending on the system, to the police) a full range of lawful investigative tools, including special investigation techniques. This also includes the use of adequate technologies.
36. The CCPE wishes to reiterate, however, that for the acceptance of the results of an investigation, it is of utmost importance in a democratic society that the principles of necessity and proportionality be scrupulously respected when applying means of coercion and special investigation techniques, while providing the prosecution with all tools for finding relevant evidence for criminal investigation or administrative inquiry related to legal persons. Any disproportionate restriction of fundamental human rights and freedoms should be avoided by establishing clear limits and criteria for the application of a given investigation tool¹⁸. The most intrusive measures should depend on an independent judicial authorisation. Once such a measure is ordered by a court, it is the prosecution service's task, where it conducts the investigation, to thoroughly and permanently consider, at any stage of the proceedings, whether the continuation of the measure is still necessary.
37. Member States should have stringent rules in place on how to protect people from within a given authority/organisation having insider knowledge on particular perpetrators and their criminal schemes. These potential whistleblowers often play a primordial role in the disclosure of corruption. Their identity should be protected in the event of disclosure of information. Member States should ensure that provisions on the protection of particularly vulnerable witnesses in criminal proceedings also apply, where appropriate, to whistleblowers, particularly at the investigation phase. This may include, *inter alia*, specific confidential ways of handling information sources subject always to protecting the right of an accused to a fair trial.
38. Potential whistleblowers wishing to divulge information should know who to address and how and which protection measures will apply to them. Therefore, it is very helpful to provide, within or in direct collaboration with the prosecution service, specific contact points, and to make the contact data available to the public. It should also be noted that potential whistleblowers might be accomplices to the crime they divulge. In some cases, they may be granted immunity or other forms of particular clemency because they expose themselves to great risks by their disclosures. Whistleblowers should be aware, as quickly as possible, of all protective measures put in place for them.

E. International cooperation

¹⁸ See Opinion No. 11 (2016) of the CCPE on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime, para 65.

39. In a significant number of cases, the economic and financial crime committed is of a cross-border nature, requiring the cooperation of the prosecution services and law enforcement agencies of several countries or international, including supranational, bodies, and of the banking system worldwide. It is also possible that the financial damage is not limited to the national level but may affect simultaneously the financial interests of several States, international, including supranational, organisations (e.g. the European Union (EU)) and foreign individuals or entities.
40. The perpetrators have, e.g., an interest in hiding their gains and relevant evidence in another country or in several countries simultaneously. Therefore, they should not be able to take advantage of a lack of cooperation instruments among States or their different criminal systems and procedural rules. Consequently, it is of utmost importance that efficient extradition and mutual legal assistance mechanisms allow for direct contact and cooperation between prosecution services of different member States, all by using modern and sufficiently secured communication techniques¹⁹.
41. In order to ensure a widely harmonised approach to the fight against corruption, the CCPE invites member States to ratify, where applicable, the most important international instruments within the scope of the present Opinion.
42. The CCPE invites member States to adopt, on a bilateral or multilateral level and where appropriate, similar mechanisms and measures in order to facilitate practical cooperation between the prosecution services and law enforcement agencies of member States when fighting cross-border corruption. The CCPE notes the continued efforts by the United Nations Office on Drugs and Crime (UNODC), the EU²⁰ and other regional (sub-regional) initiatives in this direction. Furthermore, the CCPE acknowledges the facilitating practical support for this cooperation provided by institutions such as EUROJUST, as well as informal organisations such as the International Association of Prosecutors.
43. In addition, in cross-border cases, in order to permanently recover the offender's gains in the interest of the State or identified victims²¹, mutual recognition or execution, through mutual legal assistance, of temporary seizure and final confiscation orders issued by a member State in respect of property in another member State could facilitate the freezing, confiscation and recovery or return of criminal assets²².

¹⁹ See Opinion No. 1 (2007) of the CCPE on ways of improving international co-operation in the criminal justice field.

²⁰ It should also be noted that the EU has developed particular instruments and mechanisms in order to ensure the most effective fight against cross-border crime, and more particularly in order to ensure the best possible protection of the EU's financial interests. Domestic prosecution services benefit from practical support by the anti-fraud office OLAF, by Eurojust, as well as by the European Judicial Network in Criminal Matters. In a rather near future, the European Prosecutor and her relevant counterparts in member States will enter the field. Multilateral treaties such as the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union have introduced new innovative investigation and prosecution tools, such as the formation of Joint Investigation Teams (JITs) in appropriate cases of organised cross-border crime. See also EU Directive 2014/41/EU, of 3/4/2014, regarding the European Investigation Order in criminal matters.

²¹ See Opinion No. 12 (2017) of the CCPE.

²² See, e.g., the EU Council's Framework Decision 2003/577/JHA of 22 July 2003 on the Execution in the European Union of Orders freezing Property or Evidence, and the EU Regulation 2018/1805 of 14/11/2018 on the mutual recognition of freezing orders and confiscation orders, following Council Framework Decisions 2003/577/JHA and 2006/783/JHA.

44. In order to fight corruption in an efficient way, member States should assist each other in providing information necessary to prevent, detect and investigate corruption offences including those of submitting false and/or insufficient information in the declarations by public officials and other persons concerned as regards their property, profits, expenses and interests even in the absence of criminal investigation.

F. Transparency and contacts of prosecutors with the media

45. Transparency in the exercise of prosecutors' functions is a key component of the rule of law, one of the important guarantees of a fair trial, and necessary for ensuring public confidence and trust. Indeed, a positive image of the prosecution service forms an important element of public trust in the proper functioning of the justice system. In order to develop an open interaction of the prosecution service with the public²³, the prosecution service should take a pro-active approach. The media's and the public's widest possible lawful access to information on the activities of prosecutors also serves to strengthen democracy and transparency.
46. This is especially true when it comes to a truly sustainable and successful fight against corruption. Tackling corruption in all its facets and from the roots is only possible when accompanied by openness and transparency and free from any undue or unlawful political or other influence.
47. As a matter of principle, prosecution services should provide appropriate information to the media and to the public at all stages of their activities as regards fighting corruption including through their websites. At the same time, this should be done with due respect for legal provisions concerning the protection of personal data, privacy, dignity, the presumption of innocence, ethical rules of relations with other participants in the proceedings, as well as legal provisions precluding or restricting disclosure of certain information, particularly where required to ensure the security and consistency of the investigation²⁴.

IV. Personal requirements and safeguards

A. Personal integrity, impartiality, independence and protection

48. Prosecutors dealing with corruption are in a very sensitive professional position and therefore it is all the more important that they respect European and international standards on prosecutors' professional conduct²⁵. It is important to bear in mind that the enounced principles also concern the prosecutors' behaviour out of office and outside their professional role.
49. Prosecutors must in particular demonstrate absolute integrity and neutrality, acting independently of any kind of bias, preferences or factors, and guided only by the law. Prosecutors should also avoid any risk of undue pressure, be it external or internal²⁶

²³ See Opinion No. 8 (2013) of the CCPE on relations between prosecutors and the media, paras 30-31.

²⁴ See Opinion No. 8 (2013) of the CCPE on relations between prosecutors and the media, para 38.

²⁵ As laid down in Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors. A central instrument in this respect are also the so called "Budapest guidelines", i.e. the European Guidelines on Ethics and Conduct for Public Prosecutors, as adopted in the name of the Council of Europe by the Conference of Prosecutors General in Budapest on 31 May 2005, CPGE (2005) 05.

²⁶ See Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, paras 53-56.

and benefit from guarantees of independent, autonomous and transparent decision-making. They should be, and also appear to be, impartial in their decisions, be transparent, avoid conflicts of interest and not favour any party in criminal and other proceedings. Where there is a risk that the prosecutor may not have sufficient distance from any such party, he/she should refrain from handling the case.

50. In cases where corruption among prosecutors occurs, any impression or appearance of a preferential treatment vis-à-vis the defendant should be avoided by the prosecutor(s) in charge, respecting the principle of equality of all before the law.
51. The prosecutor should be removed, in accordance with lawful proper procedure, from cases relating to corruption, whenever there is a sign of potential bias, preference or conflict of interest. This right, however, should not be abused and decisions to remove a prosecutor should be justified and recorded. In case of manifestly improper case management by the prosecutor, disciplinary or, as the case may be, criminal proceedings may be opened against him/her. In case of necessity, there should be mechanisms of defining and settling any conflict of interests, established within the prosecution service and its bodies.
52. In a case of undue interference, appropriate protection should be applied towards prosecutors and investigators involved in the proceedings and their families²⁷.

B. Specific training

53. The professional requirements for prosecutors fighting corruption are particularly high. Therefore, it is all the more important for such prosecutors to undergo regular in-service training, as tailor-made as possible, responding to their specific needs.
54. Such training should also cover legislative and case law developments, both the domestic developments, and the jurisprudence of international courts such as of the European Court of Human Rights and, where appropriate, of the Court of Auditors and of the European Court of Justice. Prosecutors should also be aware of the role and functioning of relevant international bodies in this field, and their respective instruments and recommendations.
55. The prevention, investigation and prosecution of corruption are often of a multidisciplinary nature. Therefore, the continued training of anti-corruption and economic crime prosecutors may include also abilities such as reading and understanding balance sheets, understanding IT, working with complex software, etc. Trainers and experts from outside the prosecution service may be involved for this purpose. It may be of practical use to organise the exchange of counter-corruption experience between the prosecution services of different States.
56. Prosecutors within the scope of the present Opinion have to be particularly stress-resistant. They should be able to deal with very voluminous files and particularly skilled defendants and defence counsel. In order to avoid professional burn-out, it is important that the training also comprises so-called “soft” skills, such as stress management, case management, critical thinking, memory training and other relevant supports. The

²⁷ See the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors of 1999 and the Declaration on Minimum Standards concerning the Security and Protection of Public Prosecutors and their Families of 2008 developed by the International Association of Prosecutors (IAP).

chiefs of prosecutorial teams should also benefit from such support, as well as appropriate leadership training.

57. Finally, the training should be complemented by more informal and subtle elements in the workplace. This can involve meetings and round tables with other institutions, officials and experts fighting corruption. The CCPE underlines the added value of networking in this respect.

C. Respect for defendants' rights

58. Prosecutors should promote and respect the principle of equality of arms between prosecution and defence, the presumption of innocence, the right to a fair trial, the independence of the court, the principle of separation of powers and the binding force of final court decisions, and other applicable rights enshrined in relevant international instruments.
59. Throughout the investigation and prosecution phases, the prosecutor should fully respect and protect the defendants' rights, notably by scrupulously respecting and applying the principles of necessity and proportionality. This is all the more valid when special investigation techniques are at stake; these should be reserved for criminal cases of particular importance and gravity²⁸.
60. Despite the complex nature of the criminal offences within the scope of the present Opinion, prosecutors should decide on indictment or dismissal of a case within a reasonable time. Accordingly, if the defendant is in pre-trial detention, both the investigation and the trial should be as expeditious as possible.
61. A defendant in corruption and related crime cases is as entitled to the respect of his/her right to privacy and the principle of the presumption of innocence, as any other defendant. The prosecutor handling the case should respect the principle of equal treatment under the law. At the same time, he/she should avoid exposing the defendant to unnecessary publicity or assumptions of guilt by the general public.

V. Recommendations

Whereas:

there is no universally accepted definition of corruption, the CCPE considers that the best reference for defining the term "corruption" can be drawn from the Council of Europe Criminal Law Convention on Corruption (ETS173) as it has been applied by GRECO. It means that "corruption" is a concept that contains or addresses a variety of criminal offences, such as active and passive bribery in the public and private sectors and trading in influence;

in a significant number of cases, corruption offences are neatly entwined with other – often secretive – phenomena of economic and financial crime, such as fraud, tax fraud, money laundering, embezzlement, etc. Consequently, the effective fight against

²⁸ The CCPE refers to its findings in previous Opinions, and especially in Opinion No. 10 (2015) on the role of prosecutors in criminal investigations. In addition, as already mentioned in para 36 of the present Opinion, the disproportionate restriction of fundamental rights and freedoms should be avoided by establishing clear limits and criteria for the application of a given investigation tool.

corruption should involve dealing with other related economic and financial crimes as well;

it is of utmost importance to use all proper legal, legislative and other tools for, first of all, prevention of corruption and related economic and financial crime;

in fact, the effective fight against corruption and related economic and financial crime, and the highly detrimental effect this kind of behaviour has on public trust, social stability and the economic well-being of a given country, and on the principles of justice and equality of all persons before the law, is not only a question of prosecuting the perpetrators, but mainly of preventing the occurrence of such offenses;

it is necessary that both society in general, and the prosecutors dealing with corruption and related criminal offences in particular, are fully aware of the extremely damaging character of such offences. Tolerance towards corruption should be continuously combatted;

the CCPE agreed on the following main recommendations:

1. Taking into account that prosecutors face a series of particular challenges when fighting corruption, consistent and systematic efforts should be undertaken by member States to establish an enabling environment for their work.
2. A political will should be clearly and consistently demonstrated and affirmed at the highest level for fighting corruption.
3. Member States should establish a robust constitutional and legislative framework allowing the prosecution to act as an independent/autonomous institution and in an effective, transparent and accountable way, free of any undue political or other external influence.
4. Domestic systems of recruiting, promoting/advancing and transferring prosecutors, as well as any disciplinary procedures, should offer the necessary guarantees and safeguards for independent, autonomous and transparent decision-making and be governed by transparent and objective criteria.
5. The necessary institutional, legal and operational framework and human, financial and technical resources should be provided for the prosecution services in order to ensure that even in the most complex corruption cases, final decisions are taken without undue delay and before the expiry of any relevant statutory limitation period.
6. Member States should provide the necessary budget to ensure that a sufficient number of competent prosecutors are recruited and efficient and properly trained support staff (clerks, etc.) and experts are assigned to the prosecution service, as well as that the necessary modern equipment and other means are made available.
7. Prosecutors and prosecution services should, in line with applicable laws and rules and with celerity, handle complex proceedings concerning the freezing, seizure, confiscation, recovery and return of criminal assets.
8. All necessary measures to ensure the impartiality, professionalism and specialisation of prosecutors (and other stakeholders, as appropriate) fighting corruption should be

undertaken. It is all the more important for such prosecutors to undergo regular in-service training.

9. Prosecutors, when they conduct or supervise the investigation, must have, subject to, where appropriate, judicial authorisation, effective access to all relevant sources of information, often stored in public or private databases, such as registers of property and interests or asset declarations, bank records and tax information.
10. Throughout the investigation and prosecution phase, prosecutors should thoroughly respect and protect the defendants' rights, notably by scrupulously respecting and applying the principles of necessity and proportionality, particularly when applying coercion and special investigation techniques.
11. In order to be able to work on complex cases of corruption, good case management by prosecutors is indispensable and it may take different forms, for example, the establishment of specialised teams of prosecutors and providing for the most expedient and effective flow of information within the prosecution service.
12. The CCPE underlines the importance of cooperation and coordination between prosecution services, on the one hand, and law enforcement agencies, customs, financial intelligence units, and tax fraud investigation services, supervisory institutions, etc. on the other.
13. Member States should have stringent rules in place on how to protect persons with insider knowledge about particular perpetrators and their criminal schemes. The potential whistleblowers often play a primordial role in the disclosure of corruption. Their identity and personal integrity should be protected in the event of disclosure of information.
14. In case of undue interference, appropriate protection should be provided to prosecutors and investigators involved in the proceedings and their families.
15. Since corruption is often of a cross-border nature, it is of utmost importance that efficient extradition and mutual legal assistance mechanisms allow for direct contact and cooperation between prosecution services of different member States, including information sharing with non-public actors, civil society and NGOs.
16. In order to ensure a widely harmonised approach to the fight against corruption, member States should ratify, where applicable, the most important international instruments for fighting corruption.