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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

**FRAMEWORK OVERALL ACTION PLAN
FOR THE WORK OF THE CCPE**

DRAFT

Secretariat Memorandum
prepared by
the Directorate General of Legal Affairs

A. INTRODUCTION

1. The Consultative Council of European Prosecutors (CCPE), a consultative body to the Committee of Ministers of the Council of Europe, was created by decision of the Ministers' Deputies on 13 July 2005, with the intention to institutionalise the yearly Conference of Prosecutors General of Europe (CPGE). The CPGE was launched in Strasbourg on the occasion of the finalisation of the Recommendation Rec (2000)19 on the role of public prosecution in the criminal justice system and has met every year until 2006.
2. Through the institutionalisation of the previous informal forum of the CPGE, the Committee of Ministers as well as its European Committee on Crime Problems (CDPC), recognises the importance of closely involving Public Prosecution services of its member States in its work aimed at the development of common policies and legal instruments related to their functioning and professional activities.
3. The CCPE, composed of high level prosecutors of all member States, has been given the following terms of reference (the full text of the specific terms of reference is set out in Appendix 1):
 - a. to prepare a framework overall action plan for the work of the CCPE to be approved by the European Committee on Crime Problems (CDPC) and the Committee of Ministers;
 - b. to prepare opinions for the attention of the CDPC on difficulties concerning the implementation of Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system;
 - c. following a specific request from the Committee of Ministers, the CDPC or any other Council of Europe body, to prepare opinions concerning issues related to the prosecution service;
 - d. to promote the implementation of Recommendation Rec(2000)19, in particular by the organisation of conferences on topics of common concern to the profession;
 - e. to collect information about the functioning of prosecution services in Europe.
4. On the basis of the above terms of reference, Recommendation Rec (2000)19 on the role of public prosecution in the criminal justice system, the conclusions of the previous CPGE sessions and the proposals made by the Co-ordinating Bureau of the CPGE during its meeting on 7-8 November 2005, a preliminary draft framework overall action plan is proposed for discussion and comments by the Bureau of the CDPC, during its meeting in January 2006. The comments by the Bureau of the CDPC were considered by the Bureau of the CPGE who have reviewed the draft framework overall action plan in light of these comments before its consideration by the CDPC during its plenary meeting on 3-6 April 2006. The present, consolidated draft framework overall action plan, which includes the amendments proposed by the CDPC, will consequently be examined and then approved by the CCPE during its first meeting on 6 July 2006.
5. According to the procedure resulting from the specific terms of reference of the CCPE, the draft framework overall action plan adopted by the CCPE, will need to be approved by the CDPC (which is planned to be done through the written consultation procedure) and by the Committee of Ministers in order to become effective.

B. OBJECTIVE

6. The objective of the overall framework action plan for the work of the CCPE is to provide this body with a non-exhaustive and dynamic list of possible action areas.

C. FRAMEWORK OVERALL ACTION PLAN

7. The implementation and the promotion of Recommendation Rec (2000)19 on the role of public prosecution in the criminal justice system constitute the heart of the specific terms of reference of the CCPE. The proposed action plan therefore adopts the structure and incorporates the contents of the Recommendation. However, since the terms of reference do not limit the work of the CCPE to the contents of Recommendation

Rec (2000)19, the action plan also encompasses areas which are not covered by the Recommendation but are nevertheless closely linked to the tasks and functions of prosecution services in Europe.

I. Functions of the public prosecutor

8. The functions of the public prosecutors in Europe vary considerably due to differences in their status and role in the justice systems of Council of Europe member states. Although some functions, such as those concerning criminal prosecution, are common to prosecutors in all member States, other functions, including those outside the criminal sector are not found in all legal systems. The following possible functions of public prosecutors could be addressed, either by undertaking a study on or an enquiry into their exercise (powers and limits in law and practice) in Council of Europe member States, or by the drafting of an opinion (e.g. on the need to elaborate guidelines or standards on their exercise):
 - a. Functions in the criminal justice system with regard to
 - i. decision-making regarding the initiation, continuation or discontinuation of prosecution or regarding alternatives to prosecution (e.g. mediation):
 - a) advantages and disadvantages of discretionary powers of this decision making;
 - b) implementation of crime policy priorities;
 - ii. the conduct of prosecutions before the court and the conduct of appeals;
 - iii. the conduct and co-ordination of criminal investigations;
 - iv. the supervision of the execution of court decisions in penal matters;
 - v. the protection of witnesses in danger;
 - vi. the protection of/ assistance to victims;
 - vii. juvenile delinquents, juvenile victims and witnesses;
 - viii. prisoners /persons deprived of their liberty;
 - b. Functions, including court procedures, outside the criminal sector related to, inter alia:
 - i. civil law,
 - ii. family law,
 - iii. labour law,
 - iv. commercial law,
 - v. social law,
 - vi. public law (including administrative and constitutional law),
 - c. and also, functions related to:
 - i. the administration and management of the justice system;
 - ii. advisory functions to the judiciary, executive and legislative powers;
 - iii. communication with the general public and the media.

II. Safeguards provided to public prosecutors for carrying out their functions

9. The CCPE could also undertake an assessment of the safeguards provided to public prosecutors in member States for carrying out their functions in accordance with the principles contained in Recommendation (2000)19. These safeguards concerning their functioning, their status and professional career include the adequacy and effectiveness of measures to guarantee:
 - i. that public prosecutors are able to fulfil their professional duties under adequate legal and organisational conditions, including by ensuring sufficient budgetary means;
 - ii. fair and impartial procedures for recruitment, promotion and transfer of public prosecutors;
 - iii. that the careers, promotions and mobility of public prosecutors are governed by known and objective criteria;

- iv. reasonable conditions of service such as remuneration, tenure, pension, age of retirement and that these conditions are governed by law;
- v. that disciplinary proceedings against public prosecutors are governed by law and guarantee a fair and objective evaluation and decision, subject to independent and impartial review;
- vi. that public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal if their legal status is affected;
- vii. that public prosecutors, together with their families are physically protected by the authorities when their personal safety is threatened;
- viii. that public prosecutors have an effective right to freedom of expression, belief, association and assembly under the conditions mentioned in §6 of Recommendation (2000)19;
- ix. that public prosecutors receive appropriate and sufficient training both before and after their appointment;
- x. the development of specialisation to respond to different forms of criminality, in particular organised crime, trafficking in human beings, terrorism, corruption, cybercrime, counterfeiting, domestic violence, sexual exploitation of children and money laundering, and the recourse to teams of specialists, including multi-disciplinary teams to assist public prosecutors in carrying out their functions;
- xi. that the assignment of cases meet the requirements of impartiality and independence and take due account of the level of legal qualification and specialisation required for each case;
- xii. that individual public prosecutors can request that instructions addressed to him or her be put in writing and that he or she be provided with an adequate internal procedure against instructions which he or she believes to be either illegal or running against his or her conscience.

III. Relationship between public prosecutors and the executive and legislative powers

10. Prosecution services in European States represent widespread differences with respect to their institutional relationship with the executive and legislative powers. While in some legal systems the public prosecutor enjoys complete independence from parliament and government, in others he or she is subordinate to one or another while still enjoying some degree of scope for independent action. Although possibilities for harmonisation on this issue seemed premature, at least when Recommendation (2000)19 was adopted, current internal reforms in various member States of the Council of Europe might justify a need to assess the effective implementation of the safety nets enshrined in the Recommendation to avoid possible weaknesses of both models.
11. The principles and safety nets contained in Recommendation (2000)19 aim to guarantee, in all systems, the fundamental principle of the separation of powers between the legislative, the executive and the judiciary while ensuring, on the one hand, a sufficient level of operational autonomy of public prosecutors to perform their duties without unjustified interference and, on the other hand, a sufficient level of democratic accountability for the activities of the prosecution services and liability for individual shortcomings at disciplinary, administrative, civil and criminal levels.
12. In the above context, the following issues might be addressed:
 - a. In all systems:
 - i. capacity of public prosecutors to perform their duties without unjustified interference or obstruction, including their duty to prosecute public officials for offences committed by them;
 - ii. accountability of the prosecution service for its activities as a whole;
 - iii. personal liability of public prosecutors (civil, penal or other).
 - b. In systems where the public prosecution is part of or subordinate to the government:
 - i. nature and scope of the powers of the government as established by law;
 - ii. the exercise of these powers, in particular with regard to instructions;
 - iii. consultation of public prosecutors with regard to instructions;
 - iv. possibility for public prosecutors to submit to the court any legal argument of their choice, even when they are under a duty to reflect in writing the instructions received.

- c. In systems where the public prosecution is independent of the government:
 - i. nature and scope of the independence of the public prosecution as established by law;
 - ii. working relationship between the public prosecution service and government agencies and other institutions.

IV. Relationship between public prosecutors and court judges

13. Although prosecutors and judges are part of the same legal system, there can be no equivalence between the two professions and appropriate measures should be taken so as to fully ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no doubt about the independence and impartiality of court judges. An assessment of measures taken to this effect could be conducted, including the following aspects:
 - a. the guarantee that a person cannot at the same time perform duties as a public prosecutor and as a judge;
 - b. the strict respect by public prosecutors of the independence and impartiality of court judges, in particular by refraining from casting doubts on judicial decisions or from hindering their execution (save where exercising their right of appeal);
 - c. where judges are involved in criminal investigations (investigating judges), attention should be given to the functional co-operation of public prosecutors with these judges, within the respect of the latter's independence;
 - d. the need for public prosecutors to be fair, impartial and objective, in particular by providing the court with all relevant facts and legal arguments necessary for the fair administration of justice;
 - e. where public prosecutors are empowered to take measures which affect the fundamental rights and freedoms of individuals, these should be subject to judicial review.

V. Relationship between public prosecutors and the police¹

14. With regard to the institutional link between public prosecutors and the police a distinction is to be made between States in which the police service is independent of the public prosecution, and enjoys considerable discretion not only in the conduct of investigations but also often in deciding whether to prosecute, and those in which policing is supervised, or indeed directed, by the public prosecutor.
15. In countries where the police are placed under the authority of the public prosecutor, the following issues are to be considered:
 - a. instructions by the public prosecutor to the police with a view to an adequate implementation of crime policy priorities, including in particular:
 - i. cases to be dealt with as a priority;
 - ii. means used to search for evidence;
 - iii. staff used;
 - iv. duration of investigation;
 - v. information to be given to the public prosecutor;
 - b. where different police agencies are available, allocation of individual cases to the agency that deems best suited to deal with it;
 - c. evaluations and control necessary to monitor compliance with the instructions of the public prosecutor and with the law;
 - d. sanctioning of violations.

¹ For the purpose of this action plan "police" comprises all law enforcement agencies or bodies involved in criminal investigation.

16. Where the police are independent of the public prosecution, attention should be given to the availability of effective and functional co-operation between the public prosecution and the police.
17. In general, the possible role of public prosecutors could be further considered in:
- a. scrutinising the lawfulness of police investigations before any decision to proceed with public prosecution can be taken;
 - b. monitoring the observance of human rights by the police.

VI. Duties of the public prosecutor towards individuals

18. As a corollary to the safeguards enjoyed by public prosecutors in the performance of their functions, these functions entail certain duties and responsibilities towards those who come into contact with the legal system, whether as suspects, witnesses or victims of crime or any other persons whose rights are violated. Public prosecutors should, as a main responsibility, ensure that they carry out their functions in a way that is fair, impartial and objective, respectful of human rights and as expeditious as possible.
19. The effective fulfilment of these duties by public prosecutors, and the obstacles encountered in fulfilling them should be considered, including in particular the following requirements:
- a. non-discrimination and equality before the law;
 - b. consideration of all circumstances of a case including those affecting a suspect;
 - c. no prosecution when charge seems unfounded;
 - d. no prosecution based on illegally obtained evidence;
 - e. safeguarding the principle of equality of arms, disclosure of information;
 - f. respecting the presumption of innocence, confidentiality of information;
 - g. taking account of the interests and the protection of the life, safety and privacy of witnesses and collaborators of justice;
 - h. taking account of the views and concerns of victims and providing them with appropriate information on their rights and the procedure;
 - i. taking adequate measures for the protection of the rights and interests of persons claiming that their rights or interests are violated.
20. Consideration should also be given to the requirements made to States to promote fair, consistent, impartial and efficient activity of public prosecutors in this respect, and in particular by:
- a. providing a possibility to victims and other interested parties of recognised or identifiable status to challenge decisions of the public prosecutor not to prosecute;
 - b. the development of national “codes of conduct” for public prosecutors²;
 - c. ensuring well designed hierarchical methods of organisation which do not lead to ineffective or obstructive bureaucratic structures;
 - d. defining general guidelines on the implementation of the crime policy, setting out priorities and means of pursuing them, and making them accessible to the public;
 - e. defining general criteria to guide decision-making in individual cases and making them accessible to the public;
 - f. ensuring an adequate control on the observance by public prosecutors of general criteria, instructions and general guidelines .

² During the 6th Conference of Prosecutors General of Europe held in Budapest, May 2005, the participants adopted “European Guidelines on ethics and conduct of prosecutors” (the “Budapest Guidelines”) which are largely inspired by the above principles.

VII. International co-operation

21. Given the important role played by the public prosecutor in international judicial co-operation in criminal matters and the growing importance of strengthening international co-operation in order to combat crime, consideration could be given to:
- a. ways to promote direct contacts between public prosecutors in the context of international judicial co-operation, within the framework of international agreements where they exist or on the basis of practical arrangements, e.g. by:
 - i. disseminating documentation;
 - ii. compiling a list of contacts and addresses giving the names of the relevant persons in the different prosecuting authorities, as well as their specialist fields, etc.;
 - iii. organising regular meetings between public prosecutors of different countries on questions regarding mutual assistance and shared crime issues;
 - iv. organising training and awareness-enhancing sessions;
 - v. introducing and developing the function of liaison law officers based in a foreign country;
 - vi. the conduct of joint investigation procedures.
 - b. ways to improve rationalisation and active co-ordination of mutual assistance procedures by promoting
 - i. the awareness of all public prosecutors of the need for active participation in international co-operation;
 - ii. the specialisation of some public prosecutors in the field of international co-operation;
 - iii. the possibility that the public prosecutor of the requesting state, where he or she is in charge of international co-operation, may address requests for mutual legal assistance directly to the authority of the requested state that is competent to carry out the requested action, and that the latter authority may return directly to him or her the evidence obtained;
 - c. ways to improve the role played by public prosecution services, including by the recourse to teams of specialists and multi-disciplinary teams, in strengthening international co-operation in the fight against specific forms of serious crime, such as:
 - i. organised crime;
 - ii. trafficking in human beings;
 - iii. terrorism;
 - iv. corruption;
 - v. cybercrime;
 - vi. counterfeiting;
 - vii. sexual exploitation of children; and
 - viii. money laundering.

D. IMPLEMENTATION

22. Priority issues to be addressed will be defined by the CCPE in consultation with the CDPC or will result from specific requests by the Committee of Ministers, the CDPC or any other Council of Europe body.
23. The action areas identified as a priority will be addressed, as appropriate, by the preparation of an opinion, a proposal to undertake a study or a proposal to elaborate draft legal instruments on certain aspects linked to the action plan.
24. The subjects might also lead to proposals to organise seminars or conferences on specific topics where large consultation or awareness raising is indicated.
25. Some suggestions for priority actions proposed by the Co-ordinating Bureau of the CPGE are appended to this framework overall action plan (Appendix II).

APPENDIX I

Specific terms of reference of the Consultative Council of European Prosecutors (CCPE)³

1. Name of Committee:

Consultative Council of European Prosecutors (CCPE)

2. Type of Committee:

Consultative body

3. Source of terms of reference:

Committee of Ministers

4. Terms of reference:

a. to prepare a framework overall action plan for the work of the CCPE to be approved by the European Committee on Crime Problems (CDPC) and the Committee of Ministers;

b. to prepare opinions for the attention of the CDPC on difficulties concerning the implementation of Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system;

c. following a specific request from the Committee of Ministers, the CDPC or any other Council of Europe body, to prepare opinions concerning issues related to the prosecution service;

d. to promote the implementation of Recommendation Rec(2000)19, in particular by the organisation of conferences on topics of common concern to the profession;

e. to collect information about the functioning of prosecution services in Europe.

5. Membership of the Committee:

a. All member states may be represented on the CCPE. Members should be chosen in contact, where such authorities exist, with the national authorities responsible for prosecutors and with the national administration responsible for managing the prosecution service, from among serving prosecutors having a thorough knowledge of questions relating to the functioning of the prosecution system combined with utmost personal integrity.

The travel and subsistence of members shall be at the expenses of their states.

b. The European Union may take part in the work of the CCPE, without the right to vote or defrayal of expenses.

c. The following Council of Europe observers may send a representative to meetings of the CCPE, without the right to vote or defrayal of expenses:

- Canada;

³ Adopted by the Committee of Ministers on 13 July 2005 during the 935th meeting of the Ministers' Deputies (CM/Del/Dec(2005)935, Item 10.2, Appendix 13)

- Holy See;
- Japan;
- Mexico;
- United States of America.

d. The following observers with the CCPE may attend the meetings of the CCPE, without the right to vote or defrayal of expenses:

- the International Association of Prosecutors;
- the Association “Magistrats européens pour la démocratie et les libertés” (MEDEL).

e. The CCPE may appoint one representative to attend meetings of the CDPC and one representative to attend meetings of the Consultative Council of European Judges (CCJE) and the CDPC and the CCJE may each appoint one representative to attend meetings of the CCPE. The Council of Europe will cover the travel and subsistence expenses of these representatives.

6. Structures and working methods:

The CCPE is an advisory body of the Committee of Ministers. The Consultative Council works in co-operation, in particular, with the CDPC and the CCJE and also, depending on the subjects dealt with, other committees or bodies. The CCPE reports on its activities to the Committee of Ministers and to the CDPC and all texts for the Committee of Ministers will be forwarded through the CDPC to ensure proper coordination and consistency on matters relating to criminal justice policy.

In order to discharge its terms of reference, the CCPE will be assisted by a Bureau of eleven members appointed by the CCPE. The Bureau shall provide assistance as requested by the CCPE and to this end, the Bureau may seek the advice of external experts and have recourse to studies by consultants.

The travel and subsistence expenses of the Bureau members will be paid by the Council of Europe.

7. Duration:

These terms of reference expire on 31 December 2006 and may be renewed.

APPENDIX II**CCPE PRIORITY ACTIONS PROPOSED BY
THE CO-ORDINATING BUREAU OF THE CPGE**

1. Study ways and means to improve international co-operation between public prosecutors in Europe, on the basis of articles 37-39 of Rec (2000) 19, and in co-operation with the Committee of Experts on the Operation of Conventions in the Penal Field (PC-OC) [Reference to Chapter VII]
2. Further to the preliminary study and conclusions of the Budapest Conference of Prosecutors General of Europe with regard to the public prosecutor's competencies outside the criminal field, undertake further inquiries on the subject in view of the preparation of an opinion [Reference to Chapter I]
3. In the light of the recent updating of the European Prison Rules, study the relationship between public prosecution services and prison administrations including the role of public prosecutors in ensuring the respect of human rights of persons deprived of their liberty. [Reference to Chapter I]
4. Taking into account the conclusions of the 2nd European conference of Judges, held in Cracow in April 2005, on "Justice and the media", the possibility of defining guidelines on the relationship between prosecution services and the media should be considered. [Reference to Chapter I]
5. With reference to Recommendation (2000) 19 (articles 8,9,11,36) and the conclusions of the Conference of Ministers of Justice (Helsinki 2005) on the issue of restorative justice, undertake a study on the contribution by the public prosecution service to the establishment of the criminal justice policy. In particular, inquiries should be made with regard to possibilities of developing discretionary powers to decide on alternatives to prosecution and measures of restorative justice. [Reference to Chapters I and III]
6. With reference to the Council of Europe's programme of action "Children and violence", undertake a study on the public prosecutor's role with regard to children and juveniles, taking into account the work and conclusions of the CPGE in Bratislava on juvenile delinquency and to the various instruments of the Council of Europe of relevance to this issue. [Reference to Chapter I]
7. In co-operation with the European Commission for the efficiency of justice (CEPEJ), and with reference to the Recommendation Rec (2000)19 and other relevant instruments of the Council of Europe, the contribution of public prosecution services to improving the administration and management of justice should be examined. [Reference to Chapter I and IV]
8. Referring to Recommendation Rec (2000)19, and in particular art. 35, consider ways and means of promoting the "European Guidelines on ethics and conduct of prosecutors" (the "Budapest Guidelines"). [Reference to Chapter VI]
9. Follow the work and activities undertaken in the Council of Europe that are of relevance to the public prosecution services.