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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

**Questionnaire with a view of the preparation of Opinion No. 7 on the
management of the means of the prosecution services**

Replies from Portugal

Questionnaire with a view of the preparation of Opinion No. 7 on the management of the means of the prosecution services

SECTION I: Status of the prosecution services in the state administration

1. Please specify the status of the prosecutor and the prosecution service in your state. Is it an autonomous institution? If yes, how is this autonomy guaranteed?

- Functions and statute: In accordance with article 219 of the Constitution of the Portuguese Republic the Public Prosecution Service represents the State and safeguards the interests prescribed by law, takes part in the enforcement of the criminal policy as defined by the sovereign bodies, carries out the prosecution according to the principle of legality, and defends democratic legality. The Public Prosecution Service has its own statute, its autonomy being enshrined both in the Constitution and the law. The statute of the Public Prosecution Service was approved by Law No. 47/86, of 15 October, as republished by Law No. 60/98, of 27 August and amended by Laws No. 42/2005, of 29 August, No. 67/2007, of 31 December, No. 52/2008, of 28 August, No. 37/2009, of 20 July, No. 55-A/2010, of 31 December and No. 9/2011, of 12 April.
 - According to article 3 of this Statute it is especially incumbent on the Public Prosecution Service:
 - a) to represent the State, the Autonomous Regions, the local authorities, the persons lacking legal capacity, the persons having no permanent residence and those whose whereabouts are unknown;
 - b) to take part in the enforcement of criminal policy as defined by the organs of sovereignty;
 - c) to carry out the prosecution pursuant to the principle of legality;
 - d) to represent *ex-officio* the workers and their families in view of the defence of their social rights;
 - e) to defend the collective and diffuse interests in the cases falling within the law;
 - f) to safeguard the independence of the courts within its powers and to ensure that its jurisdictional duties are carried out pursuant to the Constitution and the laws applying thereto (these powers include a binding duty to appeal in cases covered by the Law on the Organisation, Operation and Procedure of the Constitutional Court);
 - g) to promote the enforcement of court decisions within its powers;
 - h) to direct the criminal investigation even in cases where it is carried out by other bodies;
 - i) to promote and implement crime prevention initiatives;

- j) to ensure that the legislation complies with the constitutional terms;
- l) to intervene in bankruptcy and insolvency proceedings, as well as in all other proceedings which are embodied of public interest;
- m) to perform consultative functions as laid down by this Law;
- n) to oversee the procedural activity of criminal police bodies;
- o) to lodge an appeal where a decision has been reached by way of agreement between the parties with the intent to defraud the law, or where such a decision has been rendered in clear violation of the law;
- p) to perform such other functions as may be conferred upon it by the law.

- **Autonomy:** In accordance with article 219 of the Constitution, the Public Prosecution Service has its own statute, its autonomy being enshrined both in the Constitution and the law. The agents of the Public Prosecution Service are accountable judicial officials, who form part of, and are subject to, a hierarchy, and who may not be transferred, suspended, retired or removed from office except in the cases provided for by law. The powers to appoint, assign, transfer and promote agents of the Public Prosecution Service, as well as to exercise discipline over them pertain to the High Council of the Public Prosecution Service. Prosecutors form a body parallel to the judges, and they are independent and autonomous from the latter. In accordance with article 220 of the Constitution of the Portuguese Republic the Prosecutor General's Office is the highest body of the Public Prosecution Service and has the composition and powers as laid down by law (see article 15 of the Statute of the Public Prosecution Service). The Prosecutor General's Office is presided over by the Prosecutor General, and it encompasses the High Council of the Public Prosecution Service, which includes members elected by the Assembly of the Republic and members elected by the public prosecutors from and among their peers. The Prosecutor General's Office, the supreme constitutional body of the Public Prosecution Service, consists of two distinct governance instruments of the Public Prosecution Service.

One, monocratic – the Prosecutor General for the Republic – who presides over it and is appointed for a term of six years by the President of the Republic, upon Government proposal.

The other, collegial – the High Council of the Public Prosecution Service – consists of five members elected by Parliament, two persons appointed by the Minister of Justice, seven members elected by the prosecutors of the different hierarchic rangs within the Public Prosecution Service and the four District Deputy Prosecutors General, being chaired by the Prosecutor General for the Republic

In accordance with article 2 of its Statute, the Public Prosecution Service is autonomous as regards the other bodies of the central, regional and local authorities, its autonomy being characterised by the compliance with criteria of legality and objectivity and by the exclusive submission of Public Prosecutors to the directives, orders and instructions set out in their own statute. Therefore the statute also sets out the possibility for Prosecutors to refuse to comply with hierarchic instructions which would violate their legal conscience, with the exception of those coming directly from the Prosecutor General for the Republic, which can only be refused on the grounds that they are contrary to the law.

In addition, instructions addressing specific proceedings must always be given in writing and the doctrine directives given by the Prosecutor General for the Republic must be published in the official Journal in order to meet concerns on public transparency and make those who issue them personally accountable therefor. Pursuant to article 15, the Prosecutor General's Office carries out its powers as regards the disciplinary and management matters through the High Council of the Public Prosecution Service, which is composed of:

- a) The Prosecutor General;
- b) The District Deputy Prosecutors General (4);
- c) A Deputy Prosecutor General elected from and among the Deputy Prosecutors General;
- d) Two District Prosecutors elected from and among the District Prosecutors;
- e) Four Deputy District Prosecutors elected from and among the Deputy District Prosecutors, one per each judicial district;
- f) Five members elected by the Assembly of the Republic;
- g) Two persons of recognised merit, designated by the Minister of Justice.

2. Does the ministry of justice or another authority govern the activity of the prosecution service? If so, how?

No. The Minister of Justice has a restricted sphere of intervention in that area. He may appoint two members for the High Council of the Public Prosecution Service under article 32 of the statute, on the one hand, and to attend meetings of the High Council of the Public Prosecution Service whenever he considers it to be appropriate, or where he intends to make a communication or clarify a specific matter. The intervention of the Minister of Justice in the Public Prosecution Service is therefore extremely limited.

Pursuant to its Statute, the Public Prosecution Service is autonomous towards the other bodies of the central, regional and local authorities.

Therefore, the Minister of Justice and the Government are unable to intervene in a criminal inquiry. However, in accordance with article 32 of the Statute, the Minister of Justice may attend meetings of the High Council of the Public Prosecution Service (HCPPS) whenever he considers it to be appropriate, or where he intends either to communicate information or clarify a specific matter, which occurs very rarely and only as part of the protocol. The Minister of Justice is also responsible, through the Prosecutor General for the Republic, for requesting information on the work carried out by the Public Prosecution Service, but has no directive powers in criminal matters or in matters related to the constitutional functions of this magistracy to represent the public interests as conferred on it, and in general in the safeguard of democratic legality. For purposes of its operation, the Public Prosecution Service is solely bound to criteria of legality and objectivity, being exclusively subject to the orders and instructions covered by law.

3. Which authority is responsible for the creation of prosecutor positions?

The Assembly of the Republic and/or the Government through the Minister of Justice are responsible therefor.

The Ministry of Justice is responsible for ensuring the training of prosecutors and other staff members, allowing them to fulfil specific functions in the area of justice.

The number of prosecutors assigned in the courts is set by the law. Nonetheless, those vacancies may only be filled after expenditure approval, i.e. after payment of expenditures resulting from fulfilment of the vacancy is secured, in particular when referring to salaries of prosecutors. In what concerns the first instance courts, such expenditure is undertaken by the *DGAJ*, which causes the filling of the vacancies for Prosecutors to be dependent on that body.

4. Please indicate if there is any connection between the prosecution service and the Ministry of Justice or another public authority in terms of financial and human resources, IT facilities etc. If so, please describe how this connection works.

The Public Prosecution activities are/may be limited by the Ministry of Justice in the sense that the budget allocated to the salaries of those public prosecutors (salaries, facilities, equipments, etc.) assigned in the first instance courts is managed by the *DGAJ* (a body operating under the Minister of Justice).

According to Order in Council No. 123/2011 (*Decreto-Lei nº 123/2011*), of 29 December, the Minister of Justice establishes the bridge between the Government and the courts, the Public Prosecution Service, the High Council for the Judiciary, the High Council for the Administrative and Fiscal Courts. The Ministry of Justice is responsible, in particular, for the management of human, financial and material resources, as well as for the justice IT systems, without detriment to the powers conferred on other administrative bodies and departments.

The *Instituto de Gestão Financeira e Equipamentos da Justiça, I.P* (Financial and Justice Equipment Management Institute, or *the IGFIJ, I.P*) is entrusted with the management of the Ministry of Justice financial resources, infrastructures and technology resources, as well as the management of the estate allocated to the area of justice. Furthermore this Institute is also responsible for the design, execution and evaluation of IT plans and drafts, in articulation with other services and bodies within the Ministry of Justice.

The *Centro de Estudos Judiciários* (Judicial Training Centre), which operates within the Ministry of Justice, is entrusted with the professional training of future judges and public prosecutors.

5. Is the prosecution service independent from other institutions when implementing and managing its own budget?

The funding of the national-wide Public Prosecution services is covered by the general revenue – the State General Budget.

The funding of the Public Prosecution services is covered solely by the State Budget. However, except for the Prosecutor General's Office, the budget management concerning these services is not incumbent on the Public Prosecution Service: management at first instance level is entrusted to the *DGAJ* (salaries), the *ITIJ* (IT equipment) and the *IGFIJ* (facilities); management of higher courts is mainly centered on the president of the concerned Court, who is no Prosecutor.

SECTION II: Financial rules and regulations of the prosecution service

6. Does the law governing the prosecution service include provisions on financial management and on the executive's obligation to provide it with the necessary infrastructure?

Yes. Order in Council No. 333/99, of 20 August, governs the structure, staff and assignment roles granted to the technical and administrative support services of the Prosecutor General's Office. It also determines that the support services budget shall cover the expenditure involving prosecutors and staff members carrying out duties at the Prosecutor General's Office, as well as other current and capital expenditure deemed necessary for the implementation of their functions. Moreover, Order in Council No. 333/99 provides for the State Budget and the Ministry of Justice budget to allocate sums intended to fund the Prosecutor General's Office's budget.

The Public Prosecution services operating by the first instance courts have no budget of their own. The expenditures derived therefrom are covered by funds from agencies integrated in the Ministry of Justice (*DGAJ*, *ITIJ*, *IGFIJ*), in particular in what concerns the salaries of prosecutors and staff members, equipments, consumables, facilities, etc.

In the case of higher courts these expenditures are covered by the budget of the concerned court, except for the salaries of prosecutors holding functions by the *STJ* (Supreme Court of Justice), the *STA* (Supreme Administrative Court), the Court of Audit and the Constitutional Court, which are covered by the budget of the Prosecutor General's Office.

7. Please describe how and when the budget of the prosecution service is managed (preparation, distribution of funds between the budget lines).

Similarly to the Judiciary budget, the Public Prosecution Service budget is part of the State General Budget approved by the Assembly of the Republic.

In compliance with the Government policy, the Prosecutor General's Office prepares and distributes the funds among the different budget lines, being also responsible for their execution.

The same applies to the other services in which prosecutors are assigned, such services being also responsible for the budget execution.

8. Is there a specific department within the prosecution service responsible for the management of resources?

No. In what concerns the Prosecutor General's Office (the *PGR*) such responsibility lies on the Technical and Administrative Services (the *SATA*).

The responsibility for the management of resources lies on the Courts of Appeal as regards the District Deputy Prosecutors General's Offices (the *PGD*).

Such responsibility is conferred on the Ministry of Justice in what concerns the Public Prosecution Service and the first instance courts.

9. Is there a national and/or centralised IT system for managing, monitoring and evaluating the budget of the prosecution services? Does this system include a mechanism for increasing the efficiency of the resource management?

Overall, the management, monitoring and evaluation of any budget integrated in the financial organisation of the Ministry of Justice – which also comprises the Public Prosecution Service – are centralised in the Ministry of Justice.

SECTION III: Resources of the prosecution service

10. Please specify the amount of budget of the prosecution service for 2008, 2009, 2010 and 2011 (€ equivalent), indicating the distribution between staff expenditure and other types of expenditure.

No aggregated elements are available allowing us to answer this question.

11. In your jurisdiction, what resources would you improve access to, and how would you do that (e.g. through partnership agreements, joint investigations, redistribution of resources etc.)?

Except for its highest body (the *PGR*), the financial resources of the Public Prosecution Service are managed by the Courts of Appeal and/or by departments under the responsibility of the Ministry of Justice.

12. Are the current or future budgets of the prosecution service affected by the 2009-2011 economic crisis?

As widely known, Portugal is currently undergoing external financial assistance, and budgets forcibly reflect this reality.

13. *What instruments are used to allocate resources needed for the good functioning of the prosecution service?*

The budgets are prepared based upon the experience and the know-how acquired from previous years, although they are zero-based budgets.

The various existing reports, in particular those on the activities and performance, are documents used in decision-making processes.

14. *Is there any connection between the budgets allocated to the prosecution service and to the judiciary or to law enforcement bodies?*

The budgets are prepared in compliance with the legislation in force.

Although the prosecution service and the judiciary are both magistracies, there is no information on whether the agency of the Ministry of Justice entrusted with the distribution of the funds establishes any "link" between them.

15. *Do human resources of the prosecution service depend on other institutions of the judiciary (e.g. Judicial Council, National Schools of Clerks)?*

The Public Prosecutors depend on the High Council of the Public Prosecution Service. For purposes of registrar tasks, the prosecutors are assisted by justice officers, who pertain to the Direction General for Justice Administration. The evaluation of merit and the disciplinary matters involving justice officers are entrusted to Council of the Justice Officers.

16. *In your jurisdiction, is there any mechanism of rapid reaction which could allow a quick redistribution of means (financial or human resources, logistics) between prosecution services, according to the needs of the system?*

Yes. Within the existing principles of legality, changes to the budget are allowed so that given budget lines of other bodies can be boosted..

As aforesaid, the management of services other than the Prosecutor General's Office that are financially responsible for the prosecutors and justice officers depend upon the said bodies.

17. *Does the General Prosecutor (or equivalent institution) have a specific budget for taking interim/temporary measures in situations when, within a certain prosecution service, human resources are insufficient?*

The Prosecutor General's Office has its own budget. Where possible and required the budget balance may be allocated in order to tackle the needs.

SECTION IV: Budget for investigations

18. *What steps are required in order to obtain direct access to the resources needed for investigations? Please assess the period of time that elapses between submitting a request for resources and the moment when they are actually obtained.*

The Public Prosecution Service budget is funded by the Ministry of Justice to a great extent. The steps have been taken through the proper bodies of the Ministry without problems so far.

This does not necessarily imply that no budgetary difficulties are felt. In fact those difficulties are sometimes tackled and overcome thanks to a direct communication with the decision-makers.

19. Have you ever faced the risk that special investigative techniques (e.g. communication interceptions, legal-genetic expertise, computer search) could not be applied in due time because of insufficient resources? Have insufficient resources in general affected the performance of criminal investigation in normal cases?

A significant effort has been made by the Public Prosecution Service with a view to ensure that investigations are not affected by insufficient budget resources. Nonetheless, consideration must always be paid to the fact that resources are scarce, budget limits must be met and that we are experiencing times of major constraint..

20. Is the resource management performed by the prosecution services during their investigations controlled? Please specify.

Yes. All bodies encompassed by the State General Budget must send monthly reports on their accounts to the Minister of Finance.

21. What is the resource management procedure when various agencies are involved in the investigation procedure (e.g. the police)?

In general terms each agency involved in the investigations bears the operational costs (e.g., salaries, transport, etc).

22. Is it possible for prosecutors to specialise in certain type of crimes? If so, what kind of effect it has had on the results of the prosecution service?

Yes, there are specialised sections within the prosecution departments.

23. Are there areas of investigation that have priority access to financial or material resources? If so, how and by whom is this priority established?

The priorities are defined and outlined when the annual budgets are drafted, although they may undergo adjustments throughout the year.

SECTION V: Description of the system of management by results

The Prosecutor General's Office annual report comprises all the Public Prosecution services, the respective findings being broadly expanded and assessed therein.

24. Do you have a system of management by results? (Please specify.) If yes, is there any problem with this system ?
25. What kind of objectives are set for the prosecution service, if such a system of objectives exists? Does your system use benchmarks of achieved results?
26. Which authority/authorities is/are competent to set these objectives?
27. What role does the prosecution service play in setting these objectives?
28. Are the objectives coordinated between all authorities of the criminal procedure? If such coordination exists, how does it influence the activities of the prosecution service?
29. Are there regulations in your system as regards the optimal workload within prosecution offices? if yes, is the allocation of resources correlated with the workload? Please provide examples.
30. Is the setting of objectives based on a negotiation system?
31. Who are parties of the negotiations?

SECTION VI: Follow-up of results and reporting

The follow-up and reporting of results are expanded on the Prosecutor General's Office annual report. The same applies to the inspection activities made by the inspection service (which is composed of 15 inspectors operating in the dependence of the HCPPS) to the Public Prosecution services.

32. Please indicate if there are any national strategies implemented in your state regarding the resources allocated to the judicial system, including the prosecution service. If so, in what areas were these strategies developed? Please comment on the results of these strategies.
33. Is the attainment of objectives followed up yearly? How?
34. Have any reforms been implemented during the last 5 years aimed at increasing the budget of justice?
35. Is the prosecution service included in the government strategies for enhancing the efficiency of public institutions (e.g. e-governance, external financial audit)?

36. How would you assess internal audit recommendations within the prosecution service?

37. Is the social impact of the prosecutors' activities evaluated? If yes, by whom?