



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Independence and Accountability of the Prosecution

ENCJ Report 2014-2016



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IMPORTANT NOTE: The data in this report has been compiled by the ENCJ and its members, and should only be used for proper purposes acknowledging the provenance of the data.

Introduction of the president of ENCJ

1. This report has been prepared by a sub-group comprising the representatives of five of those members of the ENCJ, which have a Council for both judges and prosecutors (Belgium, Bulgaria, France, Romania, and Italy), together with some interested observers.
2. When addressing the independence and accountability of prosecutors, it is important first to understand the function of the prosecutors in the country under consideration. These functions vary in significant ways in different systems. For example, in countries where the Council comprises both judges and prosecutors, prosecutors are generally treated in the same way as judges in many areas including, for example, in their appointment, evaluation and promotion, and in the allocation of cases.
3. The work of the sub-group was to consider which of the indicators determined by the ENCJ to be applicable to the independence and accountability of judges were also applicable to the independence and accountability of prosecutors. The sub-group concluded that the large majority of the indicators were capable of being read across from judges to prosecutors with minor changes of emphasis in some cases.
4. It was ultimately decided that the indicators for the independence and accountability of prosecutors developed by the sub-group in this section would be applied to the 5 participating Councils, members of ENCJ. Their implementation was carried out in the second phase (2015-2016). Moreover, bearing in mind the constitutional similarities between the positions of judges and prosecutors in the sub-group countries, it was expected that the results of the application of the indicators for prosecutors would closely track those for judges.
5. The sub-groups suggestions for further actions are contained in the “recommendations for future actions” sub-section below.

Geoffrey Vos, President of the ENCJ, 2015-2016

Overview

Rationale on the independence of judges and prosecutors

The independence of the Judiciary as a whole and the independence of judges and prosecutors play a critical role in strengthening the *Rule of Law*.

A legal system based on respect for the Rule of Law needs – besides the guarantees awarded to judges – strong, independent and impartial prosecutors willing to open an investigation and to prosecute suspected crimes and suspects, regardless of the status or the influence in society of the suspects. The authority that starts the application of the law in criminal justice, on behalf of the society and the public interest should enjoy a certain type of independence, similar to that of the judges.

In several Judiciaries, a strong and independent prosecution service has proven to be the appropriate measure for the fight against corruption and for strengthening the Rule of Law.

International documents underline that in every system the prosecutor is expected to act in a judicial manner and the qualities required of a prosecutor are similar to those of a judge.¹

Accordingly, ENCJ has acknowledged that the Judiciary in its broader meaning does not relate only to judges², but also to prosecutors, so when it comes to the independence of the Judiciary, the independence of prosecutors should also be taken into consideration³. Both are prerequisites of fair trial and the absence of any of them might endanger the process of delivering a rightful judicial decision.

Nevertheless, it was admitted that the independence of prosecutors is not of the same nature as the independence of judges and these differences are underlined throughout this report. In most of the cases, prosecutors are organized under a hierarchical system and their independence has to be put in accordance with their system.

Prosecution services may in some measure be determined by the state to prioritise the criminal policy of the state. That's why it may prove to be difficult to provide common standards for the independence of both judges and prosecutors. But there is a species of independence where prosecutors in all jurisdictions have much in common with judges, in relation to their decisions as to whether or not to prosecute any particular case. The independence of prosecutors should, in this sense, be guaranteed by legal provisions at a constitutional level or by laws.

In many of the European countries, the prosecutor is a part of the Judiciary *sensu lato*, but in each of the five countries⁴ represented in the ENCJ working subgroup, prosecutors are magistrates and enjoy

¹ Venice Commission CDL-AD(2010)040.

² "Independence and accountability are also crucial for prosecutors to fulfil their role in the legal system." ENCJ Rome report on the Independence and accountability of the Judiciary, 2013/2014, page 6.

³ Also see the Opinion no 9 (2014) of the Consultative Council of European Prosecutors ([Rome Charter](#)), par. IV, "*The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary.*"

⁴ Belgium, Bulgaria, France, Italy and Romania.

a similar status to judges. In other countries, prosecutors may be a part of the executive or may have the same status as lawyers. Nevertheless, in each and every system, the act of prosecution should be independent and based only on the law. Any influence that may affect the independence of prosecution is likely to affect the entire trial, especially in the systems where the judge has a more passive role and the measures taken ex officio are limited. In these cases, the independence of the prosecutor is a guarantee to the independence of prosecution act and to a fair trial.

Prosecutors also share with judges the need for public accountability. Their independence is not a right that can exist without such accountability. The independence and integrity of public prosecutors are of legitimate interest to the general public and public scrutiny is justified.

Activities within the project

In 2013/2014, the ENCJ undertook a major project on independence and accountability of the Judiciary, establishing a project group with two main objectives:

- 1) to develop and evaluate indicators for the independence and accountability of EU judicial systems, EU judiciaries, and Councils for the Judiciary, and
- 2) to present an ENCJ vision of the independence and accountability of the Judiciary.

Accordingly, in the first year the project focused on the Courts (Judiciary in its narrow sense) and the report was presented to the General Assembly in Rome in June 2014⁵. Having in mind the conclusions of the report, the General Assembly established a sub-group to consider the application of indicators to the evaluation of the independence and accountability of prosecutors in member states where the Councils for the Judiciary are responsible for prosecutors as well as judges.

This objective was also included in the ENCJ Strategic Action Plan 2014-2018⁶, within the broader objective of promoting independent and accountable justice systems in EU and wider Europe.

Therefore, in 2014-2015, there was established a specific ENCJ subgroup formed by Councils for the Judiciary that include both judges and prosecutors other interested ENCJ members and observers.

The group on the independence of prosecution services carried out its activity through two years (2014/2016) and aimed at determining a framework and indicators for the independence and accountability of prosecution services (first year) and to implement these indicators to the five participating members (second year). The group also gathered information about the organization of the prosecution services throughout Europe, in the benefit of ENCJ.

In its activity, the subgroup tried to identify all relevant international and European documents that encompass **generally applicable standards** in relation to the independence and accountability of the

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http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adopted_version_sept_2014.pdf

⁶ http://www.encj.eu/images/stories/pdf/other/encj_4_year_plan.pdf

prosecutors and transposed them in an analysis of the members and observers of the ENCJ (Appendix no 1).

The main findings were presented within the **framework** of the independence and accountability of prosecutors. The general conclusion was that the prosecutors should enjoy the necessary degree of independence in carrying out their duties, should be free from any external influence and should be autonomous in their decision-making.

The analysis of the independence of prosecutors followed the same standards as in the case of the independence of judges, having in mind the fact that the role and functions of prosecutors differ from those of judges and, for that reason, the concepts of independence and accountability are somewhat different as between prosecutors and judges.

Based on the framework of the independence prosecutors, the subgroup has drafted a set of **indicators** that are applicable in the Judiciaries where the prosecutors are represented within the Council for the Judiciary.

With a view on the specific organisation of the prosecution offices, within the objective independence, there was established the distinction between *external* and *internal* independence. **In relation to the external independence of prosecution offices**, the following indicators were developed: (1) legal basis of independence, (2) organizational autonomy of prosecution services, (3) funding of prosecution services (4) management of the prosecution services. **The external independence of individual prosecutors** concern: (1) appointment in top positions and human resource decisions, (2) stability in office, (3) procedures that are in place in the event of a threat to individual prosecutors. **Internal independence** concerns (1) the organisation of the prosecution hierarchical structure; (2) the decision on the merits of a case; (3) general instructions on investigation; (4) freedom of decision to uphold or withdraw the accusation.

The indicators of the **subjective independence of prosecution services and the individual prosecutors** fall into the following categories: (1) independence as perceived by citizens in general; (2) trust in prosecution services; (3) prosecutors' corruption as perceived by citizens in general; (4) independence as perceived by prosecutors themselves.

The indicators of the **accountability of prosecution services** fall in the following categories: (1) allocation of cases, (2) complaints against prosecutors and prosecution services in general, (3) periodic reporting by prosecution services, (4) relations between the press and prosecution services, and (5) external review of prosecution services. The indicators of the **objective accountability of individual prosecutors** are: (1) applicable codes of judicial ethics, (2) the processes relating to the withdrawal and recusal of an individual prosecutor, (3) whether prosecutors are allowed to undertake external activities, and the disclosure of such activities and interests, and (4) the degree to which legal proceedings are readily accessible and understandable. Subjective accountability is not pursued in this report due to lack of data.

The subgroup followed the consistency of the indicators for judges in relation to prosecutors and to developed new indicators where needed.

Having established these indicators for the independence and accountability of prosecutors, the subgroup has assessed the implementation of these indicators in the countries that have judicial councils representing the judges and the prosecutors. The subgroup has only considered systems where prosecutors were represented within the ENCJ members.⁷

Similarly to the activity of assessment carried out by ENCJ for judges, the project team has made use of the indicators and has made an overview of their implementation.

Accordingly, the project team has developed a questionnaire (Appendix 2) and a scoring scheme (Appendix 3) and has evaluated how the indicators of independence and accountability of prosecutors are reflected in the five prosecution services (Belgium, Bulgaria, France, Italy and Romania). The representatives from Germany have also joined the activities of the subgroup.

The project did not try to make a ranking of the prosecution services, but to make an assessment of the indicators in the five prosecution services using comparative indicators.

In the last part, the project team has gathered information on the organisation of the prosecution offices in the EU countries and ENCJ observer, based on the information offered by the representatives of the prosecution services (contact persons who answered a specific questionnaire) and on other information available.

This part of the project did not try to make a deep assessment of every prosecution service, but only try to offer an overall image on their organisation, information that may be used by ENCJ and by its members and observers in their future cooperation.

Following its activity, the subgroup recommends to the ENCJ to publish the findings of this report and to consider establishing contacts with other national Councils for Prosecutors, CCPE and IAP in order to share their experience on the findings of this report.

⁷ It considered that at a later stage it will be useful to establish contacts with other councils for prosecutors of EU members (e.g. Spain, Portugal, Lithuania, Croatia) and to consider the involvement of the Consultative Council of European Prosecutors (CCPE), International Association of Prosecutors (IAP), Network of General Prosecutors.

I. Introduction: Methodology and Goal of the Project

The objectives of the subgroup on the independence and accountability of the prosecutors, as recommended in the 2013/2014 Report and adopted by the General Assembly in Rome were:

First, to develop, within the project on “Evaluation of the Independence and Accountability of the Judiciary” and in addition to the indicators that apply for judges, specific indicators for the independence and accountability of the prosecutors.

Second, the project aimed at presenting an ENCJ vision about independence and accountability of the prosecutors in relation to the Councils for the Judiciary, members of the ENCJ that represent both judges and the prosecutors.

The project subgroup was chaired by judge Mr Horatius Dumbrava and prosecutor Mr Flavian Popa of the Superior Council of Magistracy of Romania. The subgroup was composed of representatives of the five Councils for the Judiciary where judges and prosecutors are represented (Belgium, Bulgaria, France, Italy and Romania) and benefited from the participation of the representatives of members or observers from England and Wales, Germany and Spain. Several debates were held within the plenary meetings of the working group on the Independence and Accountability of the Judiciary.

The subgroup met on the following occasions:

First year:

11 April 2014: Coordinator meeting The Hague, The Netherlands

1-2 December 2014: Project Group meeting Brussels, Belgium

12-13 February 2015: Project Group meeting Bucharest, Romania

9-10 April 2015: Project Group meeting Lisbon, Portugal

Second year:

24-25 September 2015: Project Group meeting Paris, France

3-4 December 2015: Project Group meeting Brussels, Belgium

7-8 March 2016: Project Group meeting Brussels, Belgium

11-12 April 2016: Project Group meeting Barcelona, Spain

II. European and International Standards on the Independence and Accountability of Prosecutors

Following the same pattern as for the judges, the sub group has attempted to identify all relevant documentation in the field of independence and accountability of the prosecutors. The Appendix contains a summary of the existing material in this matter. The documents are mentioned in their chronological order.

The existing material have formed the basis of the Framework that is contained in Chapter 3.

III. Framework of the Independence and Accountability of the Prosecutors

A. Introduction

1. In simple language, a prosecutor is someone who, representing the society, initiates legal proceedings against a person. A prosecutor may also undertake some form of judicial activity, depending on the specific attributes of individual legal systems.
2. The statutory background to the prosecution service and the functions, powers and methods of organisation of prosecutors differ considerably across Europe. In some civil law jurisdictions, prosecutors are civil servants who have special powers in the application of the law on behalf of the state. In many jurisdictions, prosecutors belong to the same body of civil servants as the judges or magistrates. In common law jurisdictions, prosecutors are entirely separate from the judiciary, and they operate much as any other represented party would operate before the courts. For this reason, it is difficult to achieve an entirely accurate general definition of a 'prosecutor' that is applicable to every national system.
3. It is generally accepted, however, that prosecutors are public authorities whose object is to protect the public interest, to ensure the application of the law where its violation attracts a criminal sanction⁸. Prosecutors must also take into account respect for human rights and procedural guarantees. It is also generally accepted that prosecutors should defend the general interests of the society even against members of the executive or the legislature (for example, if they are involved in organised crime or other criminal actions). Prosecutors thereby play a critical role in strengthening the Rule of Law.
4. The role and functions of prosecutors differ from those of the judges. For that reason, the concepts of independence and accountability may be considered somewhat different as between prosecutors and judges.
5. There is a species of independence where prosecutors in all jurisdictions have much in common with judges. That is the independence of prosecutors where they are to decide whether or not prosecute any particular case. The independence of prosecutors should, in this sense, be guaranteed by legal provisions at a constitutional level or by laws which can be adopted or modified by a qualified majority of the Parliament.
6. The central difference, in terms of independence, is that Prosecution offices can in some measure be required by the state in order to put in practice public policies: for example, an elected democratic legislature or even the executive can legitimately ask the prosecution service to prioritise the prosecution of one type of criminal activity over another. The judges' decision, on the other hand, can in no sense be controlled by the state.

⁸ The Strasbourg Court held that "prosecutors are civil servants whose task it is to contribute to the proper administration of justice. In this respect they form part of the judicial machinery in the broader sense of this term". (ECHR, *Lešnik v. Slovakia*, § 54, 11 March 2003, 35640/97, ECHR, *Błaja News sp. Z o.o. v. Poland*, § 60, 23 November 2013, ECHR *Chernysheva v. Russia*, 10 June 2004).

7. It is because of this difference that it may appear difficult to provide common standards for the independence of both judges and prosecutors.
8. Prosecutors also share with the judges the need for public accountability. Their independence is not a right that can exist without such accountability.
9. In several EU countries, the careers and responsibilities of prosecutors are governed by Councils for Prosecutors or Councils for Judiciary. In these cases, the Councils guarantee their independence and form the barrier between politicians on the one side and judges and prosecutors on the other.

B. Key components of the independence of prosecution services and of individual prosecutors

10. The separations of the state's powers and the right to a fair trial are inconceivable without the independence of judges. The argument is applicable also in case of prosecutors, but it is less visible, especially considering the variety of legal systems, from total separation to full integration in the executive power.
11. In order to achieve the independence of prosecutors, states require measures to allow prosecutors to carry out their main activity – namely to prosecute – protected from interference by the legislature, executive power or any other influence.

B.1 Objective independence

B.1.1 External independence of prosecution offices

12. For external independence we may identify several categories, depending on relations with other bodies: independence from politicians or other powers in state (legislative and executive); independence from judges; independence from investigative bodies;
13. The independence of prosecution can be safeguarded by the establishment of a **Council** for Prosecutors or a Council for Judiciary so as to allow prosecutors to be represented to and protected from other state's powers.⁹ Such councils must be representative of the professional body of prosecutors and must include members of civil society. It is recommended that the decisions on the career of prosecutors are always taken by a majority of prosecutors.¹⁰
14. In some states, there are Councils for Judges and Prosecutors. Some of these councils are split into two sections or chambers for judges and prosecutors respectively. The prosecutors elected in such councils should not have the right to decide on the career of judges and vice versa. Consequently, having a common council for judges and for prosecutors should not affect the

⁹ *Declaration of principles on prosecutors* – MEDEL, Naples, 2 March, 1996.

¹⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies). CCJE Opinion No.10 (2007) on the desirable functioning of judicial councils.

independence of either, contrary it has the capacity to strengthen the independence of both judges and prosecutors.

15. The appointment or election of the head of the prosecution service (Prosecutor General) should be based on objective criteria¹¹ of professional competence, leadership, integrity and experience. There should be no political interference, whether formal or informal.
16. The independence of prosecutors must be supported by the state. This entails the provision of the finance necessary to initiate and to carry out investigations, to prosecute offences in the courts and to properly carry out their other duties. This may also involve access to information, investigative tools, and support staff.
17. The management of the prosecution services is strictly related to its hierarchical structure. Any external influence from the executive may pose a risk for the independence.

B.1.2 External independence of prosecutors

18. The independence of the public prosecutors' career (recruitment, appointment, promotion, assessment, suspension, dismissal, civil and penal liability, disciplinary procedures, sanctions, rights, duties, interdictions, wages, pensions etc.) must be stipulated by law. These cannot be left to the discretion of the other state powers. In this respect, any other solution would generate (even if only subconsciously) a situation of (at least moral) dependence or indebtedness to authorities outside the judicial system.
19. The careers of prosecutors have to be governed by the same rules applicable to judges and be based on competence, merits, integrity and experience.
20. The independence of prosecutors must be protected by compliant recruitment procedures, the incompatibility of appointment with other public or private functions,¹² adequate and protected levels of remuneration, and protections in relation to removability and promotion, discipline and dismissal.¹³
21. In relation to recruitment, prosecutors must fulfil equivalent requirements for professional skills and training to the judges. The quality of personnel in prosecution services should ensure professional prosecution, able to assess the evidence in accordance with the law and to protect the defendant's rights and the rights of the victim and to enforce the Rule of Law.
22. The criteria for the recruitment of prosecutors should be established, transparent and open to public scrutiny. These criteria should favour the appointment of skilled, impartial and objective staff.
23. Clear, transparent and objective rules should also be in force for the appointment of prosecutors but also for the regular leading prosecutors apart from the Prosecutor General. If

¹¹ *The Judges' Charter in Europe* (1997) from the European Association of Judges.

¹² The Universal Charter of the Judge (1999) approved by the International Association of Judges - "Art.7. *Outside activity - The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge*".

¹³ Guidelines on the role of the public prosecutor adopted at the VIIIth congress of United Nations for prevention of the criminality and the treatment of perpetrators, Havana, Cuba 27 August – 7 September 1990.

any prosecutor is appointed because of their loyalty to the power of state, their decisions will obviously favour the state, regardless of the law or the evidence.

24. The independence and integrity of public prosecutors are of legitimate interest to the general public. They should be protected from attacks which are likely to prevent them carrying out their duties independently or which damage public confidence in them and in the office they hold.
25. Prosecutors act on behalf of society. Prosecutors must be able to initiate and conduct investigations not only against the citizens, but also against public authorities, members of Government and of governmental organizations. The right of prosecutors to prosecute these persons and especially in relation to corruption, abuse of power, embezzlement, violation of human rights¹⁴ and other serious offences must be guaranteed.
26. It is necessary to distinguish between the interests of society and the interests of the state. Conducting an independent prosecution is in the interests of society; it is not for the benefit of the executive or of other state organisations. Therefore, the independence of prosecutors must be seen also as a guarantee of the interests of citizens, though it manifests itself in a different way from the independence of judges.
27. Where specially authorised police officers have prerogatives during the investigation phase before trial, or even the right to conduct the prosecution, clear legal provisions should be in place so as to avoid interference with the authority of the prosecutors. In cases where the prosecutors coordinate or run an investigation carried out by the police, they will have the power to control its course. No police superior may take any step that will affect the investigation directly or indirectly without the prosecutor's authority.¹⁵
28. Prosecutors must be independent also from the media. Communication with the media should balance the need to ensure independent, impartial and transparent justice on the one hand, and the need to guarantee other fundamental rights, such as freedom of expression and freedom of the press on the other hand. Since many attacks on the independence of prosecutors are made in the media, legal remedies should be available in national law.
29. Prosecutors should also preserve their own independence from judges. But where judges and prosecutors have the same status in a particular state, it is recommended¹⁶ for the same person to perform successively the functions of public prosecutor and judge or vice versa under a clear and transparent procedure.

B.1.3 Internal independence

30. Generally, prosecutors operate within a hierarchical structure. Internal independence is dependent on the particular organisation of this structure in the state's prosecution service.

¹⁴ *The Universal Declaration of Human Rights* (1948) as adopted by the UN General Assembly.

¹⁵ *Declaration of principles on prosecutors* – MEDEL, Naples, 2 March 1996.

¹⁶ Opinion no 9, Consultative Council of European Prosecutors, [Rome Charter](#).

31. Within the hierarchical structure, the prosecutors attached to a particular case should be allowed to decide on the merits of the case, whether to proceed with charges, and the way in which the prosecution will be undertaken before the court.
32. Specific and general instructions on organisational matters issued by senior prosecutors to their juniors should be grounded in law and should be given in writing, wherever possible. A prosecutor who is given a controversial instruction should have the right (prescribed by the law) to appeal or should have access to an internal procedure to challenge the legality of the instruction.
33. Prosecutors should enjoy certain stability in their office similar to the irremovability of judges¹⁷. Being appointed for limited periods of time, with the discretion of an external body to renew the mandate may affect their independence. Therefore, tenure in office must be guaranteed until the retirement age.
34. A prosecutor should only be moved or transferred to a different office or region or may be seconded to another body only with their consent.¹⁸ Switching into another function without consent should be possible only under clear and transparent rules.
35. The state must also ensure that prosecutors are able to perform their duties without intimidation, harassment and unjustified exposure to civil, penal or other forms of liability.¹⁹
36. Prosecution services should be organised in such a way as to ensure procedural guarantees and decision-making based on the evidence and the law and on no other criteria. Prosecutors should, therefore, be able to withdraw any charges that turn out on the law and the evidence to be groundless, without any interference from their superiors. Furthermore, prosecutors should have the freedom to uphold in the courts any conclusion they may reach according to the law and to the facts.
37. In short, prosecution services must be autonomous and individual prosecutors must be independent.
38. The decision to start or to drop an investigation should be independent and based on the law and on the evidence. Likewise, the decision to prioritise resources on important cases should also be taken by prosecutors. But as we have said, the priorities in terms of types of offences can properly be influenced by legislation.
39. Public prosecutors must carry out their duties impartially and on the basis of law. These aspects are similar to the basis on which a judge acts within a trial. Prosecutors must not pursue a conviction whatever the circumstances and at all costs.

¹⁷ Several international documents may be applicable as an analogy, such as *UN Basic Principles on the Independence of the Judiciary*, adopted in 1985, *Recommendation No. R (94) 12* of the Committee of Ministers of the Council of Europe to Member States on the *independence, efficiency and role of judges*, and the *European Charter on the Statute for Judges (1998)*, *Opinion No 1 (2001) of the Consultative Council of European judges (CCJE)* for the attention of the Committee of Ministers of the Council of Europe on *Standards concerning the Independence of the Judiciary and the Irremovability of Judges* (adopted in Strasbourg, on 23 November 2001).

¹⁸ See also Opinion no 9, Consultative Council of European Prosecutors, [Rome Charter](#), par 68-71.

¹⁹ *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, adopted by the International Association of Prosecutors, 23 April 1999.

40. As already explained, it is legitimate for the executive to require a prosecution service to implement government policies contained in legislation or decided upon by the executive, but such influence must not bear upon any individual prosecuting decision. All such decisions must be made independently by the prosecutors themselves. Prosecutors must be free to give their own views to the court on the evidence and the law as they affect a particular case, without regard to the opinions of their superiors or of the Government.²⁰

B.2 Subjective independence of prosecutors

Other important aspects of independence

41. Prosecutors should not perform any other public or private functions which could affect the good faith performance of their duties.²¹ The remuneration of prosecutors must also be protected,²² in order to protect them from the risk of corruption.

C. Rationale of accountability

C.1 Accountability of prosecution services

42. Transparent rules of allocation of cases should be in force in order to ensure the impartiality and professionalism in the activity of prosecutors and to avoid any suspicions in allocation or reallocation of cases.

43. A complaint procedure against the decisions of the prosecutors should be available in front of the judge. However, the prosecutors should be able to perform their duties without intimidation, harassment and unjustified exposure to civil, penal or other forms of liability.

44. Public scrutiny of the administration of prosecution offices is crucial to society. Aspects such as efficiency, budgeting, volume of work and sufficient funding should be reflected in annual reports.

45. A Council of Prosecutors offers one further means of accountability, particularly if the Council includes members of civil society.²³

²⁰ *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, adopted by the International Association of Prosecutors, 23 April 1999., [Rome Charter](#), CCPE Opinion no 9, 2014, par. 5, 15, 17.

²¹ The Universal Charter of the Judge (1999) approved by the International Association of Judges - “Art.7. *Outside activity - The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge*”.

²² Guidelines on the role of the public prosecutor adopted at the VIIIth congress of United Nations for prevention of the criminality and the treatment of perpetrators, Havana, Cuba 27 August – 7 September 1990.

²³ *Declaration of principles on prosecutors* – MEDEL, Naples, 2 March 1996.

46. The relation with the press is important in a democratic society. Explanation of high profile prosecution decisions to the media may meet the need of the society to feel that justice has been served.

C.2 Accountability of prosecutors

47. Prosecutors act on behalf of the society, and must be responsible to it.

48. Public interest and public attention has recently turned to prosecution services in many states. Their activities must be transparent, although legislation may properly restrict the publication of their investigations and the materials they create.²⁴

49. The rules on accountability of prosecutors and their procedures should be public and established by law.

50. A code of ethics can strengthen public confidence and promote a better understanding of the role of the prosecutor in society.

51. Assessment of prosecutors can be undertaken individually, by reference to a particular case, or in relation to overall performance in a certain period of time.

52. The decision not to prosecute may be submitted to a judicial review.

53. Even where prosecutors are fiercely independent, measures to ensure their accountability must be in place. Public perception of their performance and the responsibility of prosecutors is very important, so as to provide the public with insight into their work.

²⁴ Conclusions of the Conferences of Prosecutors General of Europe (available on the website of Council of Europe - CCPE), para. 95.

IV. Indicators of the independence and accountability of prosecutors

List of the indicators:

A. The external indicators of the objective independence of the prosecution services fall into the following categories:

- 1) Legal basis of independence;
- 2) Organizational autonomy of the prosecution services in relation to external bodies;
- 3) Funding of the prosecution services;
- 4) Management of the prosecution services.

B. The external indicators of the independence of individual prosecutors concern:

- 5) Appointment in top positions and human resource decisions,
- 6) Procedures that are in place in the event of a threat to the independence of the individual prosecutors.

C. The internal independence concerns:

- 7) The organisation of the prosecution hierarchical structure;
- 8) Stability in office;
- 9) The decisions on the merits of the case;
- 10) General instructions on the investigation;
- 11) Freedom of decision to uphold or to withdraw the accusation;

D. The indicators of the subjective independence of the prosecution services and of the individual prosecutors fall into the following categories:

- 12) Independence as perceived by citizens in general;
- 13) Trust in prosecution services;
- 14) Prosecutors' corruption as perceived by citizens in general;
- 15) Independence as perceived by prosecutors themselves.

E. The indicators of the accountability of the prosecution services fall in the following categories:

- 1) Allocation of cases,
- 2) Complaints against prosecutors and prosecution services in general,
- 3) Periodic reporting by prosecution services,
- 4) Relations between the press and prosecution services,
- 5) External review of prosecution services.

F. The indicators of the objective accountability of the individual prosecutors are:

- 6) Applicable codes of judicial ethics,
- 7) The processes relating to the withdrawal and recusal of an individual prosecutor,

8) Whether prosecutors are allowed to undertake external activities, and the disclosure of such activities and interests, and

9) The degree to which legal proceedings are readily accessible and understandable.

As in the situation of the 2013/2014 Report on the independence and accountability of judges, subjective accountability of prosecutors is not pursued in this report due to lack of data.

A. The external indicators of the objective independence of the prosecution services

1. The legal basis for independence comprises a number of sub-indicators concerning the formal protections for independence that are in place as follows:

- Formal guarantees of the independence of the prosecutors;
- Formal assurances that prosecutors are bound only by the law;
- Formal methods for the determination of prosecutors' salaries;
- Formal involvement of prosecutors in the development of legal and judicial reform and in criminal policy of the state.

Formal guarantees of independence

This is a common sub-indicator for judges and prosecutors and it measures the degree to which the independence of prosecutors is formally safeguarded. The independence of prosecutors – which is essential for the rule of law – must be guaranteed by law, at the highest possible level, in a manner similar to that of judges and it should not be easily affected by the decisions of the executive or by a simple act of the legislature. Therefore, a guarantee in the constitution or in the state's equivalent provisions reflects the strongest protection.

Formal assurances that prosecutors are bound only by the law

The indicator is similar to the indicator applicable to the judges, having however its own specificities. Accordingly, the prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference. This indicator measures whether prosecutors are explicitly bound only by the law and thereby prevented from responding to political, media and other external pressures, considering also the variety of legal systems, where prosecutors are either totally separated or fully integrated with executive power. Again, the strongest protection is a constitutional safeguard.

Formal methods for the determination and adjusting the prosecutors' salaries

The same principles should be applied to prosecutors as to judges in relation to salaries. The independence of prosecutors can be undermined if the executive is not bound by formal controls relating to fixing these salaries and if it may use punitive salary cuts.

Arbitrary executive control of salaries may pose the same risks as for the judges and exposes prosecutors to the risk of inappropriate pressures and corruption. Formal protection for prosecutors' salaries is, therefore, of great importance.

A formal mechanism to adjust salaries for both judges and prosecutors may be in force in some Judiciaries, whilst in other, different systems may function. In both situations, it should be kept the pace with the average development of salaries in the country and/or with inflation and should not be arbitrarily determined, making formal protections ineffective.

Formal involvement of prosecutors in the development of legal and judicial reform and in criminal policy of the state

This indicator measures whether prosecutors have the possibility to be heard in the law making process in relation to their powers and to propose law reforms. Any reform of the law that may weaken the status of prosecutor may represent a threat to independence.

A specific requirement would be the need to advise upon the developments in relation to the criminal policy of the state. The executive imposing certain general measure without the consultation of the prosecution services may also be a threat.

The strongest protection is a formal guarantee that prosecutors are entitled to be involved in the law reforms in relation to their activity or the criminal justice system and in drafting the criminal policy of the state.

2. Organisational autonomy of prosecution services

The organizational autonomy of prosecution services may be different from that of the judges, because in many cases, as a tradition, the hierarchical structure of this body may be under a certain authority of the executive. In many countries such authority may be only in theory, without being used under any form by the executive.

In any case, some decisions should be transparent and without any external influences and should be taken by the Prosecutor General or by an independent self-governing body that operates autonomously. In this matter, ENCJ has concluded that for the judges, the Council for the Judiciary is the preferred way to govern its own affairs in a transparent matter. The same may be applicable for prosecutors. Nevertheless, if such a Council exists, some of the powers may be divided between the Council and the Prosecutor General.

As for the five participating countries, there have been established Councils for Judiciary that represent both judges and prosecutors. In some other countries, in a more or less similar pattern, there were established councils only for prosecutors. Their composition and powers may differ (see Chapter VI). From this perspective, ENCJ may be interested in establishing a dialogue with them on the independence of the prosecution services.

A third situation may exist and this may relate to countries where there are no councils with any powers over the prosecutors. In this case, the Prosecutor General should enjoy certain autonomy in relation to other state powers.

The indicator looks into the assessing the external organisational of prosecutor offices, be it protected by a Council for Judges and Prosecutors, a Council for Prosecutors or the Prosecutor General.

Either of these organisational forms with powers over the career of prosecutors will be considered as adequate if they offer some guarantees of independence.

Where there is established a Council for Prosecutors / for Judges and Prosecutors, following criteria will be considered:

- Formal position of the Council;
- Responsibilities of the Council.

Formal position of the Council for Prosecutors / for Judges and Prosecutors

Where there is a Council with powers over the career of prosecutors, the formal position of the Council must be considered. In case of the Councils for Judiciary, the criteria were detailed in the 2013/2014 Report. Its position can be described in the constitution or by an ordinary law. In case of the Councils for Prosecutors similar criteria may be followed.

Nevertheless, having a common Council for judges and for prosecutors may be considered as an advantage to the independence of both of categories.

Responsibilities in relation to the prosecutors

In the same manner as for the judges, this indicator captures the scope of the responsibilities of the Councils in relation to the prosecutors. The following key responsibilities are recommended as part of the functions of the Council:

- a) The appointment and promotion of prosecutors;
- b) The training of prosecutors;
- c) Prosecutors` discipline and ethics;
- d) Complaints against prosecutors;
- e) Defending the independence and good reputation of the prosecutors.

Some of the following functions are acceptable to be shared with the Prosecutor General or chief prosecutors at a regional level, such as:

- f) The performance management of prosecutors` offices;
- g) The administration of prosecutors` offices;
- h) The financing of prosecutors` offices;
- i) Proposing giving opinions on the legislation concerning prosecutors` offices, criminal justice or criminal policy.

Within the Councils, it is recommended that the decisions on the prosecutors should be taken by a majority of prosecutors or at least by a majority of judges and prosecutors.

The categories of decisions which are in the competence of the Councils and respectively in the competence of the Prosecutor General should be clearly distinguished.

3. Funding of prosecution services

In many countries, the budget for the prosecution services is included in the overall budget of Judiciary (courts and prosecution offices)²⁵. In others, the budget of the prosecution services may be established and managed separately than that of the courts, or it may even be analysed together with other state authorities.

²⁵ E.g. Austria, Belgium, France, Greece or Luxembourg.

In any case, the funding of prosecutors` offices may face the same vulnerabilities as for the courts in terms of ensuring their independence. Accordingly, the following sub-indicators are applicable to both courts and prosecution offices:

- *The degree to which the budgets are sufficient* for prosecutors` offices to fulfil their responsibilities,
- *Budgetary arrangements* – the degree to which the prosecutors are involved in the determination of budgets, the way budgets are constructed and the degree of freedom in allocation of funds,
- *Funding system* – the transparency and the criteria used in order to establish the budget.

Sufficiency of actual budgets

Actual budgets of the prosecution offices need to be sufficient. The indicator deals with the sufficiency of budgets by distinguishing key activities that must receive adequate funding:

- a) handling of caseload;
- b) engaging experts, translators, legal aid etc. where necessary and when fees are paid by prosecution office;
- c) keeping the knowledge and skills of prosecutors and staff up to date;
- d) providing the technical infrastructure needed for investigation;
- e) facilitating prosecutors and other personnel in matters of IT systems, buildings etc.

Budgetary arrangements

The involvement of prosecution services in the budget process is determined by their role in the subsequent phases of this process. These phases are:

- a) preparation of the budget to be allocated to prosecutors` offices;
- b) method of proposal on the budget to be allocated to prosecutors` offices;
- c) adoption of the budget allocated to prosecutors` offices;
- d) management of the budget allocated to prosecutors` offices;
- e) evaluation/audit of the budget allocated to prosecutors` offices.

Funding system

The indicator describes similarly to the courts whether or not the funding of prosecution services is based upon transparent, objective criteria. Possibilities are among others: actual costs (e.g. number of prosecutors and support staff), the workload of prosecution offices and a fixed percentage of government expenditure or GDP.

The budgets should match the workload of prosecution offices and the actual costs must be covered. A system that is fixed by law offers more safeguards than a common practice.

The budgets must be transparent and respond to the needs of prosecutors' offices. Prosecutors should be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds in a transparent manner, in order to achieve the objectives of speedy and quality justice.

4. The management of the prosecutor services

The responsibility for prosecution services' management differs between countries. As a tradition prosecution services are organised in a hierarchical structure, but responsibilities in relation to the management of the prosecution office may differ widely. That's why this indicator may be considered, at most, similar to the corresponding indicator for the courts.

In several countries the management of the prosecution services' lays with the Minister of Justice. In others, the Minister of Justice may have only a general role of coordination and the management is carried out by the Prosecutor General, whilst less important decisions may be taken by the heads of prosecution offices. These former practices may pose a risk for the independence and the latter may represent a guarantee of independence. The more decisions taken by prosecution services themselves, the higher is the degree of independence.

This indicator describes whether or not prosecution services are in charge of the following tasks:

- a) General management of prosecution offices;
- b) Appointment of prosecution staff (other than prosecutors);
- c) Other human resource management decisions in relation to their own staff;
- d) Decisions regarding the implementation and use of IT;
- e) Decisions regarding prosecution services buildings;
- f) Decisions regarding prosecution services security;
- g) Access to specific investigation tools such as information needed for investigation.

B. The external indicators of the independence of individual prosecutors

5. Human resource decisions about prosecutors

Similar to judges, human resource decisions concerning selection and appointment, disciplinary processes and removal of prosecutors are an area of vulnerability for their independence. In these

areas, prosecutors are exposed to potentially improper interference by other state powers, including, for example, political appointments or dismissals of prosecutors.

The appointment and termination of service of prosecutors should be regulated by clear and understandable processes and procedures. Similar provisions to those for the judges are to be recommended. Considering that the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, salaries, discipline and transfer, it is necessary to secure proper tenure and appropriate arrangements for promotion, discipline and dismissal.²⁶

Human resource decisions about prosecutors comprise a number of sub-indicators as follows:

- Selection, appointment and dismissal of the Prosecutor General;
- Selection, appointment and dismissal of prosecutors and ordinary leading positions in prosecution services;
- Evaluation, promotion, disciplinary measures and training of prosecutors.

Selection, appointment and dismissal of head of the prosecution service (Prosecutor General)

The decision on the appointment of the head of the prosecution service is of particular interest and may prove to be even more sensitive than in case of the judges. The hierarchical structure of the prosecution service may be exposed to a greater threat in relation to the influences in appointing the Prosecutor General, as from this position a certain authority may be exerted within all the prosecutors' body.

In a similar manner as for the judges (Chief Justice), if governments have some control over the appointment of Prosecutor General, it is important that the method of selection is such as to gain the confidence and respect of the public as well as of the members of the judicial or prosecutorial system and legal profession and avoid political backgrounds.

Selection, appointment and dismissal of prosecutors and ordinary leading positions in prosecution services

The sub-indicator measures the degree to which the appointments of prosecutors or ordinary leading positions in prosecution offices are decided without any external interference, under the responsibility of the Prosecutor General or other independent body. The following criteria are taken into account in relation to the responsible authority:

- a) Proposal of candidates for the appointment of prosecutors and ordinary leading positions;
- b) Decision on the appointment of a prosecutors and ordinary leading positions;

²⁶ [Rome Charter](#), par. 51, op no 12 / 2009, 4/ 2009, Bordeaux Declaration (CCJE and CCPE), par. 6.

- c) Proposal for the dismissal of a prosecutors and ordinary leading positions;
- d) Decision on the dismissal of a prosecutors and ordinary leading positions;

It has to be noted that the guidelines developed by ENCJ for the appointment of the members of the Judiciary are also applicable to the prosecutors²⁷.

The indicator establishes the degree to which these guidelines are adhered to in relation to prosecutors, in particular:

- a) The appointment process should be open to public scrutiny and fully and properly documented;
- b) The appointment process should be undertaken according to published criteria;
- c) The appointment should be based solely on merit;
- d) The appointment process should promote diversity, whilst avoiding discrimination;
- e) The appointment process should provide for an independent complaint procedure.

Evaluation, promotion, disciplinary measures and training of prosecutors

In a similar manner as for judges, this indicator measures the degree to which the prosecution services, the Prosecutor General or an independent body are responsible for the evaluation, promotion, disciplinary measures and training of prosecutors by evaluating separately the following decisions:

- a) Decision on the evaluation of a prosecutor;
- b) Evaluation of the performance management of prosecution services;
- c) Decision on the promotion of a prosecutor;
- d) Adoption of ethical standards;
- e) Application of ethical standards;
- f) Proposal for the appointment of a member of the disciplinary body for prosecutors;
- g) Decision on the appointment of a member of the disciplinary body for prosecutors;
- h) Proposal for a disciplinary decision regarding a prosecutor;
- i) Disciplinary decision regarding a prosecutor;

²⁷ Within this project, the members of the Project Team agreed to describe the main goal of the Project as “to identify indicators that can help evaluate the compliance of the respective judiciary systems with the standards already defined” and it was agreed that “mutual confidence in the judiciary of the various European countries will be increased by knowledge of the minimum standards applied by each country as regards (...) selection or appointment of judges and/or prosecutors (admission into the judiciary), judicial training (initial and continuing) and judicial ethics” and that “both the development of minimum standards and their evaluation will contribute to strengthen mutual confidence among European judiciaries”. (page 6 of the Report)

- j) Decision on the follow-up to a complaint against the prosecution services/ prosecutor;
- k) Decision on the program/content of training for prosecutors.

In line with ENCJ Guidelines²⁸, which may also be applicable to the prosecutors, where relevant, Member States should take measures to ensure that:

a) Any system for the recruitment, selection and appointment of prosecutors should be independent of political influence, fair in its selection procedures, open to all suitably candidates and transparent in terms of public scrutiny;

b) And any method of evaluating professional performance on basis of the quality of decisions should not interfere with the independence of the judiciary either as a whole or on an individual basis and should not check the legitimacy and validity of separate procedural decisions;

c) the procedures for the evaluation of professional performance of prosecutors, ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved. The Ministry of Justice as a body of the executive branch of power should not directly deal with the evaluation of professional performance of individual prosecutors as a unique body of evaluation, since it could pose a threat to judicial independence.

d) the careers of prosecutors, their professional evaluation, their promotions and their mobility are governed by transparent and objective criteria, such as competence and experience; recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria;

The indicator is the same with the one used for the judges and establishes the degree to which these guidelines are adhered to. In particular:

- a) The promotion process should be open to public scrutiny and fully and properly documented;
- b) The promotion process should be undertaken according to published criteria;
- c) The promotion of prosecutors must be based solely on merit;
- d) The promotion process should promote diversity, whilst avoiding discrimination;
- e) The promotion process should provide for an independent complaint procedure.

6. Procedures in case of threat to independence

²⁸ [Report](#) *Development of Minimum Judicial Standards II - Minimum Standards regarding recruitment, selection, appointment and promotion of members of the judiciary, 2012/2012* and the [Report](#) *Development of Minimal Judicial Standards III - Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary 2012/2013*.

Independence requires that prosecutors are adequately protected from threats, in order to carry out their main activity – namely to prosecute - removed from the interference of the legislature, executive power, media or any other influence.

We note the possible existence of three types of external threats: Political threats (legislative and executive), threats from *organised crime*, and threats from and pressure exerted by the media (prosecution initiated / extended following media pressures).

Procedures in case of threat to independence comprise two sub-indicators as follows:

a. Existence of formal procedures in case of threat to independence

This indicator captures whether a formal procedure exists when a prosecutor considers that their independence is threatened.

b. Adequacy of formal procedures in case of threat to independence

Key issues to evaluate the adequacy of the procedures are:

- a) Who can launch the procedure?
- b) Which authority has the power to react to the complaints?

C. Internal independence

Given the specific type of organisation of the prosecution offices, these indicators are considerably different from the indicators applied to the judges.

7. Organisation of the hierarchical structure

Within the prosecution services, as a rule, the organisation follows a model of hierarchical structure. This kind of organisation is considered a necessity in order to ensure the consistency and the effectiveness.

However, the relationships between the different layers of the hierarchy must be governed by clear unambiguous rules that establish the limits of the powers and responsibilities of each. Such rules should be published.

8. Stability in office

A major guarantee of the independence of individual prosecutors is their stability. A means of improperly influencing a prosecutor might be his/her transfer or secondment to another prosecutor's office or other body without consent. It should not be possible to transfer prosecutors without their

consent, except for disciplinary reasons in pre-established circumstances. Secondment without consent should be forbidden in any situation. Furthermore, switching of function should follow clear and transparent criteria.

Stability in office is an indicator which is applicable similarly to the indicator of irremovability (non-transferability) of judges. Accordingly, several similar sub-indicators are being considered.

Formal guarantees of stability of prosecutors

The formal protection of stability of prosecutors may vary from a jurisdiction to another. Introducing transfer, secondment or the possibility to switch functions against the will of a prosecutor represents a potential risk and should be balanced by safeguards provided by law. Therefore, this possibility should be governed by law and limited to exceptional circumstances, that may be similar to those applicable to judges, such as the strong need of the service (equalising workloads, etc.).

As transfer or suspension from office as disciplinary measures are generally accepted in cases of particular gravity and are solutions that serve the general interest under the form of accountability of prosecutors, this situations are excluded from the analysis.

The indicator captures whether or not stability is formally guaranteed and how easily these guarantees can be changed by the other state powers. The strongest protection is a guarantee in the Constitution or in an entrenched law. A guarantee in law that can be changed by simple majority offers weaker protection, whilst customary protection is even weaker.

Arrangements for the transfer of prosecutors without their consent

The indicator addresses the situation in which stability is not fully guaranteed. The indicator addresses the following questions:

- a) Are the decisions in relation to transfer/secondment/switch of offices taken within the prosecution service/the Council?
- b) Are they for short or long periods of time?
- c) What are their reasons?
- d) Are these reasons prescribed by law?
- f) If a prosecutor is transferred/seconded/switched, are equivalent conditions guaranteed (in terms of position, salary, etc.)?
- g) Can the prosecutor appeal?

9. Decisions on the merits of the case

Independence does not only mean independence from outside forces, but also internal independence. The prosecutor should be able to decide upon an accusation *independently on the basis of the law and the evidence and the merits of the case.*

Prosecutors should enjoy guarantees of non-interference from their hierarchical superiors. However, in some judicial systems, the superior may, according to the law, give some instructions in a case. In these situations, on one hand, all public prosecutors have the right to request that those instructions should be put in writing, so that the hierarchy assumes direct responsibility. Writing these instructions should be the exception in cases where there are divergent points of view and such a request should not affect the career of the prosecutor. On the other hand, the respective prosecutor should have the possibility, at his own request, to be replaced in order to allow the disputed instruction to be carried out²⁹.

10. General instructions on the investigation; use of guidelines

The prosecution service can develop non-binding guidelines for matters such as uniformity, consistency, timeliness and efficiency. Furthermore, general principles and criteria to be used by way of references may also be issued.

Similarly to the judges, such instructions should not be binding, but it can reasonably be demanded from prosecutors that they explain why they did not comply with a guideline. The influence of executive power on the acts of prosecutors should be limited to general indications concerning penal policy of the state. Giving orders or indications by the executive/legislative power to prosecutors for a specific result in a certain case is not acceptable.

From these perspectives, we can distinguish between several types of interventions, in particular:

- a) A guideline (advisory opinion of general application for all prosecution services/prosecutors);
- b) General binding orientations (e.g. in relation with the enforcement of the criminal policy);
- c) An advisory opinion of concrete application in a specific prosecutorial decision;
- d) An obligatory decision of concrete application to a specific prosecutorial decision;

The indicator focuses on the use of guidelines within the prosecution services. To evaluate these practices, the following issues are relevant:

- a) Do guidelines have broad coverage?
- b) Have the guidelines been developed by prosecutors?
- c) Are the guidelines binding?

The instructions issued by the superiors should be grounded in law and should be given in writing.

11. Freedom of decision to uphold or to withdraw charges

²⁹ Explanatory [Recommendation](#) no R(2000)19 on the role of the Public Prosecutor in Criminal Justice System, par. 10.

The prosecutors are free to bring in front of the judge their own views of the evidence and not the opinion of their superiors or of the Government. At the same time, the prosecutors should be independent from the legislative/executive powers and preserve their independence from judges, in relation to their function of accusation.

The indicator comprises a number of sub-categories:

- a) The possibility to decide whether to prosecute or not;
- b) The possibility to withdraw an accusation;
- c) The possibility to plead freely in front of the judge;
- d) the possibility that a prosecutor's decision can be overruled by a superior;
- e) the ground on which a decision can be overruled by a superior;
- f) The possibility to appeal the overruling decision.

D. Indicators on subjective independence of the prosecution services and of the individual prosecutors

Subjective independence reflects the perception of the independence of prosecutors within the society. The same sub-indicators are considered to be relevant as for the judges. Three relevant groups are distinguished: citizens in general, prosecution offices' users and prosecutors.

In addition, two other concepts are considered: trust that citizens place in prosecutors relative to their trust in the other state powers and perceived corruption within the prosecutors' offices.

12. Independence as perceived by citizens in general

Independence of prosecutors as perceived by citizens is not measured at the level of the European Union. A recommendation may be sent to the European Commission in order to include this benchmark in the next Flash Eurobarometer *Justice in Europe*. The interest may be related to citizen perception in relation to the independence of prosecutors when opening or closing an investigation.

Prosecutors should inform the public, through the media, about their activities and the results thereof in high profile cases. Such communication may respond to the need of the public to be informed where a general interest resides, but also it may demonstrate transparency and lack of any external hidden interest in the investigation. A possible result may be the increase of public trust.

13. Trust in Prosecution services

In most European countries surveys about the trust of citizens in their institutions are held on a regular basis. If such surveys usually include the judiciary, the prosecution service may be omitted.

The goal of such a survey would be to measure trust in prosecutors comparing with other public institutions, including the courts.

The sub-indicator encompasses a broader view than the previous sub-indicator.

14. Prosecutors' corruption as perceived by citizens in general

This indicator measures the perceived corruption in prosecution services. The indicator uses results of the latest European Commission reports with respect to corruption.

We note from the latest special Eurobarometer for EU Corruption Report³⁰ that European citizens think that corruption is widespread in the public prosecutor service (19%). Around a quarter of Europeans (26%) consider that there are enough successful prosecutions in their countries to deter people from corrupt practices. Comparing the results with those of trust in courts may offer interesting conclusions about the perception of the entire Judiciary.

Another interesting aspect may be in relation to the independence perceived by persons who get in contact with the prosecutors such as victims, defendants, lawyers or those that come in contact with the prosecution during their activity – investigation bodies, courts etc. By now, no such surveys have been carried out. In relation to corruption, another indicator may be suggested – the perception of the efforts of prosecution services in tackling corruption.

15. Subjective independence: independence as perceived by prosecutors

Independence as perceived by prosecutors comprises two sub-indicators:

- Availability of surveys among prosecutors; and
- Perceived independence by the prosecutors.

Availability of surveys among prosecutors

The indicator describes whether a survey among the prosecutors has recently been conducted (three years or less).

Judicial independence as perceived by prosecutors

The indicator is the percentage of prosecutors who feel themselves to be independent.

³⁰ Special [Eurobarometer](#) for EU Corruption Report published in February 2014.

Indicators of the accountability of the prosecutors

E. Indicators of the accountability of the prosecution services

1. Allocation of cases

The indicator is similar to that of the courts. The mechanism for the allocation and reallocation of cases should guarantee the independent and impartial as well as expert treatment of every case. There should be in force transparent rules for allocation of cases.³¹

Two sub-indicators are applicable. Allocation of cases comprises two sub-indicators as follows:

a. Existence of a transparent mechanism for the allocation of cases

The indicator describes whether or not a mechanism of allocation of cases has been established by the prosecution offices, and if it is transparent.

b. Content of the mechanism for the allocation of cases

The indicator is based on:

- 1) The method of allocating cases;
- 2) The official charged with allocating cases;
- 3) The supervision of the mechanism
- 4) If a prosecutor can be taken off a case without his consent.

2. Complaints procedure

Complaints against the decision not to prosecute a case are to be raised in front of a judge. However, accountability requires also the opportunity to raise founded complaints about other matters such as the treatment of a case by a prosecutor and the behaviour of prosecution services staff.

Nevertheless, the state shall ensure that prosecutors are able to perform their duties without intimidation, harassment and unjustified exposure to civil, penal or other forms of liability.

The complaints procedure comprises of a number of sub-indicators as follows:

- Availability of a complaints procedure;
- External participation in the complaints procedure;
- Scope of the complaints procedure;
- Appeal against a decision on a complaint;
- Number of complaints;
- Personal civil and criminal accountability of the prosecutor.

Availability of a complaint procedure

The indicator describes whether or not there is established a complaint procedure.

External participation in the complaints procedure

The indicators measures whether the procedure is carried out by the prosecution office or by an external body, independent from the prosecution office.

Scope of the complaints procedure

The indicator describes the scope of the procedure by enumerating the admissible grounds for complaints, such as the behaviour of the prosecutor, timeliness and administrative mistakes.

Appeal against a decision on a complaint

The indicator describes whether or not a decision on a complaint can be appealed and brought in front of the courts.

Personal civil and criminal accountability of the prosecutor

A system of personal civil or criminal accountability of a prosecutor may not be accepted if it is not clearly established by the law and applicable only in situations of bad faith or gross negligence.

3. Periodic reporting

To allow external scrutiny the prosecution services should provide periodical reports to the general public or before a representative body. The same as for the courts, the prosecution service should be submitted to public benchmarking with respect to their performance, for instance in the area of fighting certain crimes provided in the criminal policy of the state, spending of resources etc.

Periodic reporting about the prosecution services comprises three sub-indicators:

- Availability of annual reports about the functioning of the prosecution services;
- Scope of the annual reports;
- Benchmarking of the prosecution services.

Availability of annual reports about the functioning of the prosecution services

The indicator is whether or not the prosecution services publish annual reports on their activity.

Scope of the periodic reports

The indicator captures whether or not the report includes data about:

- The indicators of performance of the activity of prosecution offices
- in *how manner prosecution offices implement the results of these reports*
- Disciplinary measures, (successful) complaints.

Benchmarking of the prosecution services

The indicator is whether or not the prosecution services are periodically and publicly benchmarked with respect to their performance.

4. Information to the press and public ³²

In order to be open and transparent, the prosecution services should maintain an open dialogue with the media, explain their practices as well as their high profile decisions in individual cases, without adversely affecting victims' rights. The prosecution services should also have an educational role in explaining to the population the importance of prosecution services in society.

The relation with the press comprises two sub-indicators:

- Explanation of high profile prosecution decisions to the media and the parties;
- Availability of press guidelines;

Explanation of high profile prosecution decisions to the media

³² Consultative Council of European Prosecutors, [Opinion](#) no 8, par. 30-46.

As a rule, the criminal investigation is not open to the public. The strategy decided in a case, the name of the suspects, the administration of evidence and the decisions taken are not subject to public scrutiny.

However, in high profile cases, the interest of the society may require some information. In these situations, prosecution services officials (for example, communications officers or press prosecutors) should offer to the public certain information in order to guarantee a proper balance between the need to ensure an independent, impartial and transparent justice and the personal rights of the persons involved in the proceedings.

In order not to undermine the effectiveness of the investigation, the prosecution body should cooperate with the police (when they are involved in the investigation) in order to coordinate the information released to the press.

The indicator measures whether or not specific decisions of the prosecutors are explained in appropriate cases to the media.

Availability of press guidelines

The indicator measures whether the prosecution services have established guidelines that regulate what the press is allowed to report and by which medium.³³

5. External review

External review can take different forms, but in this case, only similar reviews as those applicable for the courts, such as external audit and inspection, are accepted.

External review can measure different aspects of performance, such as quality and efficiency, but also specific topics such as knowledge management. An external review for these purposes is one that is undertaken by persons outside the prosecution services. External reviews undertaken or commissioned by other state powers may compromise independence and are undesirable.

Summoning individual prosecutors to give explanations on how the investigation is carried out, especially where dealing with cases of corruption within other powers, is not acceptable.

External review comprises three sub-indicators:

- Use of external review;
- Types of external review;
- Responsibility for external review.

Use of external review

This indicator measures whether or not external review is used to evaluate the performance of the prosecution services on a regular basis.

Types of external review

This indicator addresses the different types of external review, as mentioned above. These types differ in scope and impact:

- Visitation;
- Audit committee;
- Other.

Responsibility for external review

³³ Consultative Council of European Prosecutors, [Opinion](#) no 8.

The indicator relates to the identity of those commissioning an external review of the prosecution services:

- The prosecution services itself;
- The Executive;
- The Legislature.

The preferred option is for the prosecution services itself to commission external reviews, as the other options may conflict with independence. In any case, the conclusions should be published.

F. Objective accountability of the prosecutor

6. Code of ethics

In many countries the standards of conduct of prosecutors are similar to those of the judges. In others they may differ. However, the society can expect from its prosecutors to follow a set of ethical principles.

A code of ethics can strengthen public confidence and promote a better understanding of the role of the prosecutor in society.

The indicator has two components: *existence* of a code of ethics and its *availability*.

7. Withdrawal and recusal of a prosecutor

The prosecutor is required to instrument a case entrusted to him independently and impartially. If this is not possible, he should voluntarily withdraw from the case. Also, there should be a transparent procedure for recusal in case parties doubt the impartiality of a prosecutor.

Withdrawal and recusal comprise a number of sub-indicators:

- Voluntary withdrawal;
- Breach of an obligation to withdraw;
- Request for recusal;
- The authority determining the question of recusal;
- Appeal against a decision for recusal.

Voluntary withdrawal

This indicator measures whether or not a prosecutor is obliged to withdraw from solving a case if he/she himself/herself believes that his impartiality is in question or compromised or that there is a reasonable perception of bias.

Breach of an obligation to withdraw

This indicator addresses whether a prosecutor who fails to respect the obligation to withdraw from solving a case, can be subject to a sanction, and, if so, the severity of the sanction.

Request for recusal

This indicator measures whether or not a procedure exists to decide on a request for recusal by a party who considers that a prosecutor is partial or biased.

Deciding authority

The issue here is which authority takes the decision on a request for recusal, in particular, the prosecution services, the Judiciary or the Executive. The latter option is, of course, problematic from the perspective of judicial independence.

Appeal against a decision on a request for recusal

This indicator measures whether or not an appeal lies from a decision to refuse to recuse.

8. Are prosecutors allowed to undertake external activities, and do they disclose such activities and interests?³⁴

In most of the countries, these policies are similar to those applicable to the judges. They may differ among the nations of Europe on whether judges are allowed to combine being a prosecutor with other paid and unpaid functions and offices. Whilst paid and unpaid functions may endanger independence, they may also allow prosecutors to become more in touch with society. The best approach is, therefore, unclear. From the perspective of accountability it is important that, when prosecutors are allowed to hold other offices or perform other functions, they do so transparently. This is also necessary for the effective use of the right to request recusal. It is noted that in some countries the privacy of judges is a reason not to disclose information.

The question of whether prosecutors are allowed to undertake external activities and the disclosure of such activities and interests comprise a number of indicators as follows:

- Policy on paid offices and functions;
- Policy on unpaid functions;
- If paid or unpaid activities are allowed, the type of activities allowed;
- Availability of a public register of external activities and functions of prosecutors;
- Policy relating to disclosure of financial interests.

Policy on paid offices and functions

This indicator measures whether or not prosecutors are allowed to undertake other paid functions or offices.

Unpaid offices and functions

This indicator measures whether or not prosecutors are allowed to undertake unpaid offices and functions.

Permitted offices and functions

If offices and functions outside the prosecution services are allowed, the follow-up indicator seeks information about the nature of activities that are permitted. Categories are the following:

- Political functions;
- Functions in (the governance of) companies;
- Functions in (the governance of) public institutions such as schools and sports clubs;
- Arbitration;
- Lawyer;
- Teaching at universities or schools.

Public register of external offices and functions

This indicator seeks information as to existence of a public register of the external offices and functions undertaken by prosecutors.

Disclosure of financial interests

Another matter is whether prosecutors should disclose - in a register - their financial interests, above a certain amount. Opinions differ about this issue. The indicator measures the existence of such a financial disclosure obligation within a register and if the register is public.

9. Understandable procedures

³⁴ See also GRECO's 4th round of evaluation.

The prosecutor plays a key role in keeping procedures as transparent as possible and in explaining them to the parties. Understandable proceedings comprises of two sub-indicators:

- Explanation of procedures;
- Training of prosecutors.

Duty of prosecutors to make procedures intelligible to the parties

This indicator measures whether or not judges are obliged to make sure that parties understand the proceedings. The prosecution has to explain to the parties their procedural rights.³⁵

Training of prosecutors

The indicator captures whether prosecutors get training in how to:

- Conduct a criminal investigation appropriately;
- Explain the procedures in an understandable manner to the parties;
- Explain the decisions in an understandable manner to the parties.

³⁵ art. 11, [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

V. Implementation of the indicators of the independence and accountability of prosecutors

A. Introduction

The project team has assessed the implementation of these indicators in the countries that have Councils for Justice.

The method of implementation follows the same principles used with success by ENCJ in the assessment of the independence and accountability of judges. The project team has made use of the indicators for prosecutors and has made an overview of their implementation.

For this purpose, the project team has developed a questionnaire (Appendix 1) starting from the designed indicators and a scoring scheme (Appendix 2) and has evaluated how the indicators of independence and accountability of prosecutors are reflected in the prosecution services from various countries.

All five members of the ENCJ that have Councils for Justice have agreed to participate in this exercise (Belgium, Bulgaria, France, Italy and Romania) and the representatives from Germany have joined the activities of the subgroup. The group also took advantage of the participation of the president of ENCJ, Sir Justice Geoffrey Vos.

The project did not try to make a ranking of the prosecution services, but to make an assessment of the indicators in the five prosecution services using comparative indicators.

B. Measurement of the indicators of independence and accountability

The set of indicators for independence and accountability of the Prosecution services has been established by the project team and adopted within the Project on independence and accountability of the Judiciary by the ENCJ General Assembly in The Hague in June 2015.

The measurement of the indicators was tried out by five members of the ENCJ that represent within their councils both judges and prosecutors. The selected members were Belgium, Bulgaria, France, Italy and Romania. They filled in the questionnaire presented in Appendix 2.

The goals of the pilot were to establish: (1) whether there is a significant difference between the measured indicators for judges and the prosecutors, (2) whether meaningful lessons can be drawn from the indicators, and (4) what kind of conclusions can be reached about the state of independence and accountability of Prosecution services in Europe.

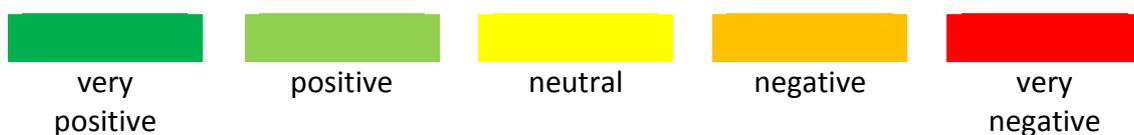
Having in mind the conclusion of the report on the indicators on independence and accountability of prosecutors, and that is that these indicators are very similar to the indicators on the independence and accountability of judges, the questionnaire was designed on a similar basis to that on independence and accountability of the judges implemented by ENCJ in 2014-2016. As a result, similar questions may be noticed and the subgroup decided in favour of using a similar scoring template.

However, there are other issues, relevant only to the prosecutors that were discussed and agreed within the subgroup.

As the indicators generally consist of several sub-indicators, the scores with respect to the sub-indicators had to be aggregated to arrive at scores for the indicators.

The arithmetical scoring rules that were used are provided in Appendix 2. These rules had been discussed within the project team. The results of the application of the scoring for each participating country is provided in Appendix 3.

The results of the pilot are given in the tables below. As these results have not been discussed in the subgroup, the main ENCJ project group or an expert group as has been the case for judges, they should be interpreted with caution. As in the previous ENCJ exercise, the scores are presented using five categories, ranging from very positive, positive, via neutral to negative and very negative. These broad categories are represented by colours, as follows:



Where

indicators could not be measured due to lack of data, as occurs frequently with respect to subjective independence (perceptions about independence in society and among clients and judges), fields are marked with red, as in many cases absence of data will reflect a lack of interest in these matters.

Table 1 Indicators about objective independence for five countries³⁶

	Belgium	Bulgaria	France	Italy	Romania
Legal basis of independence	Light Green	Light Green	Orange	Dark Green	Yellow
Council for Prosecutors	Light Green	Dark Green	Yellow	Light Green	Dark Green
Funding	Orange	Yellow	Yellow	Yellow	Yellow
Management of the Prosecution	Orange	Light Green	Dark Green	Orange	Dark Green
Human resource decisions	Light Green	Dark Green	Light Green	Dark Green	Dark Green
Stability in office	Orange	Yellow	Yellow	Dark Green	Dark Green
Hierarchical structure	Dark Green	Dark Green	Yellow	Light Green	Dark Green
Instruction on the investigation	Dark Green	Dark Green	Yellow	Dark Green	Yellow
Decision on the merits	Yellow	Light Green	Dark Green	Light Green	Yellow
Freedom to decide on the accusation	Dark Green	Dark Green	Dark Green	Dark Green	Dark Green
Procedures in case of threat to independence	Red	Light Green	Dark Green	Dark Green	Dark Green

³⁶ As regards funding and management, Belgium is since the 2014 Law on the introduction of autonomous management in a transition period. Because the implementation of the law will only be realized by 2018 the current legislative provisions were taken into account for evaluation.

Table 2 Indicators about subjective independence for five countries

Perceived by society	Green	Yellow	Light Green	Green	Yellow
Trust in the prosecution office	Yellow	Red	Red	Green	Green
Perceived corruption	Yellow	Yellow	Light Green	Yellow	Yellow
Perceived by users	Green	Red	Red	Red	Yellow
Percived by prosecutors	Green	Red	Red	Red	Red

Table 3 Indicators about objective accountability for five countries

Allocation of cases	Orange	Light Green	Yellow	Orange	Yellow
Complaints procedure	Light Green	Light Green	Green	Light Green	Light Green
Periodic reporting	Orange	Light Green	Green	Green	Light Green
Relations with the press	Light Green	Green	Green	Green	Green
External review	Light Green	Light Green	Orange	Orange	Light Green
Code of ethics	Green	Green	Green	Green	Green
Withdrawal and recusal	Green	Green	Light Green	Green	Light Green
Accessory functions	Orange	Orange	Orange	Yellow	Light Green
Understandable proceedings	Green	Orange	Green	Green	Yellow

The measurement of the indicators about objective independence and accountability by means of the questionnaire is an instrument already tested successfully by ENCJ in the previous years, in relation to judges. In addition to the previous exercises, no important comments were made on the methodology by the participants in the working subgroup in relation to the questionnaire.

The information on indicators of objective independence was easily available for respondents and, with respect to indicators on subjective independence, the measurement was easy in as far as these could be based on international sources. Where these were not, the availability of national surveys determined whether the indicators were measurable for the countries concerned. For instance, in France, Bulgaria and Italy, there are no national surveys available for the past three years containing information on the sub-indicators mentioned in the Table 2. On the one hand, this issue raises a possibility of a different interpretation of these indicators. The outcomes show a low score on subjective independence /many red fields/ but that does not necessarily mean a low level of perception, but mostly the lack of relevant data. On the other hand, the lack of such national surveys does not allow an assessment of whether the indicators are measurable for the countries concerned. This situation remains exactly the same when it comes to the interpretation of the sub-indicator “Trust in the prosecution offices”/Table 2/.

1. Introduction

The results emerging from the indicators, with reference to the five Councils involved in the working group, did not show significant differences relating to the diversity of cultural backgrounds and legal systems adopted.

It can be noticed, in general, that a high score as to objective independence does not correspond to a high score in subjective independence.

Furthermore, the presence of formal guarantees at the highest level is necessary for structuring a system that, regardless of the cultural and social context, assures the independence of the judiciary and formally supports the judicial and constitutional system. But those formal guarantees are not the only requirement necessary to ensure the substantial independence of the public prosecutor.

This also depends on additional factors such as, for example, those relating to the management of the funds necessary for the operation of the public prosecutor's offices and others offices, as will become clear.

In the different participating countries, there has been a constant attempt to achieve a higher level of independence and autonomy of the public prosecutor, which is an indispensable corollary to the independence of the whole judicial power.

2. Indication of the legal basis of the independence of public prosecutors

The provision in the Constitution and the Law of the general principle of independence of prosecutors uniformly characterizes the system of the five countries under comparison, in which there is a Council for Justice with the presence of representatives of the public prosecutor's office.

The mere provision at constitutional level is however not sufficient to ensure a full functional, organizational and investigative independence.

The regulatory system is entirely oriented to preserve the autonomy in the conduct of investigations and in the final decisions regarding the exercise of criminal action or the choice to dismiss criminal proceedings.

Full independence also requires the provision of an autonomy from the executive branch, primarily the Ministry of Justice, with reference to the organization of public prosecutor's offices and with regard to the investigative action plans.

Particularly in the five countries covered by this comparative analysis, although being possible to observe a good level of protection and guarantee of the independence of public prosecutors, significant differences in the methods of implementation in practice of independence in their respective legal systems can be highlighted.

For this reason the indicator relating to legal bases of independence recognises different levels of protection.

The not entirely positive values are probably related to the specific characteristics of individual systems, which emerge from the responses to the questionnaire precisely prepared in order to assess the level of effective protection of independence.

In some cases, an advisory role in relation to the reform the legal system of the prosecution or the investigation activities or in general on criminal law and on changes to the legal type of offences is not accorded to public prosecutors.

In order to guarantee the independence of public prosecutors, a dialogue is desirable between the executive, legislative and judiciary (including the prosecution service) when reforms are proposed that have a direct impact on the substantive criminal and procedural system, and on investigative powers.

The mandatory involvement of the Councils for Justice and of the representatives of the public prosecutor's offices within the Councils itself, with regard to legislative reform projects in substantive and procedural Criminal Law, should be favoured so that they can propose improvements or amendments to the reforms under way.

One case shows a negative value with reference to the objective independence and the legal framework of such independence. This data is not, however, indicative of the absence of protection of the independence of public prosecutors in that country, given that the constitutional and legal system contemplates expressly the independence of public prosecutors. The reason for that negative result in the first indicator is the difference between the status of judges and public prosecutors, since the latter do not enjoy a guarantee of irremovability.

The examples above mentioned lead to the conclusion that the simple and formal provision of the principle of independence in the constitutional and legal system of the five countries where the Council is present cannot ensure in practice the full and complete autonomy of public prosecutors.

It is therefore necessary that the legal system explicitly includes all the guarantees that are necessary corollaries of the value of independence, such as irremovability, the effective independence of the public prosecutor's office from the executive branch or the Minister of Justice, and the inclusion - at least at an advisory level - of the public prosecutor's offices in the legislative reform process in criminal and procedural matters.

3. Council for prosecutors

What links all the five States in which there is a Council for Justice is the presence of a particularly high level of independence, marked by a "positive" or "very positive" value of the indicator under analysis.

The presence of a Council for Justice, entrusted with relevant tasks in the protection and preservation of the independence of the public prosecutor's office, contributes to making concrete and effective the functional and organizational independence of the prosecutor's offices.

In all five countries considered, the Council for Justice - characterized by the presence of members of the public prosecutor's offices - is specifically recognized at constitutional and legal level.

Guaranteeing the independence of the office of the public prosecutor is made effective by the presence of a large number of representatives of the prosecutor's office, although not necessarily corresponding to half of all the Council members.

Furthermore, the protection of the independence of the public prosecutor's offices is assured by the attribution of almost exclusive responsibilities to the Councils for Justice in sensitive matters, such as appointment and promotion, evaluation and organization of public prosecutor's offices, without interference from other State powers, notably the executive branch.

In this regard, the presence of the Ministry of Justice as a permanent component of the Council for Justice produces a different level of objective independence of the prosecutor's office.

In countries characterized by the presence of the Council for Justice with representatives of prosecutor's offices, the role of the Prosecutor General is particularly important, especially in cases where the latter holds responsibility for coordination of the prosecutor's office at national level.

When, on the contrary, the role of the Prosecutor General is characterized by a strong hierarchical control of the activities and organization of public prosecutor's offices, the objective independence level fades in favour of a rigid pyramidal structure which can adversely affect the autonomy of prosecutor's offices.

In conclusion, it can be said that the degree of objective independence in the five States with a Council for Justice is higher when all the competences in matters of career advancement of individual prosecutors and organization of prosecutor's offices are assigned exclusively to the Council itself.

4. Funding, management, human resources and stability in the office

The independence of the public prosecutor's office is ensured in an appropriate manner in the five States with a Council for Justice through a system of funding of investigations corresponding to that of the Judge's office.

The provision in the budget of periodic (normally annual) economic facilities in favour of the prosecutor's office is almost always determined in accordance with objective rules and criteria.

The independent management of these funds by the prosecutor's office better guarantees and protects the independence of the investigative bodies, especially in order to facilitate the appointment of external consultants as auxiliary or for the adoption of innovative methods or investigative techniques, which require the use of technological tools (such as wiretapping devices or IT systems for the collection of data useful for investigations).

The limitation of funds by the executive branch can be a serious weak point in the effective autonomy of the investigative activities of the office of the public prosecutor, in particular in cases where the provision of financial and material resources management is assigned to the Minister of Justice.

This is especially the case of those States where the Council for Justice does not contribute to the determination of an annual budget of the Justice system sufficient to ensure fully effective investigation proceedings. The same happens when there are no remedies in the legal system for recourse or opposition to an unexpected limitation of funds.

The legal system should give to the Council the responsibility for determining and managing the funds necessary to perform the duties of the public prosecutor's offices. This guarantees the involvement of the investigators in the provision of adequate budgets, to ensure complete investigative action with the use of modern and innovative techniques and thereby a high quality of criminal investigations.

The above mentioned tools would make the action of public prosecutor's offices effective and efficient by means of advanced technologies, adequate to pursue and fight cyber-crimes and international terrorism.

In the five States the appointment, promotion and dismissal of public prosecutors are almost always strictly a matter for Councils for Justice, with some exceptions involving the attribution of those (concomitant or exclusive) powers to the Minister of Justice or to the Prosecutor General.

The degree of protection for the independence and autonomy of each public prosecutor is higher in those States where the Council has exclusive competence on appointments, promotion and removal of prosecutors. It is less so where the Minister of Justice or Attorney General has these responsibilities. This can be noticed especially in countries in which the Executive appoints the Prosecutor General. In these cases, there is a high risk that the autonomy and influence of individual prosecutors will be compromised.

A very positive profile that characterizes the legal systems of the five States with Council for Justice can be found in the selection, appointment and promotion of public prosecutors based on merit and professional skills acquired, rather than other reasons such as the influence of the executive branch or the hierarchy.

Procedures for the appointment, promotion and removal of prosecutors are not always characterized by a high degree of publicity and transparency. But where this exists, the regularity and correctness of these decisions are assured.

As for the permanence of the public prosecutor in the office, the highest degree of objective independence is guaranteed in countries where a Council for Justice is present and in which the public prosecutor cannot be dismissed without his/her consent (except in cases of disciplinary action for objective organizational reasons). Where there is an appeal process in respect of such dismissals before a judicial authority, the level of objective independence is higher.

Legal systems in which transfers without consent are outside the responsibility of the Councils for Justice, and where there is no guaranteed appeal, have the lowest level of independence.

5. Organization, general instructions, decisions, freedom, procedures in case of threat

In those States where a Council for Justice is present the public prosecutor's offices are hierarchically organized, and characterized by the fact that Chief Prosecutors is responsible for the organization for decisions in relation to criminal prosecutions.

The hierarchical structure of the office of public prosecutors is, however, mitigated by the provision of objective criteria for assigning prosecutors to specialized investigative teams and for assignment or withdrawal of cases.

The highest level of independence is observed in those States in which the Council for Justice exercises control over the assignment of criminal investigations by objective criteria.

The organizational power of the heads of prosecutor's offices is expressed through the adoption of operational or organizational guidelines, which do not always have a binding character.

In the five States with Councils for Justice the overall degree of independence of public prosecutors in dealing with the cases is high. That is mostly because the Chief Prosecutor is prevented from reviewing the decisions of the assigned prosecutor.

The single prosecutor always enjoys full freedom in promoting the prosecution or dismissing the case in compliance with the Law and based on the evidence gathered, without hierarchical interference or external conditioning.

For this reason, the degree of independence, marked by the green fields in Table 1, is very high in all States with a representation of public prosecutors in the Councils for Justice.

Finally, in these Councils, prosecutors are protected from threats to their independence by the adoption of formal decisions or through public press statements, in addition to ordinary criminal and civil remedies.

6. Subjective independence in general and perceived

It must be stressed that, although a general positive result in terms of objective independence can be observed, there are very negative scores as regards subjective independence.

In particular, while the indicator concerning the perceived independence from the citizens is in general positive, this is not the case with regard to the citizens' trust in the power of public prosecutor's offices (in three countries out of five the judgment is negative).

With regard to the issue of perceived corruption within the prosecution services, it should be noted that the available data underline, for all five countries under consideration, a low perception of corruption, which ranks between 14 and 24 percent. This data is in line with results of perceived corruption concerning judicial office-holders.

The data deteriorates further when perceived subjective independence is evaluated by parties involved in judicial proceedings or by legal practitioners. These parties and the public prosecutors themselves show a highly negative index, except in an isolated case.

It must be stated however that the negative figure is determined by the absence of direct questionnaires to ascertain the degree of independence perceived by parties and public prosecutors.

A questionnaire could be devised for the collection of data so far missing.

7. Indicators on strict liability

As regards the indicators relating to strict liability, it can be said that they are generally positive.

Some deficiencies are found, however, in the field of ancillary functions since there is neither specific legislation nor a record of these functions nor appropriate publicity.

The degree of independence relating to external influences from the press is, however, positive.

In all countries where a Council for Justice is present, guidelines are established with respect to relationships with the press. Information relating to an investigation is delivered by authorized persons.

The withdrawal of a prosecution is not always undertaken in such a way as to protect the independence of prosecutors, since the withdrawal is often left to the subjective assessment of the Heads of Offices.

Likewise, recusal is not regulated and does not ensure optimum standards in terms of protection of the perceived independence of each prosecutor.

The indicators show in some cases gaps in the external control of the performance of the prosecutor's offices.

The highest degree of independence is enjoyed in those States in which regular inspections are carried out by the Council for Justice. In other cases, the score is reduced either because the inspections are conducted by the executive, or because they lack inspection teams or regular external evaluation of the performance of the investigators.

Finally, the assignment of cases among public prosecutors working in the same office does not give an entirely positive result. This is not often governed by objective and predetermined criteria.

8. Potential lessons to be learned

The results of this work highlights the areas where it is necessary, in some countries, the introduction of improvements.

It should be noted that for each of the five members of the group there are different fields in which it appears necessary to pursue an improvement, although there are areas where the problems are common to all participants.

In general, however, it can be said that the list of the aspects that should be improved is relatively short, which in turn allows a focus on the efforts to improve independence.

It can be said, firstly, that the indicators relating to objective independence are generally positive. There are shortcomings related to the availability and management of the budget, as well as the management of the offices.

Moreover, there is sometimes no proper confirmation of the legal basis of the independence of public prosecutors and their Council.

9. Conclusions on the assessment

In all legal systems, prosecutors contribute to ensuring that the rule of law is guaranteed. They guarantee the fair, impartial and efficient administration of justice in all cases and degrees of proceedings within their competence. They also act on behalf of civil society and in the public interest with the aim of respecting and protecting human rights and freedoms, as they are provided for, in particular, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the jurisprudence of the European Court of Human Rights.

It is therefore necessary that the roles of prosecutors are defined at the highest legislative level and performed in strict observance of democratic values.

On the other hand, awareness of the independence and autonomy of the public prosecutor as an essential corollary to the independence of the judiciary, needs to be developed.

Against this backdrop, taking into account the results, the trend towards strengthening the independence and effective autonomy of public prosecutors in the areas in which are weaker should be encouraged.

It can be said that in the five countries that are members of the working group the status of objective independence and responsibility is generally recognized at a good level.

However, there is a need to implement some essential improvements.

Individual deficiencies, within a generally positive framework, will not necessarily lead to negative opinions as regards the independence of public prosecutors in a given legal system; nevertheless, it seems necessary that particular attention be paid to some of these inadequacies, in order to introduce significant improvements.

First of all, special attention should be paid to the perception of independence within the society, the parties involved and the prosecutors themselves.

Thus it is desirable that initiatives be taken to develop tools for detecting the views of all those involved in various capacities in the jurisdiction.

In relation to public confidence in the prosecutor's independence, prosecutors should refrain from activities inconsistent with the principle of impartiality. They should not deal with proceedings where they have personal interests, or where their relationships with the persons concerned could affect their impartiality.

Furthermore, when it comes to the shortcomings noticed in the field of the objective responsibility, since the organization of the prosecutor's offices is mainly based on a hierarchical structure, direct improvements appear to be necessary in order to define by clear, unambiguous and balanced rules the relationships between the various levels of the hierarchy. Improvements must be introduced and

promoted in the field of assignment and reassignment of the files, so that they take place according to the principles of impartiality.

Finally, taking into account the results, it seems necessary that improvements be realized in the field of economic independence as far as the budget and its management are concerned. Public prosecutors should be able to assess their needs, negotiate their own budget and decide how to use the funds allocated in a transparent manner, so as to achieve their goals quickly and competently.

The public prosecutor in charge of managing the resources should be allowed to make use of modern management methods in an effective and transparent manner, on the basis of an adequate and specific training.

VI. Information on the organisation of prosecution services

In this part, the project team has gathered information on the organisation of the prosecution offices in the EU countries and ENCJ observers and has made an overview on the prosecution services in the countries that have participated in this survey.

In order to obtain information on the organisation of the prosecution services, the subgroup, with the support of the representatives of the ENCJ members and the observers, have established contact persons at national level from the prosecution services who offered answers to a questionnaire on the general organisation of the prosecution services (Appendix 4).

The part of the project did not try to make a deep assessment of every prosecution service, but only try to offer an overall image on their organisation, information that may be used by ENCJ and by its members and observers in their future cooperation.

1. Definition of the prosecution service

When talking about the definition of the prosecution service there are certain aspects that have been taken into consideration by most European states. The notions of „protection of the public interest”, „ensuring the application of the law” set out by the ENCJ Report can be identified in various national legislations and despite of the fact that not all the states have established a legal definition of the prosecution service, by setting out the powers of the prosecutors, whose role is to conduct criminal prosecutions in order to protect the rule of law, crimes and their perpetrators are not being left unpunished.

In some countries, like **Albania, Croatia, Slovenia, Slovakia** and **Spain**, there are constitutional provisions that stipulate the role and the functions of public prosecutors and also the fact that the Prosecution Office is an independent body, with an autonomous positions among the other public

authorities in the state, any interferences from the outside being therefore prohibited. On the other hand, in **Denmark**, for instance, such independence does not exist, the role of the public prosecutor being defined as „together with the Police to pursue crime in accordance with the law”.

Protecting the public interest, raising and presenting indictments are some of the attributions of the prosecution service in every country, but there are also states, for example, **Bulgaria, Hungary, Slovenia, Portugal**, that give prosecutors a wider range of powers, that exceed criminal matters. However, these multiple competences are not given to prosecutors of every European country, in **Germany** the prosecution service having no authority outside criminal proceedings to protect the public interest.

A. Other authorities with similar powers/functions as the prosecutors

Most states do not allow other authorities engage in criminal proceedings, but in **Denmark** and **United Kingdom**, for instance, prosecution can also be conducted by the police or other prosecuting agencies, such as the Serious Fraud Office, Financial Conduct Authority, Service Prosecution Authority.

B. Prosecution service part of the Judiciary or not

Prosecution Service is part of the Judiciary in many European countries, the principles governing the career of judges and prosecutors being mostly the same. However, it must be underlined that being part of the Judiciary does not always imply the same rules for both judges and prosecutors, in **Austria**, for example, public prosecution offices are not independent, in **Germany, Croatia, Hungary** or **Spain**, in contrast to judges, we can talk about an hierarchical structure of the prosecution service, while in countries such **Slovenia** the appointment of judges and prosecutors belongs to different entities: the National Assembly on the proposal of the Judicial Council of the Republic of Slovenia and the Government of the Republic of Slovenia, on the proposal of the Minister of Justice.

Despite of the fact that most legislations stipulate the belonging of the prosecution service to the Judiciary, there are also states like **Albania, Denmark, United Kingdom** where the Judiciary and the prosecution do not interfere, being, therefore, independent from one another.

C. Basic principles of the activity of the prosecution

The guidelines for the activity of the prosecution can be summarised as it follows:

- Prosecutors conduct criminal proceedings pursuant to the Constitution and laws, as a result of their independence aforementioned.

- The activity is being carried out under the principles of legality, impartiality and, in most countries, hierarchic control. As provided in the ENCJ Report, prosecutors shall protect the public interest and ensure the compliance with the law.
- Although independent, in states with a hierarchical structure of the prosecution, such as **Romania, Portugal, Germany**, we can talk about a certain control of the decisions, the instructions of the highest prosecutor being compulsory for lower prosecutors.
- In the exercise of the criminal prosecution prosecutors shall act independently and in good faith, in order to discover the truth and to ensure the punishment of crimes perpetrators. They must also analyse all the facts so as to form a strong and objective opinion on the case.
- When enough evidence is provided, it is mandatory that crimes are investigated and charges against perpetrators of criminal offences are brought by the representatives of prosecution offices. In **United Kingdom**, for instance, in the process of decision-making, Crown Prosecutors must be sure that the evidence used in court is reliable and credible and also that the prosecution is beneficial for the public interest. The principle of mandatory prosecution is also applied in **Spain**, where the prosecutors must prosecute all crimes that come to their knowledge, cannot receive instructions not to prosecute and they are not empowered to drop prosecution or investigation.
- Stability is another principle governing prosecutors' activity, as the decisions regarding their career, such as promotions and transfers can only be made if their consent is given, **Romania** and **Austria** being some of the countries where this principle applies.

D. Organisation of the prosecution services and the hierarchical structure of the prosecution services

In countries where hierarchical structure of the prosecution services is established, the activity of prosecutors is organized and functions under the direction of a centralized structure.

For instance, in **Romania**, prosecutors appointed by the President of the state enjoy stability, and they carry out their activity according to the principles of legality, impartiality and hierarchical control, under the authority of the minister of justice. The Public Ministry is led by the General Prosecutor of the Prosecutor's Office by the High Court of Cassation and Justice; also, the prosecutor's offices are independent in relation with the courts, as well as with other public authorities.

E. Countries that have a Council for the Prosecutors

Despite of the fact that most legislations stipulate the independence of prosecutors and admit that prosecution is part of the Judiciary, not all the states have a Council for Prosecutors, the situation being as it follows:

Among the countries with such council we can find :

- **Albania**- it functions as an advisory body that helps the General Prosecutor
- **Hungary**- the council has attributions regarding prosecutors' career
- **Portugal**- The High Council of Prosecutors is an entity with a constitutional and a legal basis
- **Slovakia**- The Council of prosecutors is the leading body of self-government of prosecutors
- **Spain**-The Prosecution Council -composed of two kinds of members: ex-officio and elective members- is a body meant to help the Prosecutor General perform his tasks, but its decisions are not binding in such case

On the other hand, countries such **Austria, Denmark, Germany, United Kingdom** do not have a Council for Prosecutors, but there are representative bodies for them. For instance, in **Germany**, the elected bodies of prosecutors participate in their appointment and promotion, in **United Kingdom** there is a structure that shares information, best practice and creates useful networks.

There are also states which have a unique Council for both judges and prosecutors, **Romania** and **Italy** being some of the examples. In the Romanian system, The Superior Council of Magistracy is the guarantor of the independence of justice, with functions related, among others, to the career of judges and prosecutors, the disciplinary measures that may be applied to them.

F. The independence of the prosecution service from the executive brand

The independence of prosecutors can be analysed from both internal and external views. Firstly, the internal independence of a prosecutor refers to whether in the states with a hierarchical structure is it possible for higher ranked prosecutors from a higher prosecutor's office to deliver instructions to the lower ranked ones. As a result, it can be said that the limitation of the internal independence is the result of the hierarchy of the Prosecution Offices. In certain cases-**Italy, Romania, Bulgaria, Germany, Portugal**- the written motivated orders of the prosecutor higher in office are mandatory for the others, who must therefore comply with the official instructions of their superiors.. In **Germany**, for example, supervisory powers include the attribution to issue general and case-specific instructions, but these supervisory powers are limited in that prosecutors are bound by the principle of mandatory prosecution and by law and justice.

As referred to the external independence, this means that no authority or person outside the prosecution service is authorised to give guidelines or instructions to a prosecutor on the handling of

a concrete case, in the exercise of their competences the prosecutors being subject only to the Constitution and laws. Such provisions can be found in the **Albanian, Bulgarian, Croatian, Italian, Portuguese** legislations. In **Spain**, the Government may ask the Prosecutor General to introduce motions in court in order to promote and defend the public interest. Nonetheless, it is not legally bound to follow such instructions and the answer to that request will be given after consulting the Board of High Prosecutors. In the **UK**, The Crown Prosecution Service is also independent from Government, and in its activity the decisions are taken according to the law and without any political influence.

Although independent, in **Romania** the Minister of Justice, whenever considers necessary, on his own initiative or at the request of the Superior Council of Magistracy, shall exercise the control over the prosecutors, through prosecutors expressly designated by the General Prosecutor of the Prosecutor's Office by the High Court of Cassation and Justice or, as the case may be, by the chief prosecutor of the National Anti-Corruption Department, or by the Minister of Justice.

Nevertheless, there are also countries in which although public prosecutions offices are part of the Judiciary, they are not independent. Such is the situation in **Austria**, where instructions can be issued by a senior public prosecution office or by the Federal Minister of Justice.

G. Preparation of the budget, adoption, spending and control

There is no pattern of the management of the budget, the system varies from state to state, the rules concerning the preparation of the budget, adoption, spending and control being therefore applied differently to certain entities responsible for the financial activity.

The budget is managed and implemented according to the legal provisions, the executive usually having the attribution of drafting the annual budget proposal after analysing opinions and proposals from administrative heads of judicial system bodies. In states such **Albania, Hungary, Bulgaria**, the judiciary have an independent budget, a part being allocated solely to the Prosecution Service. Nevertheless, when an independent budgetary chapter in the central budget is allocated to the Prosecution Office, such being the case of **Hungary**, the Prosecutor General prepares the budgetary proposals. On the other hand, not all countries allocate prosecution offices their own budget, in **Spain**, for example, the budget of the Prosecution Service is integrated in that of the Ministry of Justice.

In states like **Austria** a part of the federal budget is allocated to the Supreme Court, which also includes the budget for the Procurator General's Office. The compliance with the budget of the Ministry of Justice is monitored by the Ministry of Finance. In **Italy**, the Ministry of Justice manages the funds, while in **Romania** the Prosecutor General is the main spending authority, the heads of the Prosecution offices by the Courts of appeal are secondary spending authorities and the heads of the prosecution offices by the Tribunals are third spending authorities. Legal, transparent and objective criteria are also met in other countries, in **Slovakia**, for instance, the Ministry of Finance analyses the formal budgetary proposals coming from the prosecution service.

H. Management of the prosecution offices

The key aspects of the management of the prosecution offices relate to the leadership, coordination, supervision of these offices and also to the career and appointments of prosecutors.

The highest authority for the exercise of criminal prosecution is mostly the same in every country and is represented by the General Prosecutor. According to **Bulgarian** legislation, The Prosecutor General is responsible for exercising supervision and for providing methodological guidance to the other prosecutors. In **Romania**, the general prosecutor of the Prosecutor's Office by the High Court of Cassation and Justice represents the Public Ministry in relations with the other public authorities and with any natural or legal persons within the country or abroad. Similar to the states above mentioned, in **Slovakia** management of the prosecution service is delegated to the general prosecutor and to chief prosecutors.

Regarding the appointments and career of prosecutors, objective criteria are necessary, higher education in justice and following courses at a special institution being some of the requirements of almost every national legislation. The authority competent to appoint prosecutors may differ from state to state and is represented as it follows by:

- The President of the state, at the General Prosecutor's proposal-regarding prosecutors- and the General Prosecutor- regarding the head of Prosecution Office at courts: in **Albania**
- The Federal President, at the proposal of the Federal Minister of Justice: in **Austria**
- The President of **Bulgaria**, on a motion by the Supreme Judicial Council, appoint the General Prosecutor
- The Prosecutor General- related to prosecutors, with the exception of the Deputy prosecutor General: in **Germany**
- The **Italian** Judicial Council appoints chief prosecutors
- The President of **Romania**, at the proposal of the Minister of Justice, with the endorsement of the Superior Council of Magistracy- concerning the General Prosecutor of the Prosecutor's Office by the High Court of Cassation and Justice, his prime-deputy and deputy, the chief prosecutor of the National Anti-Corruption Department, his deputies, the chiefs prosecutors of the section within these prosecutor's offices, as well as the chief prosecutor of the Directorate for Investigation the Organised Crime and Terrorism Offences and his deputies
- The king of **Spain**, who appoints and removes the Prosecutor General, on proposal of the Government, after consulting the General Council of the Judiciary

Administrative matters and technical-supportive services are carried out in countries such **Albania** by the General Secretary, who is considered to be the highest official civilian in the General Prosecutor's Office.

I. Internal organisation (allocation of cases, transfer within the office, endorsement of acts)

Regarding the internal organisation, the matters were handled on the principle of hierarchy above-mentioned. As far as the allocation of cases is concerned, in countries like **Croatia, Bulgaria** a random allocation principle is applied, in order to ensure a secure and transparent random allocation process. This distribution of cases is being made through an electronic assignment, if sufficient grounds for the decision of prosecuting are given in written form. In **Germany**, the cases are allocated by a system established at the beginning of the year, using allocation methods which can be replaced with the instructions given by the head of the prosecution office.

J. Reforms

Among the reforms states are in progress to make, we can mention the **Bulgarian** initiative to separate the Supreme Judicial Council in two chambers, one dedicated to staff matters and one to judges and prosecutors, in order to conform to international standards as set out by the Venice Commission.

Germany can also be brought in discussion, the German Association of Judges and Prosecutors has promoted a proposal calling for reform to abolish the right for the ministries of justice to give instructions to the prosecution services in single cases.

VII. Conclusions and recommendations for the Board

Independence, as already stated, is the core value of the judiciary and it is a safeguard not only for its representatives, but, what it is more important, it is a guarantee offered to the citizens for independent justice and respect for the Rule of Law.

Judicial systems in the European Union are not uniform. From the perspective of prosecution services, this difference is even wider and it is reflected mostly in the role and the organization of the prosecution services. Regardless of this great diversity, the prosecutors fulfil an unquestionable role in the maintenance of the rule of law in each of these countries. But the rule of law is not one actor's responsibility, but the responsibility of all actors of the state.

Although there is a debate whether the prosecution service is or is not part of the Judiciary, there is no doubt that it is close to the judiciary in bringing cases to the court, without which the judiciary wouldn't be able to undertake its functions.

From this perspective, there is a common acknowledgement that a certain type of independence for prosecution offices and for prosecutors is needed in order to deliver an independent act of justice. Without an independent prosecution service, there cannot be an independent Judiciary. And this independence was benchmarked and measured by the subgroup throughout its activity 2014-2106 as it was developed above.

On one hand, it was noticed that the independence of prosecutors is very similar to that of the judges and in certain countries they may enjoy even the same protection. Both are guarantees for the independence of the judiciary, for a qualitative judicial act and for the supremacy of Rule of Law. But in all situations, even among the professionals involved in justice, a certain form of independence is required and prosecutors should be independent from judges and judges should be independent from prosecutors.

On the other hand, independence has its limits. There is no argument that, internally, the prosecutors function under a hierarchical system, which in some cases may have connection with the executive and may be bound to implement the criminal policy of the state.

The recommendations of the subgroup should be viewed from the perspective of the instruments that are at hand for Councils to enhance the independence and the quality of the Judiciary, including prosecutors.

In this regard, the working group on the independence and accountability of prosecutors' notes that independence is crucial for quality, and its absence may seriously affect the quality of justice. The independence comes hand in hand with accountability.

The group recommends that the continuation of the project should focus **on the quality of justice, from the perspective of the findings on independence, on the interrelation between judges, prosecutors and other professionals in order to provide an independent and high quality justice**

system. The work may focus on the evaluation of the independence of judges in relation to prosecutors and the safeguards that are in place, and on the concerns of a Council for the Judiciary if a prosecutor is not independent.

On subjective independence, the working group noticed a general lack of data on perception of independence. In the past, the ENCJ has made some important steps in obtaining information in respect to obtaining an overview throughout European countries on how the judges feel about their own independence. The perception of the independence of prosecutors is very important in a democratic society.

The group suggests that in this exercise, it may be relevant to investigate the true perception of prosecutors **about their own independence from government and from judges, but also the independence of judges from prosecutors.** On this last point, it will be relevant to know what judges require by way of independence of the prosecutors, how judges feel about their own independence when the independence of prosecutors may be affected, and how prosecutors react when they have worries that judges may be biased or lack independence.

Furthermore, the subgroup recommends to the Board to use these instruments in order to develop a dialogue with the relevant bodies in order to promote the independence of justice as a whole and the rule of law.

In short, the subgroup considers that the findings of the Reports on the independence and accountability of the prosecution services should be used by the ENCJ in order to:

- continue its activity and, having in mind both the findings on the independence and accountability of judges and prosecutors, to focus on the quality of justice and the role that the councils both for judges and prosecutors may have in this regard;
- to develop instruments in order to obtain information on subjective independence;
- organise dialogue groups within the broader project on the independence of the Judiciary in order to discuss the results of this report.

APPENDIX 1

1. **The Universal Declaration of Human Rights (1948)** as adopted by the UN General Assembly and the **UN's International Covenant on Civil and Political Rights (1966)**.
2. **The UN Basic Principles on the Independence of the Judiciary (1985)**.
3. **Guidelines on the role of the public prosecutor adopted** at the VIIIth congress of United Nations for prevention of the criminality and the treatment of perpetrators, Havana, Cuba 27 august – 7 September 1990
4. **Declaration of principles on prosecutors** – MEDEL, Naples, 2 march 1996.
5. **The Judges' Charter in Europe (1997) from the European Association of Judges**.
6. **The European Charter on the Statute for Judges (1998)**.
7. **The Universal Charter of the Judge (1999) approved by the International Association of Judges**.
8. **Standards of professional responsibility and statement of the essential duties and rights of prosecutors**, adopted by the International Association of Prosecutors, 23 April 1999
9. **Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials** (11 May 2000);
10. **Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system** (Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 at the 1151st meeting of the Ministers' Deputies).
11. **CCJE Opinion No.1 (2001) concerning the independence of the judiciary and the irremovability of judges**.
12. **CCJE Opinion No.3 (2002) relates to judicial ethics**.
13. **The Bangalore Principles of Judicial Conduct (2002)** and **resolution 2006/23 of the UN Social and Economic Council**.
14. **The Venice Commission's Report on Judicial Appointments** (Opinion No. 403/2003).
15. **Recommendation of the PACE on the role of the public prosecutor's office in a democratic society governed by the rule of law** (Rec 1604/ 27 May 2003)
16. **European Guidelines on Ethics and Conduct for Public Prosecutors** (the "Budapest Guidelines") adopted by the Conference on Prosecutors General of Europe on 31 May 2005.
17. **CCJE Opinion No.10 (2007) on the desirable functioning of judicial councils**.
18. **The Venice Commission's Report on the Independence of the Judicial System** (Opinion No. 494/2008).
19. **UN Resolution17/2 - Strengthening the rule of law through improved integrity and capacity of prosecution services (2008)**;
20. **Opinion no 12(2009) of the CCJE and opinion no 4 (2009) of the CCPE on the Relations between judges and prosecutors in a democratic Society**, Strasbourg, 8 December 2009 and the **Bordeaux declaration – judges and prosecutors in a democratic society**, drafted by CCJE and

CCPE in Bordeaux and officially adopted by the CCJE and CCPE in Brdo, Slovenia, 18 November 2009

21. ***Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities*** (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).
22. ***The Venice Commission Report on European Standards as regards the independence of the judicial system: Part II – the Prosecution Service***: Adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010).
23. ***CCJE's Magna Carta of Judges (2010)*** is a consolidated version of the principles contained in CCJE's Opinions.
24. ***The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia*** (2010) produced by the OSCE's Office for Democratic Institutions and Human Rights.
25. ***The Venice Commission Opinion on Legal Certainty and the Independence of the Judiciary in BiH*** (Opinion No. 648/2011).
26. ***Recommendation CM/Rec(2012)11 of the Committee of Ministers to Member States on the role of public prosecutors outside the criminal justice system*** (Adopted by the Committee of Ministers on 19 September 2012 at the 1151st meeting of the Ministers' Deputies).
27. ***Opinion (2012) No. 7 of the Consultative Council of European Prosecutors on the Management of the Means of Prosecution Services***.
28. ***Giacomo Oberto on Judicial Independence in its Various Aspects: International Basic Principles and the Italian Experience -Turin*** (2013).
29. ***Opinion (2013) No. 8 of the Consultative Council of European Prosecutors on the Relations between prosecutors and the media***.
30. ***Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings*** (10 July 2003)
31. ***The Universal Declaration on the Independence of Justice (The Singhvi Declaration)*** drafted at the request of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities.
32. Edmondo Bruti Liberati on ***Le rôle du Conseil Supérieur de la Magistrature comme garant de l'indépendance de la magistrature et dans l'organisation des juridictions***.
33. Conclusions of the Conferences of Prosecutors General of Europe (available on the [website of Council of Europe - CCPE](#))
34. **Opinion No. 9 : European norms and principles concerning prosecutors ("Rome Charter")**

ECHR case-law, CJEU case-law

Questionnaire

Questionnaire on the indicators of independence and accountability of the prosecution services

INDEPENDENCE INDICATORS

Objective Independence

1. External independence of prosecution offices

1. Legal basis of the independence of prosecution services

1a. Is the independence of the prosecution services or of the prosecutors formally guaranteed³⁷?

- Yes
- No

1b. If the answer to 1a. is yes, is this done in/by:

- The Constitution or equivalent documents
- Law
- Constitutional court

1c. Is the status of prosecutors similar to the status of judges?

- Yes
- No

1d. Are there formal guarantees to safeguard the independence of the prosecutors in relation to:

- Politicians or other powers in the state
- Judges
- Investigative bodies

1e. Is the salary of prosecutors determined by law?

- Yes
- No

1f. If the answer to 1c is yes, is this guaranteed in:

³⁷ See question 1b.

- The Constitution or equivalent texts
- Law

1g. Is there a formal mechanism to adjust the salaries of prosecutors to keep pace with the average development of salaries in the country and/or with inflation?

- Yes
- No

1h. Is the involvement of the prosecutors in criminal reform or in criminal policy of the state formally guaranteed?

- Yes
- No

1i. If the answer to 1h. is yes, is this done in:

- The Constitution or equivalent documents
- Law
- Constitutional court

1j. Is there an involvement of the prosecutors in:

- decisions in the legal criminal reform
- criminal policy of the state?

1k. Are the prosecutors bound to defend the interest of the state by representing the public institutions in their activity?

- Yes
- No

2. Organisational autonomy of prosecution services (Council for prosecutors)

2a. Does your country have a Council for the Prosecutors³⁸?

- Yes
- No

2b. Is the position of the Council for Prosecutors formally guaranteed?

- In the Constitution or equivalent documents
- Law
- Other internal documents
- No

2c. Is this Council part of the Judiciary?

- Yes
- No

³⁸ Including Council for judges and prosecutors.

2d. Please indicate the following details on the organisation of the council for prosecutors or council for the judiciary:

- The council acts independently of the Prosecutor general Yes No
- At least 50% of the members of the Council are prosecutors³⁹ Yes No
- At least 50% of the members of the Council are prosecutors⁴⁰ who are chosen by peers Yes No
- Minister of Justice is not a member of the Council Yes No

2e. Is the Council independent?

- The Council controls its own finances independently of both the legislative and executive branches Yes No
- The Council controls its own activities independently of both the legislative and executive branches Yes No

2f. Is the Council or the Prosecutor general responsible⁴¹ for the following:

- The appointment and promotion of prosecutors Council Prosecutor general Other
- The training of prosecutors Council Prosecutor general Other
- Discipline and ethics Council Prosecutor general Other
- Complaints against the prosecution service Council Prosecutor general Other
- The performance management of the prosecution offices Council Prosecutor general Other
- Defending the independence and good reputation of the prosecutors Council Prosecutor general Other
- The administration of prosecution offices Council Prosecutor general Other
- The financing of the prosecution offices Council Prosecutor general Other
- Proposals or opinions on the legislation to the legislation concerning prosecutors' offices, criminal justice or criminal policy of the state Council Prosecutor general Other

Note: if you checked “other” please specify below:

2g. Where the Council is responsible, the above mentioned responsibilities may be taken by:

- A majority of prosecutors
- A majority of judges
- A majority of elected magistrates
- Members that are not magistrates

2h. Is the Prosecutor general a member of the cabinet?

- Yes
- No

3. Funding of the Prosecution service

³⁹ Only in case of a Council representing judges and prosecutors, please read magistrates.

⁴⁰ ibidem

⁴¹ Responsible implies that the Council or the Prosecutor general executes these tasks or they have delegated these tasks to a separate body. Where the decision is taken by

3a. Is the budget of the prosecution included in the budget for the courts?

- Yes
- No

3b. Is the funding of the prosecution service sufficient as to allow:

[several answers possible]

- To handle their caseload
- To engage experts/translators/etc. in cases when necessary if fees paid by prosecution services
- To keep the knowledge and skills of prosecutors and staff up to date
- To facilitate prosecutors and other personnel in matters of IT-systems, buildings etc.

3c. Who makes the decisions?

[Please insert an "x" into the box that corresponds to the situation in your country.]

- a) Involvement in the preparation of the "budget allocated to prosecution services"
- b) Formal proposal on the budget allocated to prosecution services
- c) Adoption of the budget allocated to prosecution services
- d) Control/management of the budget allocated to prosecution services
- e) Evaluation/audit of the budget allocated to prosecution services

		a)	b)	c)	d)	e)
The Judiciary	Council for the Judiciary					
	Prosecutor general					
	Other (please specify)					
The executive⁴²						
The legislature						

3d. Is the funding of the prosecution services based upon transparent and objective criteria?

- Yes
- No

3e. If the answer to 3c is yes, is the funding based on:

[Please insert only one answer.]

- Actual costs⁴³ (e.g. number of prosecutors and staff)
- Workload of prosecution services
- Fixed percentage of government expenditure or GDP
- Other (specify):

⁴² Such as the Minister of Justice

⁴³ Figure based upon historic or realized costs.

3f. Where have these criteria been defined?

- In well-established practice
- In law
- Other (specify)

3g. Has it occurred that the government has refused a budget proposal of the prosecution service or has the government promulgated a budget for the prosecution service that was opposed by the prosecution services?

- Yes, please state the number for the past 10 years:
- No

3h. In case the government does not allocate sufficient funds, may the prosecution services address the parliament?

- Yes
- No

3i. Is the budget of the prosecution services included in the budget of the Judiciary?

- Yes
- No

4. Management of the prosecution services

4a. Which authorities can take the following decisions?

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) General management of a prosecutors’ offices
- b) Appointment of the staff (other than prosecutors)
- c) Other human resource management decisions on prosecutors’ office staff
- d) Decisions regarding the implementation and use of Information and Communication Technology in prosecutors’ offices
- e) Decisions regarding the buildings
- f) Decisions regarding the security of the prosecutors’ office
- g) Access to specific investigation tools such as information needed for investigation

		a)	b)	c)	d)	e)	f)	g)
The Judiciary	Council for the Judiciary							
	Prosecutor general							
	Other (please specify)⁴⁴							
The executive⁴⁵								

⁴⁴ E.g. heads of prosecution offices

⁴⁵ Ministry of Justice, Ministry of interior or other body under the executive

The legislature								
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2. External independence of individual prosecutors (Objective independence of the prosecutors)

5. Human resource decisions

5a. Selection, appointment and dismissal of prosecutors and chief prosecutors

Which authorities or bodies have the power to deliver the following decisions? [Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Decision on the appointment of a prosecutor
- b) Proposal for the dismissal of a prosecutor
- c) Decision on the dismissal of a prosecutor
- d) Proposal of candidates for the appointment as chief prosecutors
- e) Decision on the appointment of a chief prosecutor
- f) Proposal for the dismissal of a chief prosecutor
- g) Decision on the dismissal of a chief prosecutor

		a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary	Council for the Judiciary								
	Prosecutor general								
	Other (please specify below)⁴⁶								
The executive									
The legislature									

5b Selection, appointment and dismissal of Prosecutor general and other similar positions

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Proposal of candidates for the appointment as **Prosecutor general**
- b) Decision on the appointment of **Prosecutor general**
- c) Proposal for the dismissal of **Prosecutor general**
- d) Decision on the dismissal of **Prosecutor general**
- e) Proposal of the candidate(s) for the appointment of top level positions in Prosecutor general’s Office other than Prosecutor General
- f) Decision on the appointment of top level positions
- g) Proposal for the dismissal of top level positions
- h) Decision on the dismissal of top level positions

⁴⁶ E.g. heads of prosecution offices

		a)	b)	c)	d)	e)	f)	g)	h)
he Judiciary	Council for the Judiciary								
	Prosecutor general								
	Other (please specify below)⁴⁷								
The executive									
The legislature									

5c. Is the appointment/dismissal of prosecutors following specific standards?

- Is the appointment process open to public scrutiny and fully and properly documented?
- Is the appointment process undertaken according to published criteria?
- Is the appointment of prosecutors is solely based on merit?
- Is there in place a written policy designed to encourage diversity in the range of persons available for appointment ?
- Does the appointment process provide for an independent complaint procedure?
- Is the dismissal process of Prosecutor general or leading prosecutors undertaken according to public scrutiny/
- Is the dismissal process of prosecutors undertaken according to public scrutiny (reasons for dismissal)
- Is the dismissal process of prosecutors undertaken according to public scrutiny?

5d. Evaluation, promotion, disciplinary measures⁴⁸ and training of prosecutors

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Decision on the evaluation of a prosecutor
- b) Evaluation of the performance management of prosecutors
- c) Decision on the promotion of a prosecutor
- d) Adoption of ethical standards
- e) Application of ethical standards
- f) Proposal for the appointment of a member of the disciplinary body for prosecutors
- g) Decision on the appointment of a member of the disciplinary body for prosecutors

⁴⁷ E.g. heads of prosecution offices

⁴⁸ Written, step-by-step process in order to follow in every case where a prosecutor has to be warned, reprimanded, or dismissed.

- h) Proposal for a disciplinary decision regarding a prosecutor
- i) Disciplinary decision regarding a prosecutor
- j) Decision on the follow-up to a complaint against the prosecutors
- k) Decision on the program/content of training for prosecutors

		a)	b)	c)	d)	e)	f)	g)	h)	i)	j)	k)
The Judiciary	Council for the Judiciary											
	Prosecutor general											
	Other (please specify below)⁴⁹											
The executive												
The legislature												

5e. Is the promotion of prosecutors in compliance with certain standards?

- Is the promotion process open to public scrutiny and fully and properly documented
- Is the promotion process undertaken according to published criteria
- Is the promotion of prosecutors is solely based on merit
- Is there in place a written policy designed to encourage diversity in the range of persons available for promotion
- Does the promotion process provide for an independent complaint procedure

6. Stability in office⁵⁰

6a. Can a prosecutor be transferred (temporarily or permanently) to another office (to other duties or location) without his/her consent?

- Yes
- No

6b. If no, is the stability in office guaranteed in:

- The Constitution or equivalent text
- Law
- Jurisprudence

6c. If yes, which authority or body decides on a (temporary or permanent) transfer of a prosecutor without his/her consent?

⁴⁹ E.g. heads of prosecution offices

⁵⁰ Not including a measure following disciplinary proceedings.

- The Judiciary
 - Council for the Judiciary
 - Prosecutor general
 - Other (specify)
- The executive
- The legislature

6d. For what reasons can a prosecutor be transferred without his/her consent? [several answers possible]

- For organizational reasons (specify; e.g. closure of a prosecutors' office): ...
- For other reasons (specify): ...

6e. At what level are these reasons prescribed?

- In law
- Other (specify): ...

6f. In case a prosecutor is transferred without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?

- Yes
- No

6g. Can a prosecutor be taken off a case without his/her consent?

- Yes
- No

6h. Can a prosecutor appeal if he/she is transferred without his/her consent?

- Yes
- No

6i. If yes, which authority or body decides on such an appeal?

- The Judiciary
- The executive
- The legislature
- Other (specify): ...

6j. Is the term of office of prosecutors limited in time?

- Yes. If yes, it is renewable? Please develop. ...
- No

3. Internal independence (Objective independence of the prosecutors)

7. Organisation of the prosecution hierarchical structure

7a. In your system, are there rules that establish the limits of powers and responsibilities of prosecutors between the levels of the hierarchical structure?

Yes

No

7b. Are these rules published?

Yes

No

7c. Can the management of the prosecutors' office exert pressure in individual cases on the way prosecutors handle their cases with respect to the uniformity/consistency?

Yes

No

7d. Can the management of the prosecutors' office exert pressure in individual cases on the way prosecutors handle their cases with respect to the timeliness/efficiency?

Yes

No

8. General instructions on the investigation

8a. What kind of decisions can higher ranked prosecutors deliver on their own initiative to ensure the uniformity or consistency of their decisions (ex officio)?

A guideline (advisory opinion of general application for all prosecutors)

General binding orientations (e.g. in relation with the enforcement of the criminal policy)

An advisory opinion of concrete application to a specific case

An obligatory decision of concrete application to a specific case

Other (specify): ...

8b. Have guidelines broad coverage?

Yes

No

8c. Have the guidelines been developed by the prosecutors?

Yes

No

8d. Are the guidelines binding?

Yes

No

9. The decisions on the merits of a case

9a. In your system, is a prosecutor able to decide upon an accusation independently on the basis of the law, the evidence and the merits of the case?

Yes

No

9b. Can higher ranked prosecutors (e.g. from a higher prosecutor's office) change a decision on the merits of a lower ranked prosecutors ex officio (outside of an appeal system)?

Yes

No

9c. The respective prosecutor, does he have the possibility, at his own request, to be replaced in order to allow the disputed instruction to be carried out⁵¹?

Yes

No

9d. Has the higher prosecutor to motivate in writing his decision to change that solution?

Yes

No

9e. Has the prosecutor the possibility to appeal the overruling decision?

Yes

No

9f. Are prosecutors legally obliged to gather evidence both in favour as well as against the proposed defendant?

Yes

No

9g. May a reversal of the decision of a prosecutor or an acquittal in case of indictment have a consequence on his career?

Yes

No

10. Freedom of decision to uphold or withdraw the accusation

10a. Are the prosecutors free to decide without any interference whether to prosecute or not?

Yes

No

10b. Are the prosecutors free to decide whether to withdraw the accusation or not?

Yes

No

⁵¹ See Explanatory Recommendation no R(2000)19 on the role of the Public Prosecutor in Criminal Justice System, par. 10

10c. Has the prosecutor the possibility to plea freely in the court?

- Yes
- No

11. Procedures in case of threat to independence of prosecutors

11a. When a prosecutor or an authority considers that independence of an individual prosecutor or of the judiciary is threatened, are there any specific procedures, other remedies or sanctions for protecting it?

- Yes
- No

11b. If yes, who can launch such a request or a procedure?

[several answers possible]

- A prosecutor who believes his/her independence is threatened
- Chief of the prosecutors' office
- Judicial inspection body
- Council for the Judiciary
- Other independent body (specify): ...
- Minister of justice
- Other (specify): ...

11c. If yes, which authority or body has the power to react to such complaints from prosecutors or authorities for protecting their independence? [several answers possible]

- Council for the Judiciary
- Other independent body (specify): ...
- Judicial inspection body
- Court
- Prosecutors' office
- Chief of the prosecutors' office
- Higher prosecutors' office / Chief of a higher prosecutors' office
- Prosecutor General
- Other (specify): ...

11d. If yes, what are the measures that these authorities can take on the basis of a request in order to protect the independence?

[several answers possible]

- Notification to other authorities
- Sanctions
- Press releases
- Other (specify):

11e. Are there any procedures, other remedies or sanctions in place in order to protect the independence of the prosecutors against influence of the media, including social media?

- Yes
- No

Subjective independence

12. Independence as perceived by society (by citizens in general)

The working group will analyse whether there are surveys at European or International level that may be relevant.

12a. Perceived independence according to the [World Justice Rule of Law Index 2014](#), item 8.6.
(criminal justice free of improper government influence)

13. Trust in the prosecution offices

13a. Are opinion surveys available of the past three years in which the trust in the Prosecution services is compared with other branches (e.g. the executive and legislature)?

- Yes
- No
- Only for the whole Judiciary, including the prosecution services

13b. If yes, is the Prosecution services:

- Ranked higher than the executive and legislature⁵²;
- Ranked approximately equal to the executive and legislature?
- Ranked below the executive and legislature?

14. Perceived corruption within the prosecution services

Please don't answer this question. The data will be filled in by the secretary of the project group for each member and observer.

14a. Perceived Judicial corruption according to [EU Anti-Corruption report 2014](#) is... Percentage of respondents that believe corruption is widespread.

15. Independence as perceived by persons that have been defendants, victims, lawyers or judges?

15a. Are there any surveys available of the past three years which contain a question with respect to the perceived independence of the prosecutors by defendants, victims, layers or judges?

- Yes
- No

⁵² The other two branches of government are Parliament and Executive.

15b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good.

.....

16. Independence as perceived by prosecutors

16a. Are surveys available of the past three years which contain questions with respect to external and internal pressures prosecutors experience during their daily work?

- Yes
- No

16b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good.....

ACCOUNTABILITY INDICATORS

Objective Indicators

Objective accountability of the Prosecution services

1. Allocation of cases

1a. Is there a well-defined mechanism for the allocation of cases?

- Yes
- No

1b. If yes, what criteria is the mechanism based upon:

[one answer possible]

- The method of allocating cases
- The official charged with allocating cases
- The supervision mechanism

1c. If yes, where have these criteria been defined?

[one answer possible]

- In well-established practice of the prosecution service
- In an act adopted by the prosecution service or by the Council
- In implementing regulations
- In law
- Other (specify):

1d. What are the criteria for the allocation of cases?

[several answers possible]

- Random-based
- Specialization
- Experience
- Workload
- Other (specify):

1e. Who assigns the cases to prosecutors in the prosecutors' offices?

[one answer possible]

- Chief prosecutor of the prosecutors' office
- A member of the staff assigns cases (e.g. clerk)
- The cases are assigned randomly (e.g. through a computerized system)
- Other (specify): ...

1f. Is the allocation of cases subject to supervision within the Prosecution service?

- Yes
- No

1g. Is the method of allocation of cases publicly accessible?

Yes

No

1h. Are the parties entitled to be informed about the allocation of the case / prosecutors identity during the investigation?

Yes

No

1i. Is the mechanism of allocation being applied uniformly within the country?

Yes

No

1j. Is the motivation for any derogation recorded?

Yes

No

1k. Can a prosecutor be taken off the case without his consent?

Yes

No

2. Complaints procedure

2a. Does the prosecution service or do the individual prosecution service have a complaint procedure ?

Yes

No

2b. If the answer on 2a. is yes, does this procedure provide for external participation in the complaint procedure:

Yes

No

2c. Is it admissible to complain about:

[several answers possible]

Behaviour of the prosecutor

Timeliness

Administrative mistakes

Other (specify):

2d. Is an appeal against a decision on a complaint possible?

Yes

No

2e. Is there a civil accountability for the prosecutors?

Yes

No

2f. If yes, is it applicable only for bad faith or gross negligence?

- Yes
- No

3. Periodic reporting of the prosecution service

3a. Is an annual report provided on how the prosecutions service has discharged its functions?

- Yes
- No

**3b. If the answer on 3a. is yes, does this report include data on:
[several answers possible]**

- The output of cases (indictments, convictions, acquittals)?
- Duration of cases?
- Disciplinary measures
- (Successful) complaints
- (Successful) requests for recusal

3c. Are the prosecution offices periodically and publicly benchmarked with respect to their activities?

e.g. conviction rate, cost per file ?

- Yes
- No

If yes, please specify

4. Relations with the press

4a. Do officials (communication officers or press prosecutors) of the prosecution offices explain their high profile decisions to the media?

- Yes
- No

4b. Has the prosecution service established press guidelines?

- Yes
- No

4c. Does the prosecutions services give authorization to broadcast specific activities in cases that draw particular public interest on television?

- Yes
- No

5. External review

5a. Is the performance of the prosecution services regularly reviewed or evaluated by external bodies?

- Yes
- No

5b. If the answer on 5a. is yes, in what kind of manner is the performance of prosecutors' offices regularly reviewed or evaluated?

[several answers possible]

- Visitation
- Audit committee
- Other (please specify):

5c. Who can commission an external review of the prosecution offices?

[several answers possible]

- The judiciary
 - The prosecution office
 - The Prosecutor general
 - The Council
- The executive
- The legislature
- Other (please specify)

Objective accountability of the prosecutors

6. Code of ethics

6a. Does the prosecution service have a code of ethics?

- Yes
- No

6b. If the answer to 6a. is yes, is the code published?

- Yes
- No

7. Withdrawal and recusal of a prosecutor

7a. Is a prosecutor obliged to withdraw from dealing with a case if the prosecutor believes that impartiality is in question or compromised or that there is a reasonable perception of bias?

- Yes
- No

7b. If yes, what is the source of the obligation to withdraw from dealing with a case?

[one answer possible]

- A well-established practice
- Set in an act adopted by the prosecution service
- Set in an act adopted by the Council for the Judiciary
- Set in an act adopted by the Minister of justice
- Set in law
- Other (specify):

7c. If a prosecutor disrespects the obligation to withdraw from dealing with a case, could the prosecutor be subject to a sanction?

[several answers possible]

Yes (specify; e.g. type of disciplinary measure):

- Oral warning
- Written warning
- Suspension
- Disciplinary dismissal

No

7d. Which authority or body takes the first decision on a request for recusal by a party who considers that a prosecutor is partial / biased? [several answers possible]

- The prosecution service
- The courts
- The executive
- Other (specify): ...

7e. Is an appeal against a decision on a request for recusal possible?

- Yes
- No

7f. If yes, which authority or body decides on such an appeal?

- The prosecution service
- The courts
- The executive
- Other (specify): ...

8. Admissibility of accessory functions and disclosure of interests

8a. Are prosecutors allowed to have other paid functions?

- Yes
- No

8b. Are prosecutors allowed to have other unpaid functions?

- Yes
- No

8c. If the answer to 8a./8b. is yes, please specify whether the following is allowed: [several answers possible]

- Political functions
- Functions in (the governance of) companies
- Functions in (the governance of) public institutions such as schools and sports clubs
- Arbitration
- Lawyer
- Teaching at universities or schools
- Other (specify):

8d. Is there a public register of the jobs and functions prosecutors actually have?

- Yes

No

8e. Is there a register which discloses financial interests prosecutors may have?

Yes, please specify the minimum amount which needs to be disclosed:...

No

8f. If the answer to 8e. is yes, is this register public?

Yes

No

9. Understandable proceedings

9a. Are prosecutors legally obliged to make parties understand the proceedings?

Yes

No

9b. Do prosecutors get training in how to:

[several answers possible]

Conduct investigation in an understandable manner to parties?

Explain the proceedings in an understandable manner to parties?

Explain the decisions in an understandable manner to parties?

APPENDIX 3

Scoring Rules of the Pilot

Explanation scoring

To make an objective ranking possible a scoring scheme has been developed. All sub-indicators have been graded according to Chapters 4 and 5. The scores on the sub-indicators that form an indicator were aggregated in the way given below. Then for each indicator the following formula was used to map the scores on the indicators onto the agreed upon colour coding:

The standardized scores were mapped in the following manner:

0 – 20%:	red
20 – 45 %:	orange
45 – 60 %:	yellow
60 – 80%:	light green
80 – 100 %:	green

This scoring method was used for all indicators, unless explicitly stated otherwise.

A. Scoring Independence Indicators

Indicator 1: Legal basis of the independence of prosecution services

1a and 1b:	No	0
	Constitution	3
	Law	2
	Consti. Court	1
1c	No	0
	Yes	2
1d	Politicians and	2
	Judges	1
	Investigative bodies	1
1e and 1f:	No	0
	Constitution	1
	Law	1

1g:	No	0
	Yes	1
1h and 1i:	No	0
	Constitution	1
	Law	1
1j:	No	0
	Criminal reform	1
	Criminal policy	1
1k:	No	0
	Yes	1

Minimum score: 0

Maximum score: 20

Indicator 2: Organisational autonomy of prosecution services (Council for prosecutors)

2a and 2b:	No	0	
	Constitution	3	
	Law	2	
	Other documents	1	
2c:	No	0	
	Yes	1	
2d:	No	0	X4
	Yes	1	
2e:	No	0	X2
	Yes	1	
2f:	Other	0	9x
	Council/Prosec	1	
	c		

2g:	Majority prosec	2
	Majority mag	1
	other	0

2h	No	2
	Yes	0

Minimum score: 0
Maximum score: 26

Indicator 3: Funding of the Prosecution service

3a:	No	1
	Yes	0 -

3b:	No	0	
	Yes	1 -	x4

3c:	Judiciary	2	x5
	Legislature	1	
	Executive	0	

3d, 3e and 3f:	No	0
	Workload	3
	Fixed	2
	Actual costs	1
	Practice	1

Law		2
-----	--	---

Other		1
-------	--	---

3g:	No	5
	Yes	1
	3h:	0
	No	

Yes		1
-----	--	---

3i:		1
		0

Maximum score: 30

Indicator 4: Management of the prosecution services

4a:	Executive	0
	Judiciary	2
	Legislature	1

Minimum score: 0

Maximum score: 14

Indicator 5: Human resource decisions

5a:	Executive	0	8x
	Judiciary	2	
	Legislature	1	

5b:	Executive	0	8x
	Judiciary	2	
	Legislature	1	

5c:	No	0	8x
	Yes	1	

5d:	Executive	0	11x
	Judiciary	2	
	Legislature	1	

5e:	No	0	5x
	Yes	1	

Minimum score: 0

Maximum score: 67

Indicator 6: Stability in office

6a	No	15	
	Yes	0	
6b:	Constitution	3	if yes 6a
	Law	2	If rd
	Jurisprudence	1	
6c:	Executive	0	If no 6a
	Judiciary	2	
	Legislature	1	
6d:	Organizational	1	If no 6a
	Other	0	
6e:	Law	1	If no 6a
	Other	0	
6f:	No	0	If no 6a
	Yes	1	
6g:	No	1	If no 6a
	Yes	0	
6h:	No	0	If no 6a
	Yes	1	
6i	Executive	0	
	Judiciary	2	
	Legislature	1	
6j	No	1	
	Yes	0	
Maximum score		23	

Indicator 7: 7. Organisation of the prosecution hierarchical structure

7a:	No	0
	Yes	5

7b:	No	0
	Yes	2

7c:	No	1
	Yes	0

7d:	No	0
	Yes	1

Minimum score: 0

Maximum score: 9

Indicator 8: General instructions on the investigation

8a:	Guideline	3
	General binding	2
	Advisory opinion	1
	Obligatory decision	0
	Other	1

8b:	No	0
	Yes	1

8c:	No	0
	Yes	1

8d:	No	0
	Yes	1

Minimum score: 0Maximum score 9

Indicator 9 The decisions on the merits of a case

9 a, c, d, e, f	Yes	1
9 b, g	No	1
Minimum score:		0
Maximum score	7	

Indicator 10. Freedom of decision to uphold or withdraw the accusation

10a, b, c:

No	0
Yes	1
Minimum score:	0
Maximum score:	3

Indicator 11: Procedures in case of threat to independence of prosecutors

11e: 11a:	Yes	5
11b -11c	Council /Prosec	3
	Inspection body	2
	Ministry of Justice/other	1
11 d	Notification, other	1
	Press releases, sanctions	2
.....Yes	2	
	No	0
Maximum score:	1	

Indicator 12: Independence as perceived by society (by citizens in general)

World Justice Rule of Law Index 2014,	World Justice
Minimum	0
Maximum	1

Indicator 13: Trust in the prosecution offices

13a :	Yes	2
	Only for Jud	1

13b Higher 2
Equal 1

Maximum score: 4

No 0

1e

Chief prosecutor of the prosecutors' office 1
A member of the staff assigns cases (e.g. clerk) 1
The cases are assigned randomly (e.g. through a 3

1f,g,h,i No 0
,j: Yes 1

1k No 1
Yes 0

Minimum score: 0
Maximum score: 22

Indicator 2: Complaints procedure

2b, 2d, 2e, 2f :No 0
Yes 1

2c
Behaviour 1
Timeliness 1
Administrative mistakes 1
Other 0

2f Yes 1

Minimum score: 0

Maximum score: 8

Indicator 3: Periodic reporting on the Judiciary

3a -3c: No	0
Yes	1
Output	1
Duration	1
Disciplinary measures	1
Complaints	1
Recusal requests	1
Minimum score:	0
Maximum score:	7

Indicator 4: Relations with the press

4a, 4b, and 4c: No Yes

0 1

Minimum score: Maximum score:

0 3

Indicator 5: External review

5a	No	0
	Yes	2
5b	Visitation	1
	Audit	1
	Other	1
5c:	Executive	0
	Judiciary	2
	Legislature	1
Minimum score:		0
Maximum score:		8

Indicator 6: Code of judicial ethics

6a and 6b:	No	0	Minimum score:	0
	Yes	1	Maximum score:	2

Indicator 7: Withdrawal and
recusal

0

3

2

7 a&b:

0

3

0

3

7c:

7d: Executive
Judiciary(Courts/Pr
os office)
Other

7e and 7f: No

Judiciary(Courts/Pr
os office)
Executive
Other

Minimum score: 0

Maximum score: 14

Act by court 2

Act by Council 3

Act by MoJ 1

Law 4

Other 1

Practice 1

Oral warning 1

Written warning 1

Suspension 1

Dismissal

Indicator 8: Admissibility of accessory

8a	No	5
	Yes	0
8b	No	5
	Yes	0
8c	Politics	0
	Companies	0
	Public institutions	4
	Arbitrations	0
	Lawyer	0
	Teaching	4
	Other	0
8d	No	0
	Yes	10-
8e	No	0
	Yes	5
8f	No	0
	Yes	5

Minimum score: 0
Maximum score 32

Indicator 9: Understandable proceedings

9a and 9b:	No	0
	Yes	1
Conduct investigation		1
Explain proceedings		1
Explain decisions		1
Minimum score:		0
Maximum score:		4