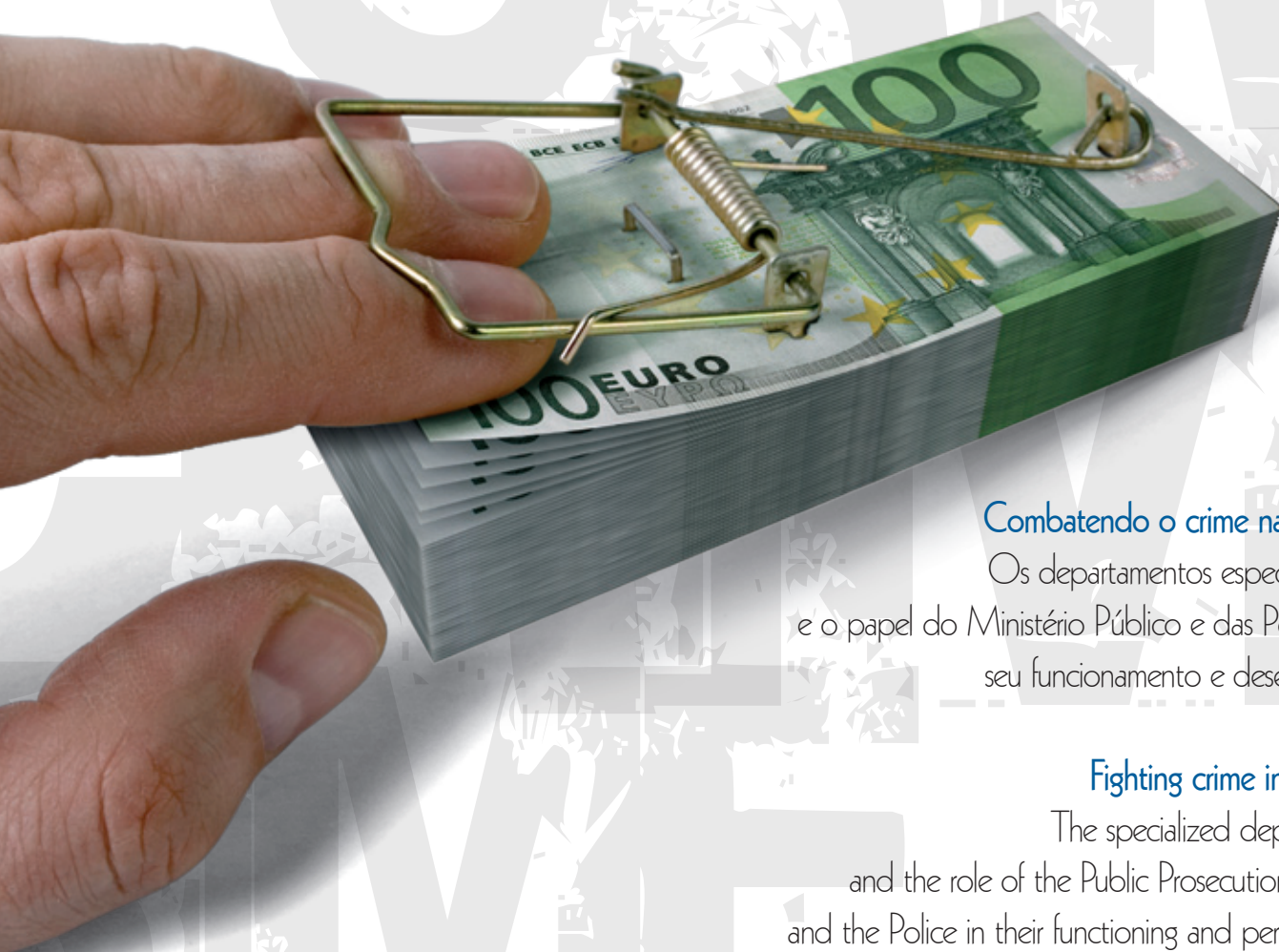


Combatendo o
Fighting

CRIME

na Europa
in Europe

QUESTIONÁRIO DE REFERÊNCIA QUESTIONNAIRE FOR REFERENCE



Combatendo o crime na Europa

Os departamentos especializados
e o papel do Ministério Público e das Polícias no
seu funcionamento e desempenho

Fighting crime in Europe

The specialized departments
and the role of the Public Prosecution Service
and the Police in their functioning and performance



35 1975
ANOS
2010

SMMP

Sindicato dos Magistrados
do Ministério Público

“O vosso estatuto [de procuradores] é de tal independência e importância que, sendo diligentes, estritos e vigorosos na aplicação da lei, não deverão deixar de ser justos”

“Your positions [prosecutors] are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just”.

Robert H. Jackson

Antigo Attorney General dos Estados Unidos da América/
Former Attorney General of the United States
“The Federal Prosecutor”, 24 J. Am. Judicature Soc’y 18 (1940)

1. NOME DO DEPARTAMENTO/ NAME OF THE DEPARTMENT

2. ENDEREÇO/ ADDRESS

Morada/ Address _____

Fax _____ E-mail _____ Telefone/ Phone number _____

3. PONTO DE CONTACTO (Facultativo)/ CONTACT POINT (Optional)

(Nome e contactos do responsável pelas ligações internacionais)/ (Name and contacts of the person responsible for the relations with colleagues)

4. DATA DA INSTITUIÇÃO/ DATE OF FOUNDATION _____ / _____ / _____

5. RAZÕES PARA A INSTITUIÇÃO/ REASONS FOR ITS FOUNDATION

- Necessidade de especialização, pois os organismos de competência genérica não tinham recursos para combater com eficácia certos tipos de criminalidade ou tinham desempenho insatisfatório nesse domínio.
Need for specialisation, as the organisations of plenary jurisdiction had no resources to effectively combat some types of crimes or had poor performance, etc.;
- Pressão da opinião pública para melhor investigação e desempenho no combate à criminalidade mais complexa, organizada e transfronteiriça
Public opinion pressure for a better investigation and performance against the most complex, organized and cross-border criminality;
- Outras razões. Por favor especifique/ Other. Please specify. _____

6. LEGAL BASIS OF THE DEPARTMENT

- Legais/ Statutory
 Outras. Por favor especifique/ Other. Please specify _____

7. RULES GOVERNING THE DEPARTMENT

- Leis/ Laws Regulamentos/ Regulations Códigos de Conduta/ Codes of Conduct Orientações/ Guidelines
 Por favor especifique o âmbito destes diversos textos/ Please specify the scope of these various texts _____

8. THE DEPARTMENT IS ACCOUNTABLE TO

- Ministro da Justiça/ Minister of Justice Procurador-Geral/ Attorney General
 Outro. Por favor especifique/ Other. Please specify _____

9. COMPETÊNCIA MATERIAL DO DEPARTAMENTO/ REMIT OF THE DEPARTMENT

Por favor especifique os tipos de crimes investigados e acusados/ Please specify the range of crimes investigated and prosecuted.

10. ESTRUTURA INTERNA/ INTERNAL STRUCTURE

Por favor apresente o V/ organograma/ Please provide your organisational chart

11. PODERES/ JURISDICTION

11.1. COMO TÊM NOTÍCIA DO CRIME/ HOW DO YOU GET TO KNOW CASES

- Oficiosamente (análise de informação, análise de imprensa, outras)/ Ex officio. Please specify (intelligence, media analysis, etc.)
 Denúncias de particulares/ Complaints _____
 Denúncias oficiais. Por favor informe donde provêm (reguladores, etc.)/ Referrals. Please specify who submits them (regulatory agencies, etc.) _____

11.2. INSTAURAÇÃO DE INQUÉRITOS/ TAKING CASES

- Todos os casos de que têm notícia/ All cases reported.
 Casos seleccionados. Por favor especifique o critério usado para seleccionar os casos/ Selected cases. Please specify the criteria used to select cases _____

**11.3. REPARTIÇÃO DE INQUÉRITOS COM OS DEPARTAMENTOS DE COMPETÊNCIA GENÉRICA/
ALLOCATION OF CASES VIS-A-VIS THE ORGANISATIONS OF PLENARY JURISDICTION**

Por favor especifique os critérios usados na repartição/ Please specify the criteria used to allocate cases.

12. PODERES DO DEPARTAMENTO/ DEPARTMENTS' POWERS

- Buscas/ Search Detenções/ Arrest Intercepções telefónicas/ Telephone interceptions
 Interrogatórios e inquirições/ Interview suspects and witnesses
 Outros. Por favor especifique/ Other. Please specify. _____

13. FORMAÇÃO/ TRAINING

- É ministrada formação profissional especializada aos procuradores e polícias/
Is there on-job specialized training for prosecutors and police officers?
 Que tipos de matérias é ministrada (científicas, financeiras, contabilísticas)?/
What kind of subjects, skills or competencies are taught (scientific, financial, accounting, etc.)?
-

14. ORÇAMENTO/ BUDGET

Por favor especifique o total de receitas e despesas (2007, 2008, 2009)/
Please specify total resources and spending (in 2007, 2008 and 2009).

15. MÉTODOS DE TRABALHO E INVESTIGAÇÃO/ INVESTIGATIVE AND WORKING METHODS

15.1. DISTRIBUIÇÃO DE PROCESSOS/ INTERNAL ASSIGNMENT OF THE CASES

- Sorteio?/ Draw by lot?
 Em função do tipo de processo? Se é assim, quem decide e qual é o critério usado?/
Allocated in a case by case basis? If so who decides and what type of criteria is used?
-

15.2. TRABALHO INDIVIDUAL OU EM EQUIPA/ INDIVIDUAL OR TEAM WORK

- O procurador/ The prosecutor Uma equipa dirigida por um procurador/ A team directed by the prosecutor
 Equipas multidisciplinares (procuradores, polícias, peritos financeiros, informáticos, contabilistas, etc.)/ Joint-up teams (Prosecutor, police, accountants, information technology experts, financial experts)

15.3. TRABALHO EM EQUIPA/ IN CASE OF TEAM WORK

- Como e por quem é formada a equipa?/ How is the team formed and by whom?
- Quem dirige a equipa (procurador, polícia, perito)/ Who leads the team (prosecutor, police officers, experts)
- Quem decide a estratégia a usar, que factos investigar, que crime está indiciado e deve ser acusado: (procurador, polícia, perito)?/ Who decides what strategy to adopt, what facts to investigate, what crime is substantiated and should be prosecuted (prosecutor, police, expert)

15.4. APOIO POLICIAL/ POLICE SUPPORT

- Polícias destacados no departamento/ In-house police
- Apoio externo (p. ex. polícias, pessoal dos reguladores, etc./ Outsourced (v.g. police, law enforcement officers, regulatory agencies personnel)

15.5. QUEM INTERROGA E INQUIRE/ WHO INTERVIEWS WITNESSES AND SUSPECTS

- Procurador/ Prosecutors
- Procurador assistido por polícias e peritos/ Prosecutor assisted by police officers or experts
- Polícias/ Police officers
- Peritos/ Experts

15.6. BUSCAS E APREENSÕES/ SEARCH AND SEIZURE

É necessária autorização judicial para realizar buscas em domicílios ou empresas ou para copiar ou apreender documentação comercial e outra?
Is there a need to apply to a judge for a search warrant authorizing a search of identified premises and to copy or seize certain records or other materials?

- Sim/ Yes Não/ No

15.7. QUEM REALIZA AS BUSCAS E APREENSÕES/ WHO CARRIES OUT THE SEARCH AND SEIZURE?

- Procuradores/ Prosecutors
- Procurador assistido por polícias e informáticos/ Prosecutors together with police officers, or information technology experts
- Quem realiza as buscas de documentos financeiros, computadores, correio electrónico?/ Who performs the search of financial documents, computers and electronic mail? _____
- Há manual de instruções para buscas e apreensões?/ Is there a manual of procedures for search and seizure?
 Sim/ Yes Não/ No
- Em caso afirmativo por favor junte um cópia/ If so please attach a copy.

15.8. PODERES ESPECIAIS/ SPECIAL POWERS

○ V/ departamento está investido de poderes especiais (legais ou de outra fonte) para investigar ou acusar os casos da respectiva competência?/ Are you entrusted with (statutory or other) special powers to investigate or prosecute the cases of your remit?

- Sim/ Yes Não/ No

Em caso afirmativo por favor especifique/ If so, please specify

16. ORIENTAÇÕES PARA ACUSAÇÃO/ PROSECUTION GUIDELINES

Há documentos com orientações para acusação?/ Are there guidelines for prosecution?

Sim/ Yes

Não/ No

Em caso afirmativo por favor junte um cópia/ If so please attach a copy.

17. MEIOS DE PROVA BÁSICOS NESTES INQUÉRITOS/ KEY EVIDENCE USED IN YOUR CASES

17.1. TIPOS DE MEIOS DE PROVA/ TYPES OF EVIDENCE

Documentos/ Documents

Videogramas/ Videotape

Registos fonográficos/ Audiotape

Intercepções de comunicações (telefone, correio electrónico, correio)/ Intercepted communications (phone, e-mail, mail)

Quem pode autorizar as intercepções?/ Who has the power to authorise interception?

17.2. VALOR DA PROVA COLIGIDA NO INQUÉRITO (nomeadamente documentos, declarações e depoimentos)/

STATUS OF EVIDENCE GATHERED DURING THE INVESTIGATION (namely, documents and statements of witnesses and suspects)

Pode ser usada como prova no julgamento?/ Can it be used as evidence in during trial?

Sim/ Yes

Não/ No

O tribunal pode fazer uso de declarações, depoimentos e documentos do inquérito?/

Can the court refer to previous made statements or documents?

Sim/ Yes

Não/ No

17.3. GESTÃO DOS MEIOS DE PROVA/ EVIDENCE MANAGEMENT

Há técnicas para fazer a gestão eficaz de meios de prova em massa (documental informática, videogramas, registos fonográficos, financeira, pericial)?/

Are there techniques to cost-effectively manage massive documentary, electronic, video and audiotape, financial, expert materials?

Em caso afirmativo, por favor especifique/ If so, please specify _____

18. QUEM É REPONSÁVEL PELA DECISÃO DE ACUSAR/ WHO TAKES RESPONSIBILITY FOR THE DECISION TO PROSECUTE

O Director do departamento/ The Director

O procurador (autonomamente)/ The Prosecutor (by himself)

Outro. Por favor especifique/ Other. Please specify. _____

19. JULGAMENTO/ TRIAL

19.1. QUEM REALIZA O JULGAMENTO/ WHO CONDUCTS TRIAL PROCEEDINGS?

Procurador/ Prosecutor

Advogado do departamento/ In-house counsel

Advogado contratado/ Out-sourced counsel

Outro/ Other

19.2. CAUSAS MAIS FREQUENTES DE ABSOLVIÇÃO EM JULGAMENTO/ MOST COMMON GROUNDS FOR ACQUITTAL IN TRIAL

Falta de prova/ Lack of evidence

Causas de justificação e exculpação/ Defences

Questões de direito/ Questions of law

19.3. SEGUIMENTO DA DECISÃO JUDICIAL/ FOLLOW-UP OF THE COURT DECISION

O procurador é notificado da decisão judicial?/ The Prosecutor has formal knowledge of the decision?

Sim/ Yes

Não/ No

É feita uma análise da decisão judicial no departamento?/ Is there a review of the court decision in the department?

Sim/ Yes

Não/ No

20. QUEM INTERVÉM NA FASE DE RECURSO/ WHO CONDUCTS APPELLATE PROCEEDINGS

Procurador/ Prosecutor

Advogado do departamento/ In-house counsel

Advogado contratado/ Out-sourced counsel

Outro/ Other

**21. MOVIMENTO PROCESSUAL (EM 2006, 2007, 2008 AND 2009)/
CASELOAD (PLEASE REFER TO 2006, 2007, 2008 AND 2009)**

15.1. Total de inquéritos instaurados/ Number of cases taken _____

15.2. Total de acusações deduzidas/ Number of cases prosecuted _____

15.3. Total de condenações/ Number of convictions _____

15.4. Prazo médio para conclusão dos inquéritos/ Average time to complete investigations _____

22. RECUPERAÇÃO DOS PRODUTOS DO CRIME/ RECOVERY OF THE PROCEEDS OF CRIME

Há advogados especializados para conduzirem estes procedimentos?/ Are there specialized counsels to handle these procedures?

Sim / Yes

Não / No

Qual é a taxa de sucesso/ What is the success rate? _____

Como decorre a cooperação judiciária internacional nesta matéria/ How does it work international cooperation on this matter? _____

**23. COOPERAÇÃO POLICIAL E JUDICIÁRIA EM MATÉRIA PENAL/ POLICE AND JUDICIAL COOPERATION IN
CRIMINAL MATTERS**

Se quiser comentar sobre esta matéria, por favor use este campo/ If you want to comment on this, please use this line.

24. OUTROS COMENTÁRIOS/ FURTHER COMMENTS

In case you have further comments, please use this box. When referring to a previous question, please identify its number

25. AVALIAÇÃO GLOBAL/ GENERAL ASSESSMENT

Por favor apresente os seus argumentos a favor e contra na avaliação global sobre a investigação e prossecução criminal realizada pelos departamentos especializados/

Please identify the arguments 'for and against' and provide your general appraisal about the investigation and prosecution performed by specialised departments

BACKGROUND NOTE:

1. Life is much more complicated than it used to be. Crime too, as a social fact, is to a large extent increasingly much more complex and sophisticated than it used to be.
2. People in the criminal justice community cannot disregard this new reality. To handle with ever increasing complexity, we must relentlessly devise not just new laws, but new strategies, new methods and new organisational forms, in order to deliver justice in reasonable time, by discharging innocent people and bringing and convicting offenders in the courts.
3. To successfully combat crime, most particularly serious, complex and cross-border offences, we must always be one step ahead. One strategy that is rapidly becoming a widespread trend to achieve this is specialization. Specialized laws, specialized courts, specialized crime fighting organisations, specialized prosecutors, specialized police officers and investigators.
4. Of course the problem of legal drafting, most specifically in laws aimed at combating serious, complex and cross-border offences, is of paramount significance. The lack of clear policies and vague standards of liability seriously hinders norm-compliance and enforcement, is both detrimental to legal certainty, the rights of defendants and to the prosecutorial function, as they tend to make prosecutions extremely difficult and burdensome.
5. But in this seminar we want to turn specifically to the topic of specialized organisational, investigating and prosecutorial forms to combat crime, most particularly serious, complex and cross-border offences.
6. This is a professional meeting specifically directed to the members of the criminal justice community (chiefly to prosecutors, police investigators, and experts, but also to judges, legislators, the general public and the media).
7. So we're looking forward to know in detail some European specialized crime fighting organizations that have a reputation for efficiency and delivering results. We want to grasp factual, clear and solid state-of-the-art information about the most efficient organizational and working methods to successfully investigate and prosecute crimes, namely but not exclusively the most serious, complex and cross-border offences (v.g. fraud, corruption, money-laundering, drugs, cases relating to foreign jurisdictions, namely within the European Union, cases relating to public officials).
8. We want to hear your views about this subject, naturally. But we also want to know the facts about this and to have the relevant statistical data.
9. A range of general questions implicated in specialization are pounding: the causes explaining the emergence of specialized organizations, their statutory remit, questions of internal department, special recruitment and training, supervision, criteria for selecting cases, disclosure, specialist prosecution, management of massive evidence (namely documentary or record-heavy cases), case management, proficient analysis and assessment of evidence to build a solid case etc.
10. A point of special interest for us is the topic of the specialist prosecutor: how is he recruited, trained, supervised, his career path, etc.
11. Another topic of special interest for us is the prosecutor-police relations: joined-up teams (prosecutor, police, forensic experts, namely economic, financial and accounting), the police relationship skills, in-house or out-source police support, etc. To achieve this we would expect that each delegation can bring together a prosecutor and police officer working in the same organisation, so we can hear both their views about joined-up teams.
12. Finally, the court use of evidence collected during investigations is another vital subject which we would definitely like to address.
13. Therefore we drafted a tentative questionnaire to have an integrated and systematic view of all this, that allows us to make comparisons, draw practical conclusions, be acquainted with feasible solutions for dire problems, learn from each other's experiences, get to know the best practices. In a word, strive to absorb the new learning and through the cross-fertilization of different approaches, working methods and legal cultures, improve our performance.
14. The questionnaire merely aims at sketching a framework that assists speakers to focus in the core subjects, simplifies the learning by the audience and last but not least, sets a standard to make comparisons and draw practical inferences in mode of conclusions.

15. Of course by no way this questionnaire aims at confining the speakers to a rigid scheme of things, they are entirely free to select some of these topics, adapt others, or even to add new questions. Please act as you think fit in order to best fulfill the spirit of this event. This questionnaire should ease your burden: you can just select the topics you think are really worth mentioning in your speech, and refer the addressees to the written answers with regard to the others points.
16. In your spoken addresses we would like to hear a sort of outline about the most relevant organisational, working and investigative methods and accomplishments of your organization (most particularly points 9, 10 and 11) and finally your overall appraisal about the goods and bads of specialized crime fighting.
17. We're asking for a huge amount and range of information. As you would imagine, we're just expecting to have a synopsis of the most relevant information, not the details.
18. In case you deem that your answer in some point will disclose confidential information, please feel free not to respond.
19. The answers to the questionnaire will be distributed by all the invited organizations and speakers, and will be made available (both in Portuguese and English) in the SMMP's webpage (<http://www.smmp.pt/?p=6768>)
20. Please be so kind to send us back your answers to smmp.secretariado@net.novis.pt (e-mail) or to (00351) 2138706 03 (fax), not later than Wednesday, March 31, 2010.