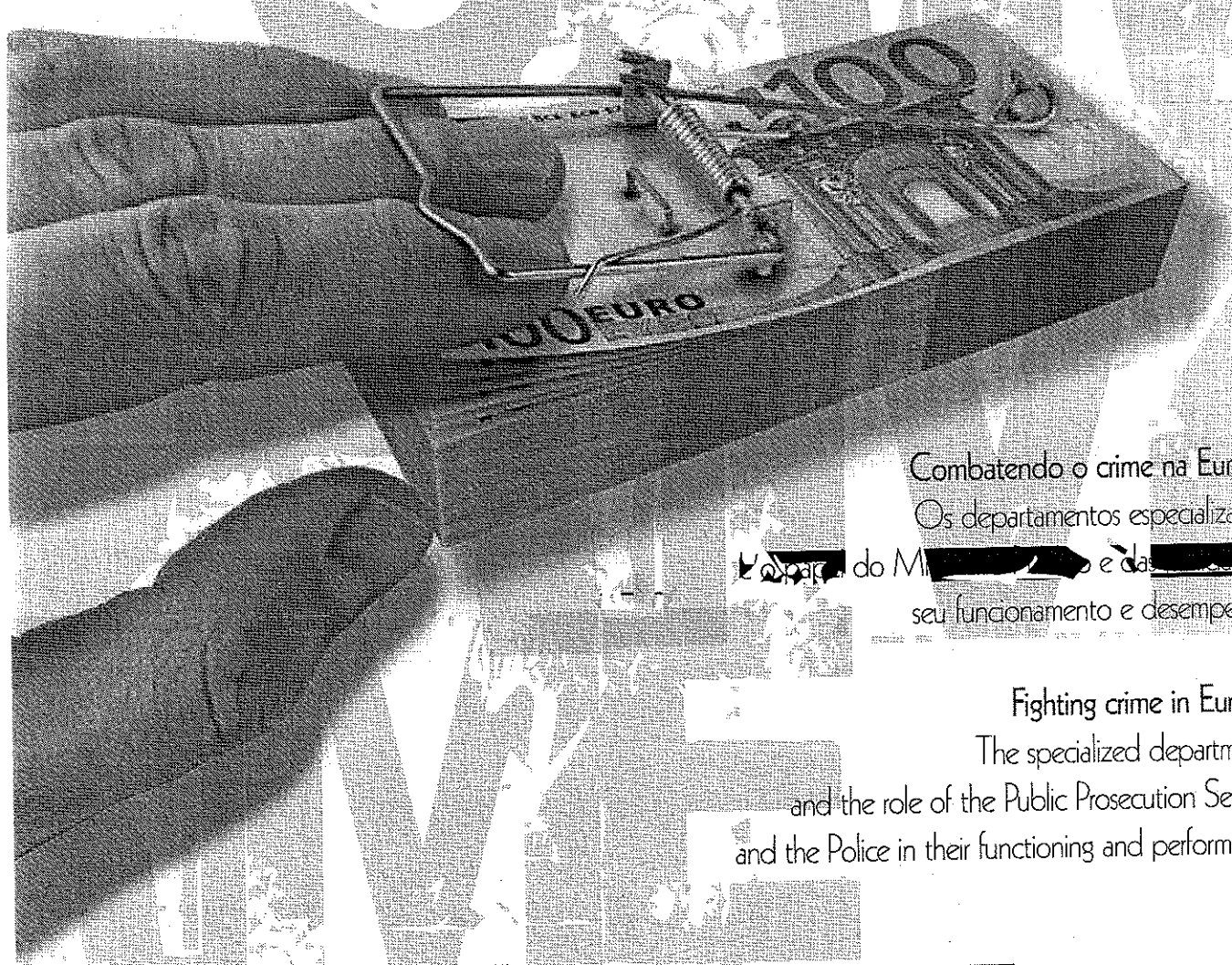


Combate
Fighting
CRIME

o na Europa
in European

QUESTIONNAIRE FOR REFERENCE



Combatendo o crime na Europa
Os departamentos especializados
do Ministério da Justiça e da Polícia
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



SMMP

Sindicato dos Magistrados
do Ministério Público

35 1975
ANOS
2010

"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

Former Attorney General of the United States

"The Federal Prosecutor", 24 J. Am. Judicature Soc'y 18 (1940)

1. NAME OF THE DEPARTMENT

Der Generalbundesanwalt beim Bundesgerichtshof (Federal Public Prosecutor General)

2. ADDRESS

Address Brauerstraße 30, 76135 Karlsruhe, Germany

Fax +49 (0) 721 8191-590

E-mail poststelle@gba.bund.de

Phone number +49 (0) 721 8191-0

3. CONTACT POINT (Optional)

(Name and contacts of the person responsible for the relations with colleagues)

4. DATE OF FOUNDATION

07 / 10 / 1950

5. REASONS FOR ITS FOUNDATION

- Need for specialisation, as the organisations of plenary jurisdiction had no resources to effectively combat some types of crimes or had poor performance, etc.;
- Public opinion pressure for a better investigation and performance against the most complex, organized and cross-border criminality;
- Other. Please specify. See the attached note

6. LEGAL BASIS OF THE DEPARTMENT

Statutory.

Other. Please specify. _____

7. RULES GOVERNING THE DEPARTMENT

- Laws Regulations Codes of Conduct Guidelines
 Please specify the scope of these various texts See the attached note

8. THE DEPARTMENT IS ACCOUNTABLE TO

- Minister of Justice Attorney General Director of Public Prosecutions
 Other. Please specify _____

9. REMIT OF THE DEPARTMENT

Please specify the range of crimes investigated and prosecuted.

See the attached note

10. INTERNAL STRUCTURE

Please provide your organisational chart

11. JURISDICTION

11.1. HOW DO YOU GET TO KNOW CASES

- Ex officio. Please specify (intelligence, media analysis, etc.) See the attached note
 Complaints
 Referrals. Please specify who submits them (regulatory agencies, etc.) _____

11.2. TAKING CASES

- All cases reported.
 Selected cases. Please specify the criteria used to select cases _____

11.3. ALLOCATION OF CASES V/S-A-V/S THE ORGANISATIONS OF PLENARY JURISDICTION

Please specify the criteria used to select cases.

12. DEPARTMENTS' POWERS

- Search Arrest Telephone interceptions Interview suspects and witnesses
 Other. Please specify. See the attached note

13. TRAINING

- Is there on-job specialized training for prosecutors and police officers?
- What kind of subjects, skills or competencies are taught (scientific, financial, accounting, etc.)?
- There is no on-job specialized training for prosecutors.
-

14. BUDGET

Please specify total resources and spending (in 2007, 2008 and 2009).
See the attached note.

15. INVESTIGATIVE AND WORKING METHODS

15.1. INTERNAL ASSIGNMENT OF THE CASES

- Draw by lot?
- Allocated in a case by case basis? If so who decides and what type of criteria is used?
See the attached note.
-

15.2. INDIVIDUAL OR TEAM WORK

- The prosecutor A team directed by the prosecutor
- Joint-up teams (Prosecutor, police, accountants, information technology experts, financial experts)

15.3. IN CASE OF TEAM WORK

- How is the team formed and by whom
- Who leads the team (prosecutor, police officers, experts)
- Who decides what strategy to take, what facts to investigate, what crime is substantiated and should be prosecuted (prosecutor, police, expert)

15.4. POLICE SUPPORT

- In-house police
- Outsourced (v.g. police, law enforcement, regulatory agencies)
-

15.5. WHO INTERVIEWS WITNESSES AND SUSPECTS

- Prosecutors
- Prosecutor assisted by police officers or experts
- Police officers
- Experts

15.6. SEARCH AND SEIZURE

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? Yes No

15.7. WHO CARRIES OUT THE SEARCH AND SEIZURE?

- Prosecutors
- Prosecutors together with police officers, or information technology experts
- Who performs the search of financial documents, computers and electronic mail? Police officers and IT experts
- Is there a manual of procedures for search and seizure? Yes No
- If so please attach a copy.

15.8. SPECIAL POWERS

Are you entrusted with (statutory or other) special powers to investigate or prosecute the cases of your remit? Yes No

If so, please specify _____

16. PROSECUTION GUIDELINES

Are there guidelines for prosecution? Yes No

If so please attach a copy.

17. KEY EVIDENCE USED IN YOUR CASES

17.1. TYPES OF EVIDENCE

- Documents
- Videotape
- Audiotape
- Intercepted communications (phone, e-mail, mail)
- Who has the power to authorise interception? See the attached note

**17.2. STATUS OF EVIDENCE GATHERED DURING THE INVESTIGATION
(NAMELY, DOCUMENTS AND STATEMENTS OF WITNESSES AND SUSPECTS)**

- Can it be used as evidence in during trial? Yes No
- Can the court refer to previous made or documents? Yes No

17.3. EVIDENCE MANAGEMENT

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

If so, please specify _____

18. WHO TAKES RESPONSIBILITY FOR THE DECISION TO PROSECUTE

- The Director The Prosecutor (by himself)
 Other. Please specify. See the attached note.

19. TRIAL

19.1. WHO CONDUCTS TRIAL PROCEEDINGS?

- Prosecutor In-house counsel Out-sourced counsel Other

19.2. MOST COMMON GROUNDS FOR ACQUITTAL IN TRIAL

- Lack of evidence Defences Questions of law

19.3. FOLLOW-UP OF THE COURT DECISION

The Prosecutor has formal knowledge of the decision?

Yes

No

Is there a review of the court decision in the department?

Yes

No

20. WHO CONDUCTS APPELLATE PROCEEDINGS

- Prosecutor In-house counsel Out-sourced counsel Other

21. CASELOAD (Please refer to 2006, 2007, 2008 and 2009)

15.1. Number of cases taken _____

15.2. Number of cases prosecuted _____

15.4. Number of convictions _____

15.5. Average time to complete investigations _____

See the attached note.

22. RECOVERY OF THE PROCEEDS OF CRIME

Are there specialized counsels to handle these procedures? Yes No

What is the success rate? _____

How does it work international cooperation on this matter? See the attached note.

23. POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS

If you want to comment on this, please use this line

24. FURTHER COMMENTS

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

25. GENERAL ASSESSMENT

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

See the attached note.

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.

Fighting Crime in Europe

Questionnaire for reference

Attachment

No. 5 "Reasons for its foundations"

As Germany is a federal state, the administration of justice including the prosecution of crimes generally falls - according to the German Constitution (Grundgesetz) - into the competence of the member states (Bundesländer). Within this system the Federal Government only has its competencies where the country is affected as a whole. In consequence the criminal prosecution in the case of state security offences is the responsibility of the Federal Public Prosecutor General at the Federal Court of Justice – as the only federal department of public prosecution. There is an enumeration of offences in the Courts Constitution Act (Gerichtsverfassungsgesetz - GVG) concerning the internal and external security of the Federal Republic, e.g. treason, espionage and formation of or membership in terrorist organisations.

No. 7 Rules governing the department

There is no separate procedure in Germany for sentencing persons suspected of having committed offences concerning the internal and external security of the Federal Republic. For this reason all provisions of the Code of Penal Procedure (Strafprozessordnung – StPO) which apply to other accused persons before or during trial are to be applied in cases of treason, espionage, terrorism etc. In the same way the guidelines for the criminal proceedings and the administrative fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV) are valid for the Federal Public Prosecutor General as for all other public prosecution offices.

An English translation of the Strafprozessordnung (StPO) can be found under

www.gesetze-im-internet.de/englisch_stpo/index.html.

the Richtlinien für das Strafverfahren und das Bußgeldverfahren (RiStBV) on the website of the German Federal Ministry of Justice under

www.bmj.bund.de/enid/Fachinformationen/Richtlinien_fuer_das_Strafverfahren_und_das_Bu%C3%9Fgeldverfahren_RiStBV_v9.html.

No. 9 Remit of the department

The crimes investigated and prosecuted by the Federal Public Prosecutor General are enumerated in the Courts Constitution Act (Gerichtsverfassungsgesetz - GVG). According to the sections 142a, 120 the Federal Public Prosecutor General is leading the investigations in cases of (without claim of completeness)

- crimes against peace, section 80 of the Criminal Code (Strafgesetzbuch - StGB)
- high treason, sections 81 to 83 of the Criminal Code,
- treason and endangering external security, sections 94 to 100a of the Criminal Code,
- an assault against organs and representatives of foreign states, section 102 of the Criminal Code,
- a crime against constitutional organs, sections 105 and 106 of the Criminal Code,
- a violation of a ban of an organisation pursuant to section 129a, 129b of the Criminal Code (terrorist organisations),
- criminal offences pursuant to the Code of Crimes against International Law.

In addition the Federal Public Prosecutor General can take over the prosecution in cases of (also without claim of completeness)

- murder, section 211 of the Criminal Code,
- manslaughter, section 212 of the Criminal Code,
- hostage taking, section 239b of the Criminal Code,
- serious arson, sections 306a to 306c of the Criminal Code,
- assaults on air and sea traffic, section 316c subsections 1 and 3 of the Criminal Code,
- criminal offences pursuant to the Foreign Trade and Payments Act,
- criminal offences pursuant to the Act on the Control of Weapons of War,

due to the special significance of the case.

English translations of the Gerichtsverfassungsgesetz - GVG - and the Strafgesetzbuch - StGB - can be found under

www.gesetze-im-internet.de/englisch_qvg/index.html

and

www.gesetze-im-internet.de/englisch_stgb/index.html

No. 10 Internal structure

The Office of the Federal Public Prosecutor General is divided in three departments.

- **Department R:** Aside the investigative competences assigned to the office the Federal Public Prosecutor General is also asked to give his opinion in appeals on law on the Federal Court of Justice (Bundesgerichtshof). These cases originate in the jurisdiction of the federal member states (Bundesländer) and may concern all sorts of (serious) crimes like murder, robbery, rape etc. The condemned person can file an appeal on law against the verdict of a country court which be dealt with by the Federal Court of Justice to guarantee a unified application of the Criminal Code (Strafgesetzbuch - StGB). About one third of the public prosecutors deal with these appeal cases.
- **Department TE:** This department includes about half of the staff of the complete office and is dealing with crimes concerning the internal security of the Federal State, mainly prosecuting terrorism cases.
- **Department ZS:** This department is dealing with cases of espionage as well as criminal prosecutions in the field of export control and proliferation. This covers mainly EC-wide embargos, banning the export of goods that can possibly be used for constructing weapons of mass destruction. Another of his competences is the investigation of criminal offences pursuant to the Code of Crimes against International Law.

There is no "official" organisational chart of the Federal Public Prosecutor General. The internal chart is confidential.

No. 11.1 Jurisdiction - How do you get to know the cases

According to section 152 subsection 2 of the Code of Penal Procedure (Strafprozessordnung - StPO) the Federal Public Prosecutor General is obliged (as any other public prosecution office) to take action in relation to all prosecutable criminal offences (within his responsibility), provided there are sufficient factual indications (principle of mandatory prosecution). The necessary information to start an investigation can be obtained from the police, intelligence services or open sources (as media, internet etc.).

12. Departments' powers

As there is no separate procedure in Germany for the investigations of the Federal Public Prosecutor General the "classical" investigation tools according to the Code of Penal Procedure (Strafprozessordnung - StPO) are used, such as (without claim of completeness)

- the ordering of remand detention / detention while awaiting trial
- the monitoring of telecommunications
- the observation
- the search and seizure of evidence
- the deployment of undercover agents or informants
- the examination of evidence by technical methods (e.g. DNA)

14. Budget

The Federal Public Prosecutor General doesn't draw up an own budget. His resources and spending are included in the budget of the Federal Ministry of Justice.

15.1 Investigating and working methods - Internal assignment of the cases

The cases in the departments TE and ZS (see question No. 10) are allocated on a case by case basis by the heads of the departments.

15.7 Investigating and working methods - Who carries out search and seizure?

The manual of the procedures of search and seizures is implemented in the sections 94 to 100 of the Code of Penal Procedure (Strafprozessordnung – StPO) and No. 73a to 84 of the guidelines for the criminal proceedings and the administrative fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV) which can be found under

www.gesetze-im-internet.de/englisch_stpo/index.html,

and

[www.bmj.bund.de/enid/Fachinformationen/Richtlinien fuer das Strafverfahren und das Bußgeldverfahren RiStBV v9.html](http://www.bmj.bund.de/enid/Fachinformationen/Richtlinien_fuer_das_Strafverfahren_und_das_Bu%C3%9Fgeldverfahren_RiStBV_v9.html).

16. Prosecution guidelines

The guidelines for the criminal proceedings and the administrative fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV) can be found under

[www.bmj.bund.de/enid/Fachinformationen/Richtlinien fuer das Strafverfahren und das Bußgeldverfahren RiStBV v9.html](http://www.bmj.bund.de/enid/Fachinformationen/Richtlinien_fuer_das_Strafverfahren_und_das_Bu%C3%9Fgeldverfahren_RiStBV_v9.html).

17.1 Key evidence used in your cases - Types of evidence

Within the responsibility of the Federal Public Prosecutor General the investigating judge at the Federal Court of Justice (Ermittlungsrichter des Bundesgerichtshofs) has a special jurisdiction for judicial investigation measures including the order to intercept telecommunications according to section 100b of the Criminal Code of Procedure (Strafprozessordnung - StPO).

18. Who takes responsibility for the decision to prosecute?

The decision, whether there is an indictment, is taken by the Federal Public Prosecutor General, Professor Harms, herself.

21. Caseload

Cases taken in appellate proceedings (department R - see answer to question No. 10):

2004: 2.868

2005: 2.915

2006: 2.955

2007: 3.195

2008: 3.259

Cases taken in preliminary proceedings (departments TE and ZS - see answer to question No. 10):

2004: 117

2005: 92

2006: 110

2007: 104

2008: 108

Further information about the numbers of cases in criminal proceedings can be obtained under

http://www.bundesjustizamt.de/cln_108/nn_258430/DE/Themen/Justizstatistik/Justizstatistik.

22. Recovery of the proceeds of crime

As the recovery of the proceeds of crime in the cases prosecuted by Federal Public Prosecutor General is of minor importance, there are no official statistics about the success rate.

25. General Assessment

In Germany the criminal prosecution in the case of state security offences is the responsibility of only one federal department of public prosecution, the Federal Public Prosecutor General at the Federal Court of Justice. But not only the public prosecution office is thus specialized: The investigating judge at the Federal Court of Justice has special jurisdiction for judicial investigation measures. The criminal senate of the Federal Court of Justice with jurisdic-

tion for national security matters rules on complaints against investigation measures. Court jurisdiction at first instance (trial court instance) was placed for these proceedings with those Higher Regional Courts in whose districts the governments of the member states (Bundesländer) have their headquarters. These provisions promote the necessary special public prosecution, as well as judicial expertise in prosecuting criminal offences related to state security offences.