

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

DRAFT QUESTIONNAIRE REVIEW OF THE RECOMMENDATION REC (2005)9 ON THE PROTECTION OF WITNESSES AND COLLABORATORS

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

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This questionnaire has been prepared as part of the implementation of the Action Plan on Transnational Organised Crime (TOC), adopted by the Committee of Ministers on 2 March 2016. Its aim is both to analyse the measures taken by member States to give effect to the provisions of [Recommendation Rec \(2005\)9](#) of the Committee of Ministers to member States on the protection of witnesses and collaborators and to identify whether there is a need to update the Recommendation.

You are invited to send your replies to the Secretariat of the CDPC, no later than 19 June 2017, to: DGI-CDPC@coe.int

RESPONDENT DETAILS	
MEMBER STATE:	
CONTACT:	
• Name:	
• Job title:	
• Ministry:	
• E-mail:	
• Telephone:	

- Please note that this document is divided into two parts:
 - **Part 1 (Core Questions)** contains questions where the answer is essential for obtaining elements to analyse the need to update the recommendation. The questions follow the structure of the Recommendation Rec(2005)9
 - **Part 2 (Optional Questions)** contains questions where the answer will help the analysis. Although the answers to the questions included in Part 2 are optional, member States are highly encouraged to answer these questions.
- Please insert your replies in the column next to each question. If necessary, please refer to the explanatory memorandum to Recommendation Rec(2005)9 for further information.
- In reply to each question please provide full citations of any relevant law, protocol or rule.

PART 1- CORE QUESTIONS

<p>1. Considering the importance of witnesses in the fight against transnational organised crime (TOC) and terrorism, do you think that your national system provides enough incentives for witnesses and collaborators of justice to report such crimes and co-operate with law enforcement and prosecution authorities? (Recommendation 4).</p> <p>What are the current incentives in general terms (protection, financial reward, reduced sentencing/plea bargaining, civic duty, others)?</p>	
<p>2.</p> <p>2.1 Who undertakes the risk assessment to determine if a witness requires protection in your national system?</p> <p>2.2 Who identifies the measures needed and who decides on whether the recommended measures should be adopted?</p> <p>2.3 Is it all done by the same body, for example the witness protection unit/commission, or are other authorities also involved?</p> <p>2.4 Do you have specialised witness protection units and if so how are they organised - do they fall under the Police, Prosecution Service, Ministry of Justice/Interior, etc.?</p>	
<p>3. Is witness protection available to witnesses in all criminal procedures, or only in certain types of crime (please elaborate)?</p>	
<p>4. Do you think that Rec(2005)9 on witness protection should better differentiate between the different types of witnesses (co-defendant/collaborator of</p>	

justice, victim, third persons, minors, etc.) when regulating the risks and the measures for persons in need of protection?	
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PRACTICE ON PROTECTION MEASURES	
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<p>5. What are the most commonly used measures for protecting witnesses in your national system? Please list from 1 to 5, 1 being the most frequent and 5 the less frequent:</p> <ul style="list-style-type: none"> a. Procedural measures (e.g. testifying with face/voice distortion, or behind screens, non-disclosure of identity/and or address, admissibility of video-recorded testimony, etc.) b. Home + personal protection (“target hardening”) c. Police measures, increased patrolling, etc. d. New identity e. Geographical relocation 	
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<p>6. If your system allows for the use of anonymous witnesses in court, (recommendation 19):</p> <ul style="list-style-type: none"> a. Can their identity be disclosed if so required to ensure the rights of the defence? b. Does the anonymous witness have any assurance that his/her identity will not be disclosed during the proceedings? c. Is the anonymity of witnesses only granted when there is a risk to life or freedom? Or can it also be granted in cases where the witness has been threatened with property damage or other less serious threats? 	
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<p>7. Does your system use electronic measures to protect witnesses (e.g. electronic/communications monitoring, electronic bracelets, geo-location devices for defendants and/or witnesses, etc.)? Please elaborate if possible.</p>	
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WITNESS PROTECTION PROGRAMMES

8. What is the approximate number of witnesses enrolled in a witness protection programme in your country?
 a. More than....., and less than.....

9. The majority of persons under the witness protection programme in your country are:
 a. Collaborators of justice
 b. Direct (Eye) witnesses
 c. Victims
 d. Undercover Officers
 e. Informants
 f. Other witnesses (please elaborate)

10. Does the witness protection unit in your country have operational autonomy from the investigation or prosecution authority (Recommendation 28)?

 Does the witness protection unit in your country have the authority to implement/extend/stop witness protection programmes and/or measures regardless of the decision of the court/public prosecutor?

11. When relocating witnesses abroad, what are the main problems faced? Please list from 1 to 5, with 1 being the most frequent and 5 the less frequent:
 a. Lack of finances/resources
 b. Profile of the witnesses (e.g. witnesses with criminal backgrounds)
 c. Political/immigration restrictions
 d. Social, cultural and linguistic difficulties
 e. Incompatible rules and practices between sending and receiving States (on identity change, etc.)
 f. Lack of reciprocity (e.g. between bigger and smaller States)
 g. Other. Please, indicate:

12. How is psycho-social assessment and support ensured to witnesses under your protection programme? Does your witness protection unit employ psychologists and social workers?	
13. Does your system take into account biometric identifying devices when providing protection to witnesses who have been given a new identity? a. How do the witness protection units deal with the new challenges of biometric identification mechanisms (in public spaces, at borders, etc.) b. Have you adopted any specific legal or practical measures in this regard? If yes, please mention.	
14. Is the witness protection unit of your country staffed with personnel with expertise in information/technology/cyber-security?	
15. Does the witness protection programme apply special protocols and measures to regulate the protected witnesses' use of the internet, social media, smart phones and other technology which may reveal their identity and location?	
16. Do you consider that witness protection is essential for fighting TOC and terrorism and that the Council of Europe should take more measures to ensure its effective implementation?	
17. Are the needs of juveniles as protected witnesses sufficiently covered legally and in practice?	
18. Are specific gender issues taken into consideration in the implementation of witness protection programmes and/or measures? (e.g. gender of witness protection staff dealing with witnesses, etc.)	
19. Does your country have special legislation and	

<p>measures for detained/imprisoned witnesses (e.g. separate, protected detention facilities, etc.)? Please elaborate (recommendation 26)</p>	
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<p style="text-align: center;">CLOSING QUESTIONS</p>	
<p>20. Are there any other needs/shortcomings that might require action in order to improve the implementation of the witness protection programmes/measures in your country?</p>	

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PART 2- OPTIONAL QUESTIONS

<p>21. What kind of alternative methods to testifying for the purpose of investigation or trial are given for a protected witness in your legal system?</p>	
<p>22. Do pre-trial statements have evidentiary value even if the protected witness is available to appear and be cross-examined at trial (but would be at a higher risk by doing so)?</p>	