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INTERIM REPORT

ASSESSMENT OF THE ANSWERS TO THE QUESTIONNAIRE REVIEW OF THE RECOMMENDATION REC (2005)9 ON THE PROTECTION OF WITNESSES AND COLLABORATORS

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I. Introduction

1. The present document contains an assessment of the replies to the questionnaire on the “Review of Recommendation Rec (2005)9 on the protection of witnesses and collaborators”¹ (hereafter, the Recommendation). The questionnaire was sent to all Council of Europe (hereafter, CoE) member States on 11 May 2017 in the framework of the scheduled activities to implement the Action Plan on Transnational Organised Crime² (hereafter, TOC), in particular Key Area 3 devoted to “Witness protection and incentives for co-operation”.
2. The questionnaire was drafted following instructions from the Bureau of the European Committee on Crime Problems (hereafter, CDPC)³ in order to both analyse the national measures taken to give effect to the provisions of the above-mentioned Recommendation and to identify whether there is a need to update the Recommendation. This interim report will be submitted to the CDPC plenary meeting for information and a further decision.
3. CoE member States were requested to insert their replies in the column next to each question and refer to the explanatory memorandum to Recommendation Rec(2005)9 for further information, to provide full citations of any relevant law, protocol or rule in replies and only reply to questions related to sensitive matters to the extent where found appropriate in accordance with relevant confidentiality requirements. National delegations were reminded that a questionnaire leading to the drafting of the Recommendation had already been sent to all CoE member States and that they may wish to consult their previous replies.
4. All delegations were invited to send their replies to the CDPC Secretariat by 30 June 2017. On 1 September 2017, replies from 29 member States had been received and one more followed afterwards⁴. This assessment (interim report), although it does not address the situation of all CoE member States regarding the needs on witness protection and the updating of the Recommendation, gives a broad overview on the topic.
5. Taking into account that the updating of the Recommendation is only one of the activities considered under Key Area 3 of the Action Plan on TOC, it was decided that the questionnaire should go even further and address relevant issues on the functioning of witness protection programmes and other problems encountered when implementing the rules on witness protection and incentives to collaborators. The questionnaire was intended to provide a real picture on the functioning of the system of witness protection, by identifying best practices as well as possible drawbacks, but at the same time trying to be concise and not overburdening the national authorities with too many detailed questions.

¹ Questionnaire - Review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators [CDPC (2017) 5 Rev].

² Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020) [CDPC (2015) 17 Fin], adopted by the Committee of Ministers of the Council of Europe on 2 March 2016.

³ List of decisions of the Bureau of the CDPC, 24 – 25 April 2017 [CDPC-BU (2017) 2]

⁴ List of countries at the following document: Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Lithuania, Republic of Moldova, Montenegro, The Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey.

6. This assessment is based on the answers provided by CoE member States, and does not seek to be a comprehensive research study on this issue nor to reflect the opinion of the experts who prepared this interim report.
7. The questionnaire sent to all CoE member States is comprised of 19 questions going from general aspects regarding the whole system of witness protection and drawbacks identified in the relevant national system, to specific questions on the type of measures most often applied, the types of procedures where the witness protection measures are available or criteria for granting protection measures or the situation of the inmates when granted protection as witnesses or collaborators, among others⁵. A complete chapter is devoted to the functioning, structure and capabilities of the witness protection units (questions 8 to 16). The questionnaire was designed to try to cover the most important aspects and needs related to witness protection and collaborators of justice, paying special attention to how this operates in practice. To that end, the questionnaire was reviewed by several practitioners involved in the witness protection, as well as in the field of international police and judicial co-operation related to witness protection⁶. The CoE would like to express its gratitude to all of them for their important insights and their outstanding input.
8. The assessment below will follow the structure of the questionnaire and the order of the questions.

⁵ See document entitled "Questionnaire - Review of the Recommendation Rec (2005)9 on the protection of witnesses and collaborators" (CDPC (2017) 5 Rev).

⁶ Meeting with Mr Vitor Sousa (Europol Secretariat), the Dutch Witness Protection Programme and the Victims and Witnesses Unit of the Special Tribunal for Lebanon (6-7 April 2017); 18th Europol Network Conference on Witness Protection, Vilnius, Lithuania (24-26 May 2017).

II. Analysis of the replies received

Question 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 protection to witnesses and incentives to collaborators of justice to encourage them to report such crimes and co-operate with law enforcement and prosecution authorities? (Recommendation 4). What are the current measures available in your national system (protection, financial reward, reduced sentencing/plea bargaining, civic duty, others) to promote greater co-operation?

9. This introductory question is aimed at identifying manifest shortcomings already detected either in the legal framework or in the practice of witness protection systems in member States. Moreover it should provide a description as well as an assessment by the states, whether they consider that the protection measures and the incentives for reporting and collaborating of witnesses (all kind of witnesses: pure witnesses, victims and co-defendants, as well as experts) are sufficient for the purposes of discovering and prosecuting more effectively criminal actions, in particular, those committed by organised groups in their country.
10. A majority of countries state that their system provides for an adequate legal framework on witness protection measures and incentives for collaborators. There are however also seven countries which do not make any assessment of their system, neither in the positive nor the negative, but simply describe the measures that are in place and the general legal framework. Other countries recognize that even if the system is appropriate and functions well, there is still room for improvement. A country specifically mentions the challenges that have to be faces regarding terrorism (foreign fighter, ISIS, DAESH, etc.); one country very honestly admits that like all systems, theirs can of course be improved; and one other expresses that, even if the system is updated and provides for a comprehensive regulation, more awareness on all the witness protection measures would be desirable for the witness protection programmes to work as an incentive (at the level of potential witness, but also at the level of law enforcement). There is concern in some countries whether the witness protection measures are well-known by potential collaborators and witnesses. Some countries also recognize that there is a need to amend the present legislation in order to better differentiate between the different types of witnesses and to include rules on the incentives for collaborators. Here, there is also room for improvement regarding the protection in the digital environment.
11. In sum, taking into account the replies to the questionnaire, it would not be wrong to say that this self-assessment shows that most countries are satisfied with their own compliance of the witness protection needs and international standards.
12. The replies to this first question show that most countries already addressed the issue of regulating the measures for protecting endangered witnesses and their close relatives in the 90s, and that many of them have amended those laws within the first decade of the 21st century.
13. In general, the conclusion that could be drawn out of these replies is that the CoE member States that have answered the questionnaire do not recognize themselves as lingering

behind in providing adequate rules on witness protection nor do they manifest any shortcomings in their application. With regard to incentives to collaborators who are defendants (we will use here the word repentant), the situation is slightly different. But this will be addressed later.

14. As to the precise measures that every member State has in place, the answers show great divergences, regarding the type of measures, the scope of their application and also related to the level of details in their regulation. When asked about the types of measures almost all answering States mention the provisions on procedural as well as non- procedural measures.
15. Within the first category (procedural measures), most include the possibility to testify without being seen, voice distortion and possibility of testifying from the distance via video conferencing (e.g. Croatia, France, Germany, Lithuania, Montenegro, Romania, Spain, etc.). Most include also the possibility, under specific circumstances, of complying with the proportionality principle and respecting the right of defence, to grant anonymity to the witness. Bulgaria, Finland, Germany and Moldova also mention specific rules for minors when acting as witnesses. This does not mean that the other responding states do not also provide for specific protective measures for minors, but only these two have mentioned it here expressly.
16. At this point it should already be highlighted that some countries exempt the witnesses from the duty to testify if the testimony is likely to expose them to considerable damage or put them at risk (Croatia). Denmark also contemplates this exemption if it would expose the witness or his/her close relatives to harm to their safety or welfare or otherwise inflict significant harm (although the judge could order the witness to testify if such information is crucial). Since these two countries exempt endangered witnesses from their duty to testify, the witness protection system acquires a different meaning and has a different practical scope. Insofar they are already not obliged to testify and the witness is the one who decides if he/she agrees to testify, there might be less need and practical implementation of measures to protect such person.
17. It is interesting to note the rule on admissibility and assessment of evidence that is mentioned in the Croatian questionnaire: it expressly states that the recorded pre-trial statements may be used as evidence.
18. As to the specific non-procedural measures, a general assessment cannot be done here, because many replies do not include a complete list of those measures. In general it can be affirmed that when it comes to non-procedural measures many provide for physical protection (without specifying in what way this is provided), geographical re-location at national or international level, the providing of a new identity, financial aid for witnesses included in a witness protection programme, as well as support in finding a new job and integration in their new environment.
19. Only three countries mention physiognomy changes as a witness protection measure (Armenia, Portugal and Romania); one country includes providing a fire-arm to the endangered witness (Lithuania). The most exhaustive list of measures include also IT measures or the provision of a protected car plate, the registering of the ingoing and outgoing calls or limited access to registered documents. Not all replies refer expressly to psychological assistance as part of the witness protection measures (Belgium does), therefore it is not easy to conclude if this type of support is in place as a rule in all the responding states.

20. Most States also consider the application of their criminal law provisions on the threatening of witness as a measure to protect the witness, although this protection might be seen only as a side effect of the aim sought, which is to prevent the obstruction of justice.
21. Incentives for collaborators are widely contemplated in most respondent states, and the most frequent incentive is a reduction in the penalty, either agreed by way of a plea agreement or automatically applied when considering the collaboration as a mitigating circumstance. This is the case, for example, in Andorra, Austria, Belgium, France, Germany, Greece, Latvia, Lithuania, Montenegro, Norway, Portugal, Serbia or Spain, The Netherlands). Other countries like Georgia or Switzerland consider the collaboration as an element to be considered when sentencing.
22. Out of those countries that incentivized the collaboration in the discovery and prosecution of other crimes, several limit these incentives to a certain type of crimes, mostly those related to organised crime. There are however many States that extend the incentives to collaborators to any kind of serious crime. In other words, incentives are mostly considered necessary in unveiling and prosecuting serious crimes, and especially in any forms of organised crime. There is however generally a refusal to compensate economically the collaborator, although this is being considered to be necessary in some countries. Collaborators are not always considered as "threatened witnesses", as is the case in The Netherlands.
23. Several countries mention the possibility of granting immunity (in form of dismissal of the charges or suspension of the prosecution) to collaborators who provide a significant testimony which is crucial to prosecute very serious crimes.
24. Finally, at this introductory level, some information is also provided related to witness protection programmes and for example, Andorra, Denmark or Sweden claim not to have any legal provisions in this regard. But as there is a special chapter addressing the rules and practice on witness protection programmes, it is not worth to address this issue here.

Question 2

Do you think that Rec(2005)9 on witness protection should better differentiate between the different types of witnesses (co-defendant/collaborator of justice, victim, third persons, minors, etc.) when addressing the needs, rights and concerns for persons in need of protection?

25. The replies to this question are as follows: 10 countries reply in the positive, stating that a better differentiation of the categories of witnesses in the CoE Rec(2005)9 would be advisable or convenient. Some countries state that an express distinction of the victim should be introduced, others consider following the classification contained in the witness protection handbook of Europol, as this would allow for a clearer understanding, and provide better definitions. On the other hand, 7 countries express that there is no need for such changes, mainly because the national laws already provide for an adequate differentiation of the diverse types of witnesses; and 10 countries do not reply or do not give any precise answer to the convenience of updating the Rec(2005)9 in this sense. Out of these replies, no definitive conclusion can be drawn, but it may be correct to understand,

that even if this differentiation is not strictly viewed as a necessity, it might be convenient to introduce more precise categories in the Rec(2005)9.

Question 3

- 3.1. 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.
- 3.2. Who undertakes the risk assessment to determine if a witness requires protection in your national system?
- 3.2. Who identifies the measures needed and who decides on whether the recommended measures should be adopted?
- 3.4. Is it all done by the same body, for example the witness protection unit/commission, or are other authorities also involved?

26. According to the answers provided, almost all respondent States have established a specialised unit to deal with the protection of witnesses. The exceptions are: Andorra, which maintains that as long as they do not have special witness protection measures or programmes, they don't have a specialized body to deal with it; and Armenia which states that it is the police who provide protection, generally to all citizens and thus, it is assumed, also to protected witnesses.
27. The rest of the respondent States have a specialised witness protection unit, with different names, but most of them are within the police structure and under the Ministry of the Interior (e.g. specialised subdivision of the central criminal police, within the national bureau of investigations, within the national criminal investigation service, or within the criminal intelligence service. However, in Bulgaria the WP unit is part of the public prosecutor's office and in France it is an inter-ministerial body. States which have a WP unit, inform that these are specialised and some countries report that psychologists and other analysts are part of the unit, additionally to the law enforcement officers. Whether these units can act independently or have an autonomous budget, are issues that will be addressed later under question 10.
28. It is assumed that under this question, respondent States focus on non-procedural measures, and thus there is hardly any reference to the adoption of procedural measures, which as a rule are decided by the relevant judge/court dealing with the criminal investigation/trial, either ex officio, upon application of the public prosecutor or the witness itself. Therefore, the next paragraphs will omit references to procedural measures.
29. When it comes to the assessment of the risks and the need for granting protection to a witness, it seems that most countries follow a similar pattern: the initial assessment is done by the criminal investigators, or the investigating judge/court or the public prosecutor, or all of them together. This is logic as those professionals are usually the first ones to get in touch with the witness and listen to his/her statements, apart from having knowledge about the context and gravity of the criminal investigation. This is expressly confirmed in many replies). The involvement at this initial stage of each of the actors varies from country to country: in some of them only the public prosecutor reports on the needs in others it is only the police.
30. At this initial stage, the WP unit might already be involved or not. Usually, once the possible dangers are detected by the police involved in the criminal investigation, the judge or the public prosecutor –who are often the authorities that apply for the measures to be taken–,

the risk assessment is then done or confirmed at a second stage by the WP unit, jointly with the previous actors, or independently.

31. Therefore, after the initial or preliminary risk assessment, the case or application is as a rule transferred to the relevant WP unit, save in Bulgaria where it is to be sent to the general public prosecutor. On the decision on granting the protection, deciding which measures are to be applied and if the person is suitable to enter a WP programme, the solutions in each country differ: 1) the decision is taken by the WP unit; 2) the decision is taken by the police authority; and 3) there are countries where the decision is taken jointly by the WP unit and other judicial or prosecutorial authorities, where the general public prosecutor takes the final decision in some cases; in two other countries public prosecutor and police are also involved in the decision. An exception is in Spain where the decision lies, according to the law, exclusively with the investigating judge or the court.
32. As to the involvement of the public prosecution and the judges in the decision on the measures to be granted, it has to be noted that some countries do not involve them together with the WP unit, but the WP commission has a mixed composition, comprising of police officers, psychologists, judges and prosecutors. This is the case of Belgium, Bosnia and Herzegovina, Montenegro or France, for example. Other countries have a special Public Prosecutor to deal with the decision on the appropriate measures to be granted (eg. The Netherlands). When the protection measures are to be provided for an imprisoned witness, the penitentiary authority is usually involved.
33. Finally, some countries provide for different bodies or commissions to decide on basic protection measures and the entering into a WP programme.

Question 4

Is witness protection available to witnesses in all criminal procedures, or only in certain types of crime (please elaborate)?

34. Only a few respondent countries state that the WP measures are available in all kinds of proceedings, regardless the type or the seriousness of the criminal offence (e.g. Bulgaria, Finland, Georgia, Latvia, or Spain). Most countries make a distinction between basic witness protection measures, which might be provided in any kind of proceedings and other special measures, which are only foreseen in cases related to serious and very serious crimes. For example, in Greece, Italy, Latvia, Lithuania, Romania or Turkey witness protection measures are only applicable in proceedings of certain types of crimes (against humanity, terrorism, against the Constitution or organised crime), while others additionally to listing the types of proceedings/offences where witness protection measures can be granted, they also establish a penalty threshold.
35. Of course not all types of measures are adequate in all kind of proceedings, but it seems that the witness protection rules are focusing more in the precise scope of the Rec(2005)9, which addresses specifically the needs in the ambit of fighting terrorism and TOC, than in the danger for the witness and their need for protection.
36. Finally, when it comes to the provisions on witness protection programmes, almost all countries limit the possibility to offering this kind of comprehensive protection only with regard to organised crime, terrorism, and other very severe forms of crime (e.g. national security, crimes against humanity, war crimes, against the Constitution, etc.).

37. It can be provisionally concluded that not all of the countries provide witness protection measures when there is a danger or threat to the witness, but they limit the protection measures to certain more severe types of offences.

Question 5

What are the most commonly used measures (procedurals and non-procedurals) for protecting witnesses in your national system?

For example:

- within the 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.)
- within the non-procedural measures (e.g. Home + personal protection ("target hardening"), Police measures, increased patrolling, etc., New identity, Geographical relocation, fully-fledged protection programme).

38. This question is aimed at learning what the real practice of the witness protection measures is and to that end information of those which are most frequently used was sent to the CoE member States. This should allow a focus on the actions that are really meaningful in practice and also, the identification of possible reasons why other measures, which at first sight would seem to appear to be adequate, are not used in practice.
39. Several respondent States have provided a detailed description of the protection measures available in their laws, including the full text of those provisions. This is appreciated, but does not give a clear picture of their actual use or the implementation of such legal norms. 8 countries have followed such an approach, not being possible to determine which ones are the measures that are most frequently adopted, although theoretically all of them can be granted.
40. Furthermore, it goes without saying that procedural measures are always more frequently adopted than non-procedural measures, and that the inclusion of a witness into a full-fledged witness protection programme is the less frequent measure. This is why the question distinguishes between the two categories, in order to know which measures within each of those types –procedural and non-procedural– are the most frequently used.
41. Among the non-procedural witness protection measures the replies show a fairly uniform practice, as almost all countries mention the same measures (save those which do not provide for anonymity of the witness, see below question 6): non disclosure of identity (anonymity), face/voice distortion devices; non-disclosure of address or other details (partial anonymity); hearing without directly confronting the defendant, either declaring via video link or in close hearing without the defendant being present. Recorded witness statements are often used when the witness is a minor.
42. As to the non-procedural measures it is unclear if the answers refer precisely to the measures adopted within a witness protection programme or in general. In general it could be considered that close protection or intensified patrolling would be the most frequently adopted. This is the case in 6 of the replies. Serbia expressly makes the distinction between non-procedural measures adopted within the witness protection programme and out of it.

However a majority of countries name the geographical relocation as one of the most frequently adopted measures (making no reference to close protection or increased police patrolling, and not stating that this applies only to person admitted to a witness protection programme), and only after it, the personal or close protection is listed.

43. The replies do not make a distinction if the relocation is carried out within the national boundaries or if it is abroad. In this context the practice varies greatly depending on the size of the country, larger countries not resorting so often to the international relocation than smaller countries, which necessarily have to count on the international co-operation. However, this is not always the rule: two countries which are not vast territories, also name national relocation as the most often used measure. On the other hand, two Scandinavian countries state that the change of residence is only done exceptionally.
44. After relocation and physical protection, the most frequently mentioned measure is the provision of a new identity, either temporary or permanently .
45. Other measures mentioned by several countries as very often used are: providing for an alarm system and preference in attending emergency calls; block the access to the address in public registers; surveillance of the residence; and increased police patrols.

Question 6

If your system allows for the use of anonymous witnesses in court, (recommendation 19):

- 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?

46. This question seeks to find out if the use of anonymous witnesses is allowed in all countries, if it widely used and finally if the protected person really can rely on the promise that his/her identity will not be disclosed as an effective protection measure and thus it can act as an incentive to report/testify a crime. The question does not intend to address the issue of undercover agents and their way of testifying, although many systems will not make a distinction between "ordinary" witnesses that require their identity to keep undisclosed and the protection of officers who act as infiltrated agents. The evidentiary value of the testimony of the anonymous witness will not be dealt here. The general "sole and decisive evidence rule" established by the ECtHR in numerous judgments, that this type of evidence is not enough to convict a person is assumed to be followed in all countries.
47. Finally, it should be clarified that the concept of "anonymous" witness is used here in the meaning of a witness whose identity is being kept secret throughout the criminal proceedings, not only to the defendant and the public in general, but to anyone, save the few authorised persons (who usually are the judge, the public prosecutor and sometimes also the head of the investigation). Partial anonymity as, for example, keeping the address secret, or face/voice distortion for non-recognition, is not considered here.
48. First of all, it has to be noted that not all the respondent countries provide for the possibility of granting anonymity to a witness as a protection measure. This is the case, for example, in

Andorra, Armenia, Italy, Poland or Sweden as they do not have any witness protection measures. In those other countries where the protected witness may be granted anonymity (the vast majority), it is important to check if there is effective assurance that their identity will not be revealed, and if it can be revealed, under which circumstances.

49. Only a few countries allow the identity of the protected witness to be revealed, and thus the anonymity is not ensured. This is the case of Greece (art. 9.4 Law 2001); Portugal where the identity can be revealed at the request of the public prosecutor; Serbia, if this is needed to ensure the rights of the defence (art. 106 CPC); or Spain, where anonymity is not directly granted during trial and any party can ask for the disclosure invoking the constitutional right of defence.
50. A different stance is taken by those countries which not only grant anonymity, but also ensure that it cannot be revealed, treating it as confidential or classified information and providing for criminal liability for those who infringe the duty to keep those data secret (e.g. Belgium, Lithuania, Moldova, Montenegro, Slovenia or Switzerland). Finally it is worth mentioning that several countries, which ensure the anonymity and grant it a status of confidential information, but which also allow its disclosure where there are indications that the anonymous witness has committed the offence of false testimony (Belgium and Slovenia).
51. As to the kind of threats or danger to the witness that might allow the adoption of this protection measure, not all countries have provided a response. Out of the few that included a reply to this precise question, state that anonymity of a witness can be granted as a witness protection measure not only in cases where there is a risk for "life or freedom", but also in other situations, as for example, serious danger or inconvenience or risk of material damage, risk for the socio-economic position or for the health. Slovenia requires a serious risk for life or other serious threat.
52. There is one statement that is worth mentioning here, because it potentially reflects some of the problems faced when implementing this measure: there is one country stating that after giving information that in their legal system the identity of the protected witness cannot be revealed, identifies that there is no 100% assurance that it will be kept secret. This may illustrate why some witnesses and collaborators who would otherwise be prone to provide their testimony if their identity is not revealed, may feel that they are not able to trust that the system will really ensure such anonymity and that no leaks or judicial disclosures will exist.

Question 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.

53. This question is aimed at providing insight on the use of e-protection for witnesses, mainly within protection programmes, but not exclusively. The question seeks to know what non-procedural measures resort to new technological electronic devices for ensuring safety for the witnesses. Thus, the use of video-conferencing or other IT instruments during trial or hearings is not addressed here (although some responses refer to procedural measures). It is important to underline this here to interpret the answers correctly. For example, when Spain answers that no electronic measures are used to protect witnesses, it means that

within the witness protection programmes e-protection is not applied, although electronic devices are put in place for protecting victims (which are also a specific category of witnesses) and video conferences and distance hearings are used routinely in courts.

54. Some countries also have electronic bracelets as an alternative to preventive custody for certain defendants. Indirectly this may affect the defendant also in a situation where he/she is also a witness and/or collaborator. In such cases, it should be differentiated if the measure is applied as a substitute to pre-trial detention or as a measure to grant protection to an endangered witness. In the former case, it does not affect this assessment, as it falls out of the protection measures.
55. The majority of the answers to this question are in the positive: 15 States say that either the legal framework provides for electronic measures for protecting witnesses, or that they use them in practice. This shows that electronic measures are not a rarity anymore and their use is increasing continuously. There are however several States that either do not use them because there is no legal provision for it, or they are not foreseen for witness protection or even if the possibility is provided in the law, it is currently not used. Even those countries which recognize that they have enough legal provisions and are prepared to apply e-protection, its practical application does not seem to be very extended.
56. Although not many details are given, and expressly several countries refer to the confidentiality of this kind of information, the measures that seem to be most commonly in place are: electronic and/or video surveillance; geo-location devices; bracelets; safe-home applications; and emergency buttons.
57. It can be concluded that e-protection offers a variety of measures that could strengthen the level of safety of protected witnesses and that the majority of countries are aware of these possibilities, and thus have started introducing an advanced legal framework allowing for such use. However, in practice it still seems that the wide range of instruments and e-protection devices are not fully exploited. It is hard to say why the development of these measures is progressing at a still slow pace, when compared to the use of electronic devices and applications in other spheres. A first step to be taken might be ensuring that all countries have the adequate legislation that allows for these measures to be adopted. Financial restrictions could also be behind the sparse use of e-protection in certain countries.

Question 8

Over the last 5 years, what has been the average number per year (if available) of :

- a) witnesses
 - b) Family members/dependents participating in a witness protection programme in your country?
- Out of those, what is the percentage of those relocated abroad?

58. This question seeks to gain an overview of the scale of witness protection in CoE member States, in terms of numbers of individuals included in the protection programme, and the extent to which international relocation is used as a measure of protection.
59. Recognizing that there could be sensitivities and potential confidentiality issues involved in providing exact figures, the question was deliberately posed in such a way as to allow

respondent States to provide approximate and average figures over the last five years, instead of revealing precise data on currently protected individuals.

60. Despite these safeguards, and perhaps not too surprisingly, a number of countries opted not to answer the question, citing confidentiality reasons. That being said, sixteen countries chose to answer the question, providing very useful data which allowed for an assessment of the scope of the problem across various member States. It must be noted however, that some countries provided such data on the assumption that they would be treated confidentially and not disseminated further. This assessment will therefore not refer to specific numbers in individual states, but rather treat and assess the provided data more broadly and generically.
61. As said, sixteen countries provided data in response to the question. Whereas some countries reported having several thousand individuals benefiting from protection every year, others cited only having a few cases per year. Apart from obvious differences in country size and population, the reported high variance in numbers may also come down to different ways of counting and defining who is "participating in a witness protection programme". As indicated in question 5 of the questionnaire, protection measures may range from procedural to operational measures and from ad hoc measures to more systematic and permanent measures. Some countries may consider ad hoc protection measures, such as increased police patrolling, issuance of panic buttons/emergency phones or temporary suppression of personal data from public records, as being elements of a protection programme, whereas other countries may apply a more limited definition and only consider those individuals who have been geographically relocated and provided with a new identity, as being participants in a protection programme.
62. Despite the significant differences in reported numbers, a common feature shared among the responding countries, is that the number of individuals benefiting from witness protection does not appear to be falling, but has either remained consistent, and in some cases consistently high over the past five years, while in other countries the number appears to be steadily rising, one respondent referring to a 10 percent annual increase on an already high case-load.
63. With regards to the differences in ratio between witnesses and family members, the picture that emerged was somewhat mixed. Some countries reported twice as many witnesses as family members in their programme, while others reported a more equal distribution of witnesses and family members, and others again indicated two or three times more family members than witnesses in their programme. One country provided a more detailed demographic indication saying that the majority of participants in its programme are single men aged 35-40.
64. As to how widely international relocation is used, the general tendency, perhaps not surprisingly, appears to be that smaller States rely more frequently on international relocation than larger States. Several States reported that a significant percentage of the witnesses in their programme are relocated abroad, in some cases stating that the majority of their witnesses are internationally relocated.
65. Considering the significant costs involved in maintaining effective protection programmes for witnesses, not least those who are internationally relocated, it also becomes apparent that we are dealing with a phenomenon which costs hundreds of millions if not billions of euros across the CoE area. For that reason alone, one could argue that it is an area that merits regular policy review.

66. With regards to the overall assessment of the average number of witnesses and family members who are participating in national witness protection programmes, and the number of international relocations, it is safe to conclude that the numbers are important enough to merit consistent attention, that in some member States they are on the increase and that the cumulative figure represents a considerable financial expenditure within and across CoE member States.
67. Moreover, the significance of witness protection should not only be measured in terms of numbers and costs, but also in terms of societal impact and importance in the fight against TOC and terrorism and other forms of serious crime. Recognizing that even if a single witness or collaborator were to be harmed or killed as a result of cooperating with justice, due to inadequate or insufficient protection measures, the State would have failed in its duty of care towards witnesses and collaborators. And such failure and harm could in turn have serious repercussions on the justice system as a whole, as it potentially could undermine public and discourage future witnesses and collaborators from coming forward.

Question 9

The majority of persons under the witness protection programme in your country are:

- d. Collaborators of justice
- e. Victims
- f. Other witnesses
- g. Undercover Officers
- h. Informants
- i. Others (please elaborate)

If possible, could you provide percentage?

68. Twenty six (26) member States responded to this question. Most reported that the majority and/or a high percentage of persons in their national protection programme are collaborators of justice (Bosnia and Herzegovina, Finland, Georgia, Italy, Lithuania, Netherlands, Norway, Poland, Romania, Serbia, Slovak Republic, Sweden). Germany clarified that the status of "collaborator of justice" does not exist in its national system, but explained that more than 90 percent of the persons in its protection programme are criminal offenders themselves. Other States reported a majority of witnesses (Bulgaria, Greece, Moldova, Portugal, Spain) or undercover officers and victims (Slovenia) in the programme.
69. The answers however also revealed differences in how the various categories are defined in member States and different legal frameworks which allow for protection of some categories but not others.
70. Belgium explained that it currently protects victims and witnesses, but that legislation is under consideration which would allow for the inclusion of collaborators of justice, undercover officers and civil infiltrators/informants into its programme. Denmark clarified that for the time being only collaborators of justice and victims are represented in its national witness protection programme. France explained that its protection programme was initially reserved for collaborators of justice but was extended to victims and witnesses by decree in December 2016. Italy explained that its Central Protection Service deals with

the protection of witnesses, collaborators of justice and their families, but is not mandated to protect victims, undercover officers, informants and others. Croatia explained that the protection system does not distinguish between the categories as such and that both victims and collaborators (“associate justice”) can be eligible for witness protection if they fulfil the conditions laid down by the Witness Protection Act.

71. Some countries also provided a percentage on the various categories of persons represented in the national witness protection programme: Moldova reported that 61% are witnesses and 22% are family members. Netherlands cited past research showing that about 40% of protected persons were individuals who themselves had been suspects in criminal investigations. Norway reported 40% collaborators, 40% victims and 20% informants. Romania indicated 60% collaborators of justice, 20% victims, 10% informants and 10% undercover officers. Slovenia reported that 80% of its programme participants are undercover officers and victims and that 20% are collaborators of justice. And Spain reported 70% witnesses and 30% collaborators of justice.
72. With regards to motivations, suitability and constraints, Norway explained that the national witness protection programme requires a lot from the participants, and is mostly suited for former criminal persons without a lot of contact with their family. The victims in the programme will more often choose to go back to their old life than the collaborators of justice, and although it is possible for family members to join the programme under the same rules as the witnesses themselves, experience shows that it is very difficult for the family members to cope.
73. When it comes to statistics, Austria pointed out that in its national system different sub-units of the Bureau for Witness and Victims Protection are responsible for the protection of witnesses and collaborators of justice, or victims at highest risk, while the protection of informants and undercover officers are provided by a different authority, rendering it difficult to obtain comprehensive statistics.
74. An overall reading of these responses would indicate that a majority of persons in a protection programme in CoE member States are collaborators of justice and/or individuals who themselves have a criminal background, but that the other categories of individuals listed in Question 9 also are considered important beneficiaries of protection in the national witness protection programmes.

Question 10

10.1 Does the witness protection unit in your country have operational and/or financial autonomy from the investigation or prosecution authority (Recommendation 28)?

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

10.3 Are witness protection experts consulted during the investigation/pre-trial stage?

75. This question aimed to identify whether Recommendation 28 of Rec(2005)9 had been adopted and given effect in member States. Recommendation 28 stated that “staff dealing with the implementation of protection measures should be afforded operational autonomy

and should not be involved either in the investigation or in the preparation of the case” but that “an adequate level of co-operation/contact with or between law-enforcement agencies should be ensured in order to successfully adopt and implement protection measures and programmes”.

76. The question also intended to test whether the separation applied on both a structural/operational/decision making level and on a financial level. Finally, in line with the Recommendation, the question aimed to assess whether the recommended functional separation nevertheless allowed for a degree of consultation and cooperation on witness protection matters.
77. Twenty eight (28) member States responded to the question. On the question of operational and financial autonomy, the majority of States replied that the witness protection unit in their country does enjoy both operational and financial autonomy from the investigation or prosecution authority (e.g. Austria, Belgium, Bosnia & Hercegovina, Croatia, Denmark, France, Georgia, Germany, Italy, Latvia, Lithuania, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Sweden). One of these respondents (France) added that financial autonomy is ensured through a budget allocated from the national agency which manages recoveries of seized and confiscated criminal assets (AGRASC).
78. Other countries indicated that they have a system whereby witness protection is financed from a within the Prosecutor’s Office. One country (Bulgaria) indicated that its Protection Bureau has its own budget within the Prosecutor’s Office, by which it implements the Protection Program. From this budget, the Prosecutor General determines the specific financial assistance provided to protected persons. The Protection Bureau maintains operational autonomy in application of the protection measures. A somewhat similar system was reported by another country (Switzerland), where the witness protection unit also has operational autonomy. The protection unit proposes a budget (living costs and special protection measures) to the prosecution authority for approval, since it is the prosecution authority which pays for the witness protection program. Such systems raise some interesting perspectives about their potential for instilling a degree of fiscal responsibility within the Prosecutor’s office, as the primary solicitor of protection services, however also raises the issue of whether financial control over the witness protection budget can influence the operational autonomy of the witness protection unit. What also remains unanswered is what happens if the designated budget for witness protection is exhausted. Does that mean an end to protection measures or is reserve or emergency funding available. Arguably, the same question could apply regardless of where the protection budget comes from.
79. The remaining responding countries also reported that their witness protection unit has operational, but not financial autonomy (e.g. Greece, Spain, Turkey). One country (Finland) indicated that its witness protection budget comes from the budget of National Bureau of Investigations within the Ministry of the Interior, but that the witness protection unit nevertheless has autonomy from the investigations. Moldova reported that the costs for the implementation its law on witness protection is covered by means from the state budget, from external sources, as well as from its programs for insurance of witness protection needs.
80. The Netherlands reported that its unit for witness protection falls under the direct authority of the special prosecutor for witness protection and the Slovak Republic similarly responded that decisions depend on its independent national Witness Protection Commission.
81. With regards to the decision making authority to refuse/implement/extend/terminate protection programmes and measures, regardless of the decision of the court/public

prosecutor, the responses reflect the different institutional arrangements already discussed in Question 3 of the Questionnaire. A few countries indicate that their national witness protection unit has the authority to make such decisions (e.g. Austria, Denmark), although Austria adds that a good understanding and agreement with the investigation and prosecution office is a main goal of the decision making process.

82. However, the majority of respondents indicate that such decisions are taken by the national Commission on Witness Protection (Belgium, Bosnia & Hercegovina, Croatia, France, Italy, Montenegro, Serbia, Slovak Republic, Slovenia, Turkey), or in the case of Bulgaria, by the national Protection Board or the Prosecutor General.
83. Other countries indicated that the Prosecutor General is the competent authority (e.g. Georgia, Greece), or that decisions may be taken by the Prosecutor General or the courts (e.g. Latvia, Portugal, Spain). The same applies for Moldova, which however clarified that in specific instances (upon written request from the witness, if there is a breach of obligations, if protection is no longer justified or in case of the death of a witness) the measures may be terminated by the protection programme. Romania similarly reported that in some specific situations the protection unit can independently decide.
84. One country (Lithuania) reported that decisions on implementation or revocation of protection are made jointly between the Prosecutor General and the Police Commissioner, or Director General of Prison Department, depending on the case, while another country (Netherlands) clarified that all formal decisions regarding witness protection are taken by the special prosecutor for witness protection. The remaining countries indicated that the relevant decisions are taken by the National Police Authority (Finland, Germany, Norway, Poland, Sweden, Switzerland).
85. On the question of whether witness protection experts are consulted during the investigation/pre-trial phase, a majority of countries responded in the affirmative, saying such consultation is frequent or standard practice (Austria, Croatia, Denmark, Finland, France, Germany, Greece, Latvia, Lithuania, Poland, Portugal, Sweden, Turkey). Some respondents went on to state that they consider such early consultation important to ensure a common understanding of the process, and to ensure that expectations are managed (Austria, Sweden). Others (Latvia) also elaborated that early involvement may be necessary to implement emergency measures before a formal decision on protection is taken. Another country (Poland) explained that such early consultation may guide subsequent decisions regarding protection and assistance measures.
86. Another group of respondents indicated that consultations occur sometimes, on a case by case basis and/or if deemed necessary by the investigating authority or prosecutor (Belgium, Bosnia & Hercegovina, Georgia, Moldova, Netherlands, Norway, Serbia, Slovenia, Switzerland). One respondent (Belgium) went on to explain that witness protection experts were sometimes consulted proactively, but more often consultations would only take place after a security problem had occurred. Another country (Switzerland) elaborated that consultation could be necessary to elaborate protection options and to verify if the witness would even agree to witness protection.
87. Despite allowing for such consultation, some responding countries emphasized that it is limited to matters of protection and procedure and does not involve investigative or legal issues (Germany, Serbia); that witness protection is not used as a bargaining tool and that protection experts play purely advisory role (Norway); and that consultation is a strong word and that perhaps inquiry is a better term (Slovenia). These responses illustrate some of the sensitivities and potential conflicts of interest which may occur during the investigation and pre-trial phase between the investigative and prosecutorial needs on the one hand, and the

need for independent and objective risk assessment, advice and protection on the other hand. It is this uneasy relationship which gave rise to Recommendation 28 in the first place. Perhaps as a reflection of this, a few countries reported that no consultation on witness protection takes place in the investigation/pre-trial phase (Bulgaria, Italy, Romania, Spain), although Recommendation 28 does allow for an adequate level of contact and cooperation.

88. When read as a whole, the responses quite clearly demonstrate that Recommendation 28, which represents one of the key policy recommendations in Rec(2005)9, have been broadly implemented and given effect in CoE member States. The majority of the respondents have national witness protection units which are structurally and functionally separated from the investigation or prosecution authority and which enjoy a degree of operational autonomy when it comes to implementing or adapting protection measures and programmes. Despite such functional separation, the majority of responding countries nevertheless allow for a degree of consultation during the investigation in line with the Recommendation.

Question 11

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 agreements/partners/reciprocity (e.g. between bigger and smaller States)
 - g. Other (Please, indicate)

89. The analysis of the data collected from the member States shows that the most frequent problems faced by witnesses relocated abroad, are those related to integration and the social, cultural and linguistic difficulties and differences between country of origin and new country of relocation.
90. The second most frequently cited challenge is the difficulty associated with relocating witnesses due to their profile (e.g. witnesses with criminal background), followed by a lack of finances and/or resources and/or a lack of ability to maintain previous standards of living. This last circumstance is especially significant when witnesses are relocated to countries where the standard and costs of living are high.
91. Political and immigrations restriction, the incompatibility of relocation rules and practices and the lack of relocation agreements are also mentioned as challenges to effective relocation, however they appear to be cited with lesser frequency among the countries consulted than the earlier outlined factors.
92. Given the data scrutinized, one can conclude that although potentially problematic and lengthy at times, the differences in legislation and practices among States are not experienced as the most serious or frequently encountered challenges in the relocation process. The more serious and frequently reported challenges appear to be linked to the successful integration of the relocated individuals and their families into the new country of residence, which takes on added significance when children are involved. A correctly

assisted and complete integration into the new country would appear to be instrumental to an effective and sustainable relocation. The improvement of measures to assist such integration, as well as the promotion and facilitation of international cooperation in the area of witness protection and relocation more generally, would therefore deserve special and continued attention, as identified in the Recommendation.

Question 12

Does your national system conduct psycho/social assessments and provide psychosocial support to participants in your witness protection programme? Are these provided by mental health professionals? Does your witness protection unit employ its own psychiatrist/psychologists and social workers?

93. This question is aimed *inter alia* at exploring how much relevance is given to the psychosocial services received by individuals who participate in the national witness protection programmes.
94. It is composed of four subtopics, aiming at identifying whether psychosocial assessment is undertaken for witnesses to be included in the protection programme; whether the participation of protected witnesses is facilitated by the possibility to receive psychosocial support; whether the psychosocial support services and assessments in the protection programme are carried out by mental health professionals and whether these experts are internally recruited within the protection unit or whether such services and assistance is outsourced.
95. The last sub-question also touches on broader issues of confidentiality, capability for early identification and detection of psycho-social support issues for individuals included into protection programs, the possibility to directly monitor the channel of information and the available resources to de-escalate potential issues before they might compromise the wellbeing of the participants or the safety of the protection programme.
96. The majority of the respondents (sixteen (16) member States) confirmed that their national system provides both psychological assessments - especially before the inclusion of participants into the protection programme - and psychosocial support to protected witnesses during their participation in the programme.
97. Six respondents stated that they only provide psychosocial support, while four countries indicated that they provide psychosocial assessment only. Two States did not reply to this question, while two others reported not having any psychosocial services included in their national system at the current time.
98. Nevertheless, psychosocial assessment and support are generally recognized by many respondents as crucial measures for a successful witness protection programme, in line with the Recommendation. One respondent cites how psychosocial assessment is considered a key element for both risk assessment and operational planning.
99. Concerning the qualification of experts providing psychosocial support services, and whether such expertise is available internally or externally, fourteen (14) States report that their Protection Unit has its own internal professionals, all of them mental health professionals - the majority being psychologists - apart from one State which reports making use of internal specialists who do not necessarily have a professional qualification in mental

health. At least seven States mention the combined use of psychologists or psychiatrists internal to the Unit, as well as recourse to external experts, depending on the individual needs of the witnesses. This possibly reflects a stronger emphasis and ability in some States to engage and provide individualized support services and tailored interventions to meet the specific requirements and requests of individuals in their programme.

100. At least two States (Italy and Spain) report using governmental mental health experts from the national health system. Only two States report not to have any experts (neither internal, not external) dealing with psychosocial support, while two other States did not reply to this question.
101. Apart from the general consensus which appears to exist around the importance of psychosocial assessment and support to witnesses in the protection programme, the reported differences among programmes also begs the question whether psychosocial support and assistance, including interventions provided by external health professionals with a particular expertise, is only made available to witnesses in those programmes that have more dedicated resources and budgets available to secure such specialized services and medical expertise. Recognizing the importance of psychosocial support to secure a successful protection programme, as recalled in the Recommendation, this is an area which would merit further research.

Question 13

- 13.1 Does your system take into account biometric identifying devices when providing protection to witnesses who have been given a new identity?
- 13.2 How do the witness protection units deal with the new challenges of biometric identification mechanisms (in public spaces, at borders, etc.)
- 13.3 Have you adopted any specific legal or practical measures in this regard? If yes, please mention (if possible).

102. The question aimed at gaining a better understanding of how new challenges linked to biometric identification are being considered by national witness protection authorities in member States, and whether systematic and strategic efforts are in place to identify problems and promote solutions and best practices. The question is gaining particular relevance due to ongoing policy initiatives and discussions to reinforce and enhance border security at the external borders of the European Union (EU). The EU in 2017 renewed its Internal Security Strategy (2015-2020) under the Maltese Presidency. It was agreed to create a joint Internal Security Strategy, implementing EU Cybersecurity Strategy, the revision of the Schengen Border Code, the European Travel Information and Authorisation System (ETIAS), the Entry-Exit System (EES) and other IT-related topics concerning the exchange of information and interoperability of data systems⁷. The new strategy, involving biometric technologies might have direct impact on witness protection operations and international cooperation.
103. Checks are reinforced already and e-gates are being introduced across Europe. Specific attention is given to Third Country Nationals and travel activities of criminals. Integrated EU Border Management is planning on implementing systematic checks in due

⁷ Council of Europe: Renewed European Union Internal Security Strategy and Counter-Terrorism Implementation Paper: report of the first half of 2017 and programme for the second half of 2017 (10827/17)

course also on EU citizens when crossing external borders. Relocation in conjunction with covert identity measures is considered one of the most successful and effective methods to protect witnesses. However this instrument may be at risk as a result of increased use of biometric verification at borders, in particular if no workable arrangement is found between relevant authorities on a trans-European level. Individuals under national protection schemes are often foreigners and they might regularly travel, leaving the national jurisdiction where national protocols and practices may provide them a degree of cover.

104. The majority of respondents reported issuing identity documents which contain biometric information. The existence of biometric verification systems at border crossings or airports, as well as their emerging use in everyday spheres of life (business sector, insurance, law enforcement, and entertainment) can jeopardize witness protection methods, and are considered by some responding countries as emerging challenges. The practical solutions identified are cooperation with institutions and other authorities in charge of such verification systems and changes in national legislation. Four countries were not in a position to share further information due to the sensitivity of the topic.
105. Most responders identify the problem as a future issue since they haven't encountered practical problems so far. That being said, there is a strong and widely shared understanding of the potentially dramatic impact biometric controls can have on witness protection, and it is recognized that there is an urgent need for increased international cooperation, legal coordination and implementation, and operational exchange of information with border control authorities. Considering border security management as a "reactive filter" (currently, once a witness is compromised using another identity, the situation can only be dealt with post-incident) was not addressed by any respondents. However such an idea merits further attention. Germany referred to Europol as knowledge hub for further exploration of the problems.
106. The legal process of issuing a new identity for the purpose of witness protection is also affecting other fields of law (civil law, administrative law, custody of children etc.) and requires long-term institutional monitoring. In order to avoid conflicts of legal regulations in regards to newly issued identities and the appearance of such information in databases, for instance in relation to travel activities crossing borders, member States were asked to outline their legal and practical solutions. There is a wide range of answers. One country states that there are currently no legal or practical measures adopted due to the assessment of "non-existence" of the problem, while another reported that on the practical and operational level advanced mechanisms are established in regards to border crossing situations. The majority of answers suggest that there are some measures and initiatives in place.
107. However, biometrics and border security management has broadly been identified as an important topic with potentially profound future implications for witness protection. The strategies suggested follow an operational inter-agency approach and a national legal approach in order to empower witness protection schemes to solve problems of re-identification of witnesses through biometric technology. The countries in their answers mainly focused on border crossing scenarios and did not contemplate the wider range of identification technology increasingly used in business products, IOT (internet of things), entertainment industry etc. which also have the potential to undermine witness protection measures. Given its potentially far reaching and profound impact on witness protection it is an area in need of further consideration and possible policy regulation/recommendation.

Question 14

14.1 Is the witness protection unit of your country staffed with personnel with expertise in secure communications/ information technology / cyber-security?

14.2 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?

108. The expertise necessary to secure the communication of protected witnesses can be difficult to outsource due to the sensitivity and confidentiality issues surrounding the protection programme. There is therefore a strong incentive to employ additional staff with IT skills and expertise and to educate existing personnel on the appropriate use of IT and communication channels and providing advice to the witnesses on how to avoid the risk of identification and exposure through new technologies. Ten out of 30 responses confirmed having specialised witness protection staff to cover that aspect. The majority of respondents without in-house IT expertise in its protection unit reported reaching out to other police resources (IT Department) when needed. As one respondent (Poland) pointed out, it can sometimes be difficult to balance the information security requirements of the protection programme, with a participants constitutional rights and freedoms to use internet and social media, and their freedom in connected spheres of life (privacy, education etc).
109. The advanced development of web based technology applications and its implementation in daily life of individuals and society are recognized as major risks to protected witnesses. The majority of witness protection units are mindful of the associated risks and consult qualified staff, implement protocols and measures, both of technical and educational nature. Nineteen (19) countries answered the second sub-question in the affirmative, starting that the protected witness and dependents are advised and trained on the appropriate use of technologies and provided equipment. Five countries have not yet implemented such policies and procedures, and one country indicated that it does not regulate the use of communication tools and internet applications for its witnesses.
110. Technical solutions provided to the witnesses and clear instructions in form of a memorandum of understanding between the witness protection unit and the witness are nevertheless adopted broadly and considered best practice by the majority of responding countries. Five countries moreover reported monitoring and observing the communication of witnesses as an added means of security.
111. So far the use of internet and modern technology has been acknowledged as major risk to the protection program by the countries, with many reported cases of protected witnesses being exposed and/or intimidated on the internet and on social media, and continued focus on the adoption of appropriate strategies and technologies are considered necessary and in need of ongoing attention.

Question 15

Do you have covert finance procedures (e.g. covert accounts, companies) for your witness protection programmes? If so, does your national anti-money laundering legislation create any difficulty in this respect?

112. This question seeks to find out if countries participating in this survey are using covert accounts and/or companies in their witness protection program, and should that be the case, whether the country's national anti-money laundering legislation poses any challenges to the finance procedures. The aim of this question is to determine whether the use of covert finance procedures for the witness protection program presents any legal issues to the relevant Witness Protection Units.
113. The majority of the countries who responded to this survey stated that they have covert finance procedures in their witness protection program without elaborating any further on that; ten countries responded that they do not use any covert finance procedures, of which one remarked that it does not have such procedures because they could culminate into legal issues and may compromise the protection program itself. Another country in this category described how the witness protection program is financed. The remaining countries either did not give an answer or stated that they cannot give a response because the question concerns finance procedures that are confidential and are related to the security of the witnesses. One country added that it is unable to provide further information in deference to the individuals who are receiving protection.
114. Most of the respondent countries remarked that their national anti-money laundering legislation does create some difficulties for them when using covert finance procedures. Some mentioned that these issues can be overcome through ad hoc adjustments, inter-institutional agreements, coordination and cooperation, or by taking into consideration the limitations imposed by laws related to money-laundering. One country replied that it may conceal the identity of its employees and the owners of the objects and facilities used in the procedures. Another country stated that when applying covert finance procedures, it does not work according to the company's principle because of issues that may arise in relation to the national legislation. One country replied that although this type of challenges does exist, it is still considered very rare. Lastly, three countries did not have any difficulties or issues with their national legislation.
115. It can be concluded from the answers provided by the respondent countries that the majority of them are making use of covert finance procedures in their witness protection programs. Even though most of the countries are facing potential difficulties in relation to their national anti-money laundering legislations, they seem to have found adequate ways to deal with these issues and to overcome them.
116. Finally, it may be speculated that some of those countries who chose not to answer the question, may be using covert procedures but due to confidentiality, they opted not to address the question.

Question 16

Are the needs of juveniles as protected witnesses sufficiently covered legally and in practice?

117. This question aims at identifying whether States apply different legislation and/or practices when dealing with juveniles receiving witness protection, from those applied to protected adults. The question is linked to a wider discussion and consideration about whether there is greater need to explore and grant legal recognition to practices which address and facilitate the needs of juveniles as a vulnerable population.
118. While a significant number of respondents (fourteen (14)) declare that the needs of juveniles are sufficiently covered both legally and in practice, there are still many others who express a limited recognition by their national jurisdiction in developing rules and laws for the protection of the specific needs of minors. In particular, three States mention how the legal coverage of juvenile needs is limited to considerations about parental/custodial consent for the inclusion of minors into the protection programme, without considering how legislation might also assist and implement other measures to address the multifaceted and complex needs often faced by juveniles involved in protection programmes.
119. Seven States underline how legally there is no difference between adults and juveniles, but adapting practices that are more suitable for a personalized approach to the specific needs of a young population. Four other States indicate that they do not foresee any differences legally or in practice in the management of juvenile cases, or where developmental phases are not taken into consideration.
120. The responses suggest that further discussion and consideration is useful to identify provisions and practices which could facilitate the interaction and integration of minors (whether as witnesses or family members) within the challenges of the protection programme. Such discussion may assist in develop a stronger normative framework, whether legal, policy or administrative, to recognize the special needs of this vulnerable population within the protection system and to facilitate the allocation of dedicated and specialized resources to address needs and promote and develop best practices in this regard.

Question 17

Are specific gender/ethnic/cultural/religious/ linguistic issues taken into consideration in the implementation of witness protection programmes and/or measures? (e.g. gender/ethnic/cultural/religious/linguistic skills/backgrounds of staff dealing with witnesses/participants, etc.)

121. In the current globalised world with increasing social and cultural diversity in all societies, cultural, ethnic, religious and linguistic issues have to be considered when establishing public policies in order to promote a peaceful integration and coexistence as well as with the view to preventing potential conflicts. This variety has also an impact when it comes to implementing witness protection measures of all kinds and making the witness protection programme successful. Those elements have to be considered at all stages: when

making the risk assessment, when deciding on the suitable measures, when implementing the witness protection programme and in general, for granting safety to the protected person and his/her close relatives.

122. This is particularly important taking into account that the protection measures in many cases will not only impact the witness himself, but the whole family. Ensuring not only the safety, but also the welfare of the witness and his/her relatives is crucial for such programmes to act as incentives for co-operation, but also to make them financially more efficient.
123. In the last decade the different ethnic, religious, linguistic and cultural backgrounds of persons included in witness protection programmes in Europe has posed new challenges. The present question seeks to find out how the different states are dealing with those challenges and if more action is needed in this field. On the other hand, it aims at checking if the gender perspective is being paid enough attention.
124. The replies show that most countries pay attention to these elements and that they are aware of their importance. Only 10 respondent States answer saying that such issues are not relevant in their countries, they have not encountered problems of this type, or simply consider that this question does have an impact in their systems. Out of those 10 countries which state that these issues are not taken into consideration some mean it in the positive sense: as not having detected any discrimination upon cultural/ethnic/linguistic/religious or gender issues. Expressly one State affirms that 40% of the staff in witness protection units are women; and another country states that no distinction is made according to these elements.
125. Many of the countries which have answered in the positive stating that such elements are being taken into account when dealing with witness protection, explain that this is considered when hiring and selecting the staff or when selecting the most compatible handler. These issues are considered also when accepting a person to the witness protection programme as well as for its design, not only to ensure the success of the programme, but also not to interfere unduly in the life of the protected witness. Some countries openly state that much more can be done and in particular the jihadist threats highlight the need to strengthen the work done with regard to cultural, linguistic and religious aspects. Several countries have programmed training in this respect and also consider that training is still important. Only few countries adopt a different approach to this question. This is the case, for example, of Moldova: the first has a specific legislation (art. 11.c on the Law of Protected Persons), that recognizes the right to reject an application for or a protection measure if it contradicts his/her moral or religious convictions.

Question 18

Does your country have special legislation and measures for detained/imprisoned witnesses (e.g. special detention facilities, etc.)? Please elaborate if possible (recommendation 26)

126. Rec(2005)9 in its paragraph 26 recommends the provision of adequate measures and where necessary arrangements "such as special penitentiary regimes". This question is aimed at clarifying if witness protection measures for persons serving sentence in prisons are ensured, not only in practice, but also at a legal level.

127. In general all of the countries state that they provide for safety measures in prisons, either by applying specific rules for protected witnesses or within the general obligation of the penitentiary authorities to ensure the safety of every single inmate. This being said, a significant number of replies state that there is no specific legal solution for protected witnesses serving in prisons. In total, 16 countries recognize that there are no special rules in their legislation (Andorra, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Finland, France, Georgia, Greece, Norway, Serbia, Slovenia, Spain, Sweden, Switzerland and Turkey).
128. Despite not having passed specific legal rules for protected witnesses within the penitentiary system, most of the respondent states confirm that the protection measures are granted in practice, usually on a case by case basis, upon request of the witness protection unit and after assessing the specific risks of the inmate. Several countries expressly answer that the co-operation with the penitentiary authorities and the witness protection units is very good, despite the lack special rules for protected witnesses.
129. The rest of the countries say that they have specific legal provisions in this area, usually included in penitentiary law. How these legal provisions are implemented in practice lies beyond this report. Belgium recognises that a special section for protected witnesses is foreseen in the law, and Denmark has a specific regulation on the Danish Prison and Probation Service which establishes protocols to be followed to ensure the safety of protected witnesses, and confirms that due care is taken in practice of the needs of protected witnesses.
130. The solutions either legally foreseen or adopted in practice without any specific legal provision are almost equal. They range from keeping the endangered witness in special facilities or separated from the other convicted prisoners, if they so wish, to the transfer to another detention centre or keeping the protected person under continuous video surveillance. Special facilities or specific detention centres do not seem to be common (although two countries inform that such special detention centres are provided for protected witnesses), but a specific place in the prison where safety can be ensured is provided in many countries.
131. In general, even if there are no specific legal rules, it appears that the general obligation of the penitentiary institutions to ensure safety and provide enhanced measures when the risk is higher is considered to provide an adequate solution for granting safety for protected witnesses. Even if no respondent state points out at any problems and rather confirms that the co-operation between witness protection units (or public prosecution, as is the case in Bulgaria or Greece) and the penitentiary institutions works well and that due care is taken to ensure the safety of all inmates, the lack of a precise legal framework, recognizing the specific needs of a protected witness does not contribute to increasing the confidence of the witness-collaborator in the system. In the end it will depend on the trust the witness protection unit inspires and whether the agreements between the units and the director of the prison are put in place or not.
132. In sum, if the co-operation works well in practice, the system provides an adequate safeguard for the collaborator. However, making the whole system depend upon single agreements without a specific support might not be seen as the best solution in theory, although it might function very well in practice.

Question 19

Are there any other needs/shortcomings that might require action in order to improve the implementation of witness protection programmes/measures, both nationally and internationally?

133. This closing question seeks to allow member States to voice their concerns related to the witness protection system, beyond the precise questions formulated. It should serve to identify further shortcomings and needs and aid in the assessment on the convenience of updating the CoE Rec(2005)9. Not all of the States have added comments at this point (12 of them have not answered), but there are many interesting comments that should be taken into account.
134. The most repeated comment is related to the need to improve international co-operation. Fostering international co-operation seems to be a general concern, and some replies also point out that this should be included in a future CoE Recommendation. The challenges in fighting terrorism and in particular jihadist terrorism in Europe need increased co-ordination at the international level, but also better international co-operation in relocating protected witnesses. Harmonization of rules on protection measures and standardized proceedings in granting the status of protected witness would also help to improve international co-operation. The processing of bio-data and the protection of witnesses who have been granted a new identity also demands joint action at international level
135. At domestic level, some States consider that there is a need to improve the incentives as well as the protection of collaborators. As there are still some countries that do not have rules to incentivize a repentant involved in organised crime offences to take the step forward to become a collaborator, it seems that action should be taken in this area.
136. Other needs expressed are, for example: development of the surveillance systems to ensure the safety of protected witnesses; improvement of the regulation and protection of witnesses who are undercover agents; expansion or allowing the use of e-protection measures; consideration of specific needs of the witness-victim together with the other categories of witnesses; and in general improvement of the skills of the staff of the witness protection units, specifically in those countries with less experience in this field.
137. Apart from ensuring adequate financing and enough human resources in the witness protection units, which is a general pre-condition for the witness protection programmes to work efficiently (the needs here may vary greatly, some States being adequately staffed, while others might be lacking of resources), the proposal of including an ICT expert in every witness protection unit, is most adequate. If e-protection is to be developed, and the challenges for protection of witnesses are to be found in the digital world, the provision of ICT skilled staff is indispensable.
138. It appears that there is also the need in some countries to extend the scope of criminal offences where witness protection measures and programmes can be applied, as in some countries the material scope is very limited. In this vein the comment included in the Swiss reply might give rise to further thoughts and discussions: the protection of witnesses within the scope of not serious crimes should also be considered, where the threats might be even higher. In other words, even if present Rec(2005)9 focuses on TOC and terrorism, it seems that the protection of witnesses should depend rather on the real danger the person testifying is under, than the type of offence or proceedings where the testimony is given.

III. Conclusion

139. An overall assessment of the answers to the nineteen questions in the questionnaire allows for the following conclusions. On the whole, the majority of responding member States have functioning witness protection systems and specialized units, and it appears that many of the recommendations contained in Rec(2005)9 are implemented and functioning well. A majority of States reported having witness protection units and programmes which are operationally autonomous and financially resourced. However, there are still some gaps and challenges identified. A few respondents do still not have any functioning national witness protection system or unit, and others are not mandated to protect all kinds of witnesses or collaborators, while others continue to encounter difficulties with international relocation and/or do not relocate at all.
140. It should be recalled that the extensive use of the Recommendation by most international organisations and States has proved that the recommendation is still a valid document in setting standards. However, due to the length of time since its approval and taking into account changes in technology, society and forms of criminality, certain areas of the Recommendation could be supplemented. Moreover, a number of critical areas merit continued attention and policy review. This includes: new and emerging technologies, which pose wide-ranging and profound challenges to current witness protection methods; new forms of criminality, which may compromise or surpass existing witness protection capabilities in member States (e.g. Jihadist terrorism; new forms of cybercrime; increased sophistication and capability of TOC networks); a continued need to consider and integrate psychosocial support into witness protection, including specialized interventions for special needs; a continued need to consider gender/ethnic/cultural/religious/linguistic issues in the implementation of witness protection to reflect demographic changes and diversity in the witness protection population and society at large; a continued focus on incentives for cooperation, shielding from harm and encouraging witness and collaborators to come forward; and last but not least a continued need for international cooperation and exchange of best practices in the area of witness protection and relocation, recognizing that many challenges faced by national witness protection are shared and that common approaches often will provide the best possible responses and solutions.
141. As recalled in Rec(2005)9 it is *"unacceptable for the criminal justice system to fail to bring defendants to trial and obtain a judgment because witnesses have been effectively discouraged from testifying freely and truthfully"* and any failures in the national witness protection system may come at a significant reputational cost to the criminal justice system. Any failures may quickly be seized and capitalized upon by the media due to the often sensationalist value associated with witness protection, and such stories can erode public trust in the criminal justice system's ability to protect individuals. Repeated such incidents could therefore quickly undo some of above outlined advances in the implementation of Rec(2005)9. It is therefore critical, that any vulnerabilities or challenges to member States witness protection programmes receive due attention and ongoing and recurrent policy review with a view to identify solutions and allocate necessary resources.
142. One country aptly summarizes the situation and the positive role a CDPC review of Rec(2005)9 could play: "Recent developments re terrorism, foreign fighters or biometric, the recording of passenger names for all flights, require urgent, common and international measures and discussions. In the last decade WP units have been established in the majority of the EU countries and abroad, but especially in the past 3-4 years all those units are confronted with new technologies and possibilities as well as new forms of crimes such as

ISIS and foreign fighters. Those developments need to be taken seriously into consideration and require also a rethinking for established WP units around the world, both on national, international and political level. The recent project of the CoE is to be seen as a first step in this direction but requires follow up measures and discussions on different levels" [emphasis added].

143. In light of the assessment and its conclusions, it is proposed that the CDPC initiates an update/review of the Recommendation and that it requests the Secretariat to draft Terms of Reference for a drafting group to be mandated to review/update Recommendation Rec(2005)9.