

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

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

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

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In the framework of the Action Plan on Transnational Organised Crime (TOC), adopted by the Committee of Ministers on 2 March 2016, Key Area 3 is devoted to “Witness protection and incentives for co-operation”. Within this Key Area, Action B1 consists of the review of the [Recommendation Rec \(2005\)9](#) of the Committee of Ministers to member States on the protection of witnesses and collaborators.

As part of the implementation of the Action B1, this questionnaire has been prepared in order to both analyse the measures taken to give effect to the provisions of Recommendation and to identify whether there is a need to update the Recommendation.

- Please insert your replies in the column next to each question. If necessary, please refer to the explanatory memorandum to Recommendation Rec(2005)9 for further information.
- Please provide full citations of any relevant law, protocol or rule in your replies to the questions.
- As some questions may be seen as related to sensitive matters, you are invited to reply only to the extent you find appropriate and in accordance with relevant confidentiality requirements.

In relation to the work leading to the drafting of Recommendation Rec (2005)9, delegations may recall that a questionnaire was already sent to all member States. As such, CDPC delegations may wish to consult their replies from this previous questionnaire, though it should be noted that its questions related to terrorism cases only and that not all member States responded.

You are invited to send your replies to the Secretariat of the CDPC, no later than 30 June 2017, to: DGI-CDPC@coe.int

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

QUESTIONS

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?

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?

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?

3.3 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?	
4. Is witness protection available to witnesses in all criminal procedures, or only in certain types of crime (please elaborate)?	

PRACTICE ON PROTECTION MEASURES	
<p>5. What are the most commonly used measures (procedurals and non-procedurals) for protecting witnesses in your national system?</p> <p>For example under:</p> <ul style="list-style-type: none"> - 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). 	
<p>6. If your system allows for the use of anonymous witnesses in court, (recommendation 19):</p> <ol style="list-style-type: none"> a. Can their identity be disclosed if so required to ensure the rights of the defence? b. Does the anonymous witness have any assurance that his/her identity will not be disclosed during the proceedings? c. Is the anonymity of witnesses only granted when there is a risk to life or freedom? Or can it also be granted in cases where the witness has been threatened with property damage or other less serious threats? 	
<p>7. Does your system use electronic measures to protect witnesses (e.g. electronic/communications monitoring, electronic bracelets, geo-location</p>	

<p>devices for defendants and/or witnesses, etc.)? Please elaborate if possible.</p>	
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WITNESS PROTECTION PROGRAMMES	
<p>8. Over the last 5 years, what has been the average number per year (if available) of :</p> <p>a) witnesses</p> <p>b) Family members/dependents</p> <p>participating in a witness protection programme in your country?</p> <p>Out of those, what is the percentage of those relocated abroad?</p>	
<p>9. The majority of persons under the witness protection programme in your country are:</p> <p>d. Collaborators of justice</p> <p>e. Victims</p> <p>f. Other witnesses</p> <p>g. Undercover Officers</p> <p>h. Informants</p> <p>i. Others (please elaborate)</p> <p>If possible, could you provide percentage?</p>	
<p>10.1 Does the witness protection unit in your country have operational and/or financial autonomy from the investigation or prosecution authority (Recommendation 28)?</p> <p>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?</p> <p>10.3 Are witness protection experts consulted during the investigation/pre-trial stage?</p>	

<p>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:</p> <ul style="list-style-type: none"> 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) 	
<p>12. Does your national system conduct psycho/social assessments and provide psycho-social support to participants in your witness protection programme?</p> <p>Are these provided by mental health professionals?</p> <p>Does your witness protection unit employ its own psychiatrist/psychologists and social workers?</p>	
<p>13.1 Does your system take into account biometric identifying devices when providing protection to witnesses who have been given a new identity?</p> <p>13.2 How do the witness protection units deal with the new challenges of biometric identification mechanisms (in public spaces, at borders, etc.)</p>	

<p>13.3 Have you adopted any specific legal or practical measures in this regard? If yes, please mention (if possible).</p>	
<p>14.1 Is the witness protection unit of your country staffed with personnel with expertise in secure communications/ information technology / cyber-security?</p> <p>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?</p>	
<p>15. Do you have covert finance procedures (e.g. covert accounts, companies) for your witness protection programmes?</p> <p>If so, does your national anti-money laundering legislation create any difficulty in this respect?</p>	
<p>16. Are the needs of juveniles as protected witnesses sufficiently covered legally and in practice?</p>	
<p>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.)</p>	

<p>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)</p>	
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CLOSING QUESTIONS	
<p>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?</p>	

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