EVALUATION OF THE COUNCIL OF EUROPE SUPPORT TO THE PROTECTION AND PROMOTION OF FREEDOM OF EXPRESSION

"The interests of truth require a diversity of opinions."

John Stewart Mill

EVALUATION REPORT 　 **2019**

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EVALUATION OF
THE COUNCIL OF EUROPE SUPPORT
TO THE PROTECTION AND PROMOTION
OF FREEDOM OF EXPRESSION

FINAL REPORT

Contents

List of abbreviations

CM	Committee of Ministers
Commissioner	Commissioner for Human Rights
CSO	Civil Society Organisation
DIO	Directorate of Internal Oversight
EC	European Commission
ECHR	European Convention of Human Rights
Court	European Court of Human Rights
EU	European Union
EUD	European Union Delegation
FO	Council of Europe Field Office
FoE	Freedom of Expression
HQ	Council of Europe in Strasbourg
ODGP	Office of the Directorate General of Programmes of the Council of Europe
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
ToR	Terms of Reference
UNDP	United Nations Development Programme

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EXECUTIVE SUMMARY

This evaluation covers Council of Europe activities aiming to protect or promote freedom of expression (FoE). Without any claim to exhaustiveness, the Terms of Reference (ToR) for this evaluation specifically note 'types' of intervention, i.e. 'standard setting, technical cooperation and the platform for the protection of journalism and safety of journalists', and five thematic areas, i.e. 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'. The period of evaluation, as specified in the ToR, covers the years 2014 to 2018.

This executive summary briefly presents the main evaluation findings, conclusions and recommendations.

FINDINGS

- **Relevance:** Desk research and case study work indicate the Council of Europe's adequate coverage of the five thematic areas, however, the assessment is constrained by the absence of an explicit strategic framework and targets against which coverage can be assessed. Stakeholders suggested a need for more selective / focused support and strengthening Council of Europe Field Office capacities. Existing data on FoE, most notably European Court of Human Rights' (Court) cases and alerts by the 'Platform to promote the protection of journalism and safety of journalists' (Platform) indicate that the Council of Europe is addressing partner needs. This is validated by the case study work, specifically highlighting the clear alignment between Council of Europe's cooperation activities and needs. Stakeholder feedback also suggests that needs can be addressed by facilitating access to Council of Europe 'outputs' such as Court judgments / decisions or recommendations by the Committee of Ministers in different languages.

- **Effectiveness:** Council of Europe's standard setting is considered effective as indicated by member State engagement with the Council of Europe to address identified shortcomings, but also other actors' (most notably ombudsperson offices' and Civil Society Organisations' (CSOs)) 'use' of Council of Europe standards, or support for Council of Europe standards voiced by other European / international organisations. Stakeholder feedback pointed to the Court as the most prominent defender of standards, and the corresponding efforts on the execution of judgments. The Council of Europe is also 'encouraging compliance' effectively, most notably via the Platform and via cooperation activities (note, however, that the Platform cannot be considered a 'traditional' monitoring mechanism, allowing for preventive measures and exchanges of good practices). However, stakeholder feedback suggested room for improvement with regard to visibility and political pressure to ensure genuine follow-up, whilst acknowledging the difficulties of engaging with authorities representing member States that experience backsliding on FoE. Council of Europe's systematic involvement of CSOs in standard development and cooperation was considered an important enabling factor, whilst Council of Europe resource / capacity constraints and lack of political will on the side of some member State authorities were identified as the main obstacles. Finally, stakeholder feedback failed to provide conclusive evidence on a specific contribution to gender equality. Notwithstanding, needs in terms of awareness raising on gender issues were noted, and so were Council of Europe efforts to ensure gender-sensitive outputs and outcomes.

- **Efficiency:** Whilst the Council of Europe lacks an overarching strategic framework or a dedicated leadership / coordination function on FoE, stakeholders did not identify any cases of incoherence. The Council of Europe deploys different tools to ensure internal coherence, e.g. the Task Force on FoE. External coherence benefits from dialogue with relevant European and international organisations. However, at times this finds itself limited by Council of Europe resource constraints, with the Council of Europe perceived as not always speaking with one voice and / or not efficiently seconding other actors' condemnations of violations of FoE.

- **Added value:** Council of Europe standard setting was considered to add substantial value. However, stakeholders in the member States perceived a lack of sufficiently strong political engagement by the

Council of Europe (this was not considered to apply to the Commissioner for Human Rights). The Court was the institution that most stakeholders referred to when discussing added value in relation to standards. Cooperation activities also distinguished themselves for their strong added value, with stakeholders emphasising Council of Europe's technical and methodological expertise; the comprehensive nature of Council of Europe support; responsiveness to (changing) needs; the 'mobilising force' of the Council of Europe, bringing all relevant actors together; and the presence of Field Offices.

- Sustainability: Stakeholder feedback suggests an adequate approach towards ensuring sustainability, e.g. via the systematic involvement of CSOs as multipliers, or by designing cooperation activities with a view to sustainability. However, Council of Europe resource constraints, and often the absence of political will, limit sustainability.

CONCLUSIONS AND RECOMMENDATIONS

The conclusions and recommendations are organised around the themes of: FoE strategic framework, leadership / coordination and visibility; FoE resources; and other issues, not specifically related to FoE.

FoE strategic framework, leadership/coordination and visibility:

- Concerning Council of Europe's strategic framework on FoE, this evaluation found that whilst there are different strategy initiatives, an overarching forward-looking strategic framework on FoE, involving all relevant actors in the Council of Europe, and covering all five thematic areas is missing. Stakeholders did not consider any of the Council of Europe's work irrelevant, but rather suggested the need for prioritisation. It is therefore recommended to develop a strategic framework on FoE, involving all relevant actors in the Council of Europe.

- Enhance leadership and coordination: This report found the Council of Europe engages in a variety of relevant initiatives to protect and promote FoE. However, there is a sense of potential for further strengthening leadership and coordination across different thematic areas, types of intervention, and mobilising all relevant Council of Europe actors towards common objectives (as set out in a strategic framework). It is therefore recommended that the Council of Europe considers creating a designated role to ensure leadership and coordination on FoE. This could take the form of a 'Special Representative' or 'Special Adviser' of the Secretary General on FoE.

- This evaluation also found that the Platform did effectively 'encourage compliance', however, there is room for improvement with regard to visibility, and it is therefore recommended to increase the visibility of the Platform, e.g. in cooperation with national champions of FoE such as CSOs and ombudsperson offices and by involving Council of Europe Field Offices.

FoE resources:

- Turning to resources dedicated to FoE, this evaluation found effectiveness and efficiency at times to be constrained by limited partner and Council of Europe resources. This aspect merits specific attention in the context of any future development of a strategic framework. CSOs and national ombudsperson offices are considered prominent defenders of standards, however, they suffer from resource constraints / government budget cuts. It is therefore recommended to prioritise capacity development for CSOs and ombudsperson offices.

- Turning to Council of Europe Field Office capacities, this evaluation found in-country presence to be an important factor in terms of thematic coverage, and it is recommended to strengthen Field Office human resources in selected thematic areas of FoE.

- Moreover, this evaluation also found that the area of FoE benefits only of limited technical cooperation in form of projects. It is therefore recommended to facilitate access to Council of Europe 'outputs' on

FoE, most notably the Court's case law, Recommendations by the Committee of Ministers, and cooperation outputs, as far as possible in different languages. One way of facilitating access would be to ensure that outputs can be accessed on relevant Council of Europe websites.

Other issues - not specific to FoE:

- This evaluation found cooperation activities to clearly address needs, with stakeholders noting several positive features contributing to relevance and distinguishing the Council of Europe. However, stakeholders also pointed to areas of possible improvement, e.g. of needs assessment and / or stakeholder mapping at the stage of project identification, and it is therefore recommended to ensure the systematic deployment of relevant project development methodologies (available in the framework of the existing Project Management Methodology).

- Stakeholders noted limitations to relevant actors speaking with 'one voice', generally considering the Council of Europe to be comparatively discreet, and failing to swiftly second other actors' condemnations of threats to / violations of FoE (this was not considered to apply to the Commissioner for Human Rights). It is therefore recommended that the Council of Europe considers allocating adequate resources to strengthen coordination and to facilitate engagement with other actors, e.g. via staff participation in selected European / international events to promote outputs / outcomes.

- Finally, stakeholders saw potential for more systematic dissemination of cooperation outputs and outcomes, and it is therefore recommended to ensure that relevant documentation on capacity development is made available not only on the corresponding 'project' website but on other relevant Council of Europe webpages.

1. INTRODUCTION

1. This section introduces the report by briefly commenting on the evaluation scope and objectives (Section 1.1), the methodology (1.2) and the structure of this report (1.3).

1.1. EVALUATION SCOPE AND OBJECTIVES

2. The Council of Europe acting through the Directorate of Internal Oversight (DIO) contracted the firm Blomeyer & Sanz on 4 April 2018 following an open call for tender to conduct the evaluation of Council of Europe support to the protection and promotion of freedom of expression (FoE).

3. The evaluation covers Council of Europe activities aiming to protect or promote FoE. Without any claim to exhaustiveness, the Terms of Reference (ToR) for this evaluation specifically note 'types' of intervention, i.e. 'standard setting, technical cooperation and the platform for the protection of journalism and safety of journalists', and five thematic areas, i.e. 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'.[1] The ToR also stipulate that 'the evaluation will touch upon activities of entities which cover the topic of freedom of expression in a transversal manner'. Finally, the ToR specify the period of evaluation as covering the years 2014 to 2018.

4. The ToR define two evaluation objectives:

- to assess the relevance,[2] effectiveness, efficiency, sustainability and added value of Council of Europe's support to member States in the area of FoE and identify lessons from past experience;
- to issue actionable recommendations on how to make improvements under each criteria or set of issues that have been identified during the evaluation.

1.2. METHODOLOGY

5. The inception report for this evaluation presents details on the methodology, including a theory of change developed around Council of Europe standards and corresponding efforts to encourage compliance (see Annex 3 for a relevant extract).[3] For the purpose of this report it is worth recalling the main data collection tools:

- Desk research: The evaluation team reviewed a wide range of relevant Council of Europe documentation and information presented on Council of Europe websites.

- Scoping interviews: In preparation of the case studies and following up on the first meeting with the Reference Group, the evaluators conducted first exploratory interviews with Council of Europe stakeholders in Strasbourg (16-17 May 2018).

- Case studies: The evaluation team conducted six country case studies, namely Georgia (18-22 June 2018), Montenegro (2-3 July 2018), Poland (17-19 September 2018), Serbia (4-6 July 2018), Tunisia (25-26 June 2018) and Ukraine (23-31 May 2018). In accordance with the ToR, 'these countries were selected on the basis of the following criteria: volume of activities conducted in the countries between 2014 and 2018; geographic diversity of the sample; feasibility of data collection; consultations with stakeholders'. The case studies involved semi-structured interviews with relevant stakeholders and a set of structured questions.

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[1] See section 2.1.1 on the 'origin' of the five thematic areas in the Secretary General Annual Reports.

[2] The criterion of relevance was not covered by the ToR but added following the first Reference Group meeting.

[3] The theory of change speaks to some extent to Council of Europe's dynamic triangle of standards, monitoring and cooperation, with the important caveat of the absence of an 'official monitoring body' for FoE. Rather Council of Europe activity 'in lieu of monitoring' relates more to a combination of: (a) the **insights on the situation with regard to FoE** as generated by the work, inter alia, of the Council of Europe's 'Platform for the Protection of Journalism and Safety of Journalists', the Council of Europe's Commissioner for Human Rights, the European Court of Human Rights etc.; (b) **related responses**, e.g. political leverage in the form of follow-up on the above noted insights by the CM, the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights or the Secretary General; and (c) cooperation activities. To avoid confusion with 'standard' Council of Europe monitoring, this theory of change uses the term 'Encouraging compliance'.

- Validation interviews: Finally, to validate the 'data' from the desk research and case studies, the evaluation team conducted a series of interviews with Council of Europe stakeholders in Strasbourg (24-26 September 2018), followed up by further telephone / Skype interviews in September and October 2018.[4]

- Reference group: The evaluation was 'accompanied' by a Reference Group comprising representatives of Council of Europe entities concerned by this evaluation.[5] The Reference Group members were consulted on the evaluation methodology and the inception report, including countries to be visited as case studies (e.g. Poland was added to the list of case studies, following a discussion with Reference Group members), as well as the draft final report.[6]

6. Concerning limitations to this evaluation, two aspects can be noted.

- This evaluation covers five distinct themes and all Council of Europe actors involved in the protection / promotion of freedom of expression. All of these themes and actors could 'merit' a separate evaluation effort, e.g. 'Evaluation of the Commissioner for Human Rights' support to the protection and promotion of legal guarantees for freedom of expression'. Obviously, the approach to cover all themes and actors presents advantages and disadvantages. For example, in terms of advantages, the adopted approach allows for a more comprehensive assessment of synergies, interlinkages and cooperation between the themes and actors. On the other hand, the adopted approach means that only limited evaluation resources can be dedicated to individual thematic interventions and actors, and this implies constraints to in-depth understanding.[7]

- The second limitation relates to the different ways that FoE is supported by the Council of Europe. This evaluation has focused on 'direct' support for FoE, i.e. interventions by different Council of Europe actors that directly relate to FoE and that can be associated with one or more of the five thematic areas. This evaluation was not in a position to comprehensively assess 'integrated' or 'indirect' support. Most notably, the Council of Europe provides substantial support for capacity development of member State actors such as the judiciary or ombudsperson offices. Whilst this does not necessarily focus specifically on FoE, it is obvious that FoE benefits of 'capacitated' national actors. Similarly, other thematic areas can be highly relevant to FoE, e.g. culture and art, a thematic area often suffering first from constraints of FoE, however, this evaluation was not in a position to assess this area.

1.3. REPORT STRUCTURE

7. The report is organised in three main sections and three annexes, namely:
- this Introduction (section 1), including details on the evaluation scope and objectives, methodology and report structure;
- the Findings (section 2) per evaluation criterion, i.e. relevance, effectiveness, efficiency, added value, and sustainability;
- the Conclusions and Recommendations (section 3);
- Annex 1 presents relevant documentation; Annex 2 presents the stakeholder consultations; Annex 3 presents relevant extracts from the Inception Report.

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[4] Annex 2 lists a total of 103 interviews between 22 May and 4 October 2018. The 'scoping interviews' conducted during the inception phase are not included.

[5] The reference group comprises the following entities: Department for the Execution of Judgments of the European Court of Human Rights, Directorate General of Human Rights and Rule of Law, Directorate General of Democracy, Office of the Commissioner for Human Rights, Private Office of the Secretary General, Office of the Directorate General of Programmes, Registry of the European Court of Human Rights, Secretariat of the Parliamentary Assessembly of the Council of Europe.

[6] The draft final report was discussed at a meeting with the members of the Reference Group on 26 November 2018. Moreover, members of the Reference Group provided written feedback on the draft final report.

[7] For example, GRECO provided feedback on the draft final report, suggesting a significant contribution to the area of FoE: 'Pending the EU adopting a Directive on whistleblower protection (which is in the adoption phase), the Council of Europe is the only body which has adopted some mandatory legal standards on whistleblowing - See Civil Law Convention on Corruption, Art. 9. Unfortunately, 13 Council of Europe member States have still not ratified it; Overall, the Council of Europe has the broadest range of standards, especially through CM rec(2014)7 on the protection of whistleblowers'. However, the evaluators were not in a position to evaluate Council of Europe's contribution in this area.

2. FINDINGS

8. This section presents the evaluation findings. The presentation is organised by evaluation criterion, i.e. Relevance (section 2.1), Effectiveness (2.2), Efficiency (2.3) Added value (2.4), and Sustainability (2.5). Some of the findings are shown in <u>underlined font</u> - these findings relate to points that are also addressed in Section 3 on the conclusions and recommendations.

2.1. RELEVANCE

Summary - relevance

Desk research and case study work indicate the adequate coverage of the five thematic areas, however the assessment is constrained by the absence of a strategic framework and targets against which coverage can be assessed. Stakeholders suggested a need for more selective / focused support and strengthening Field Office capacities.

Moreover, existing 'data' on FoE, most notably Court cases and Platform alerts indicate that the Council of Europe is addressing partner needs. This is validated by the case study work, specifically highlighting the clear alignment with needs of Council of Europe's cooperation activities. Stakeholder feedback also suggests that their needs can be addressed further by facilitating access to Council of Europe 'outputs' in different languages.

2.1.1. To what extent is Council of Europe support covering the five thematic areas of 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'?

9. Case study feedback indicates the adequate coverage of the five thematic areas, but suggests stronger focusing, in terms of themes, geography and design of support: Stakeholder feedback suggested an adequate coverage of all five thematic areas, in line with country needs and / or on the basis of country requests for support. The case studies did not allow a detailed overview of coverage of the five thematic areas to be established, e.g. in terms of resources allocated per thematic area. This is explained by the integrated nature of Council of Europe support in the area of FoE. For example, a cooperation activity would typically cover more than one of the five thematic areas, and / or other thematic areas not directly related to FoE. Similarly, an 'intervention' by the Commissioner for Human Rights (Commissioner), e.g. a country visit, would typically address issues concerning more than one of the five thematic areas. In the same context, stakeholders wondered about the desirability of a stronger <u>focus on priority areas (among the five themes) in countries for which FoE is being reported as a particular issue</u>. Stakeholders did not consider any of the Council of Europe's work irrelevant, but rather suggested the need for a prioritisation.[8] Stakeholders also wondered about the design of support, suggesting a need for more <u>support on following up on actual violations of FoE</u>.[9] Depending on the 'configuration' of Council of Europe support in specific countries, stakeholders also suggested areas for complementary support.[10]

10. The assessment of the coverage of the five thematic areas is constrained by the absence of a dedicated strategic framework on FoE, and the often indirect nature of support for FoE: The first evaluation question needs to be considered with two caveats:

-   Strategy and targets: Whilst there are different thematic or actor-centred strategy initiatives (often taking the form of a stocktaking of ongoing activities / resources), there is <u>no overarching forward-looking strategic framework on FoE involving all relevant actors in the Council of Europe, and</u>

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[8] Incidentally, this point was also raised in relation to ongoing cooperation activity on gender and media in Azerbaijan.
[9] For example, a stakeholder in Montenegro suggested that this could be addressed, inter alia, via exchanges with countries more experienced in addressing violations.
[10] For example, stakeholders in Poland and Ukraine suggested a need for more support at the regional and local levels.

covering all five thematic areas ('Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'). There are no explicit 'targets' for the coverage of the five thematic areas, e.g. in terms of the 'intensity' of the coverage, or volume of resources to be dedicated to each of the five areas, or – important for the assessment of effectiveness – intended outcomes. The five thematic areas do not directly correspond to specific budget items in the Council of Europe budget.[11] Rather, the 'origin' of the five thematic areas is the Annual Report by the Secretary General.[12] The Secretary General's Annual Reports comprise elements of a strategy, e.g. the 'Proposals for Action', however, on the whole, they rather correspond to a broad review of the current state of affairs across various key thematic areas covered by the Council of Europe, not only FoE.

- Integrated / indirect nature of support for FoE: The second caveat, as already noted in the introduction, relates to the different ways that FoE is supported by the Council of Europe. This evaluation has focused on 'direct' support for FoE but was not in a position to comprehensively assess 'integrated' or 'indirect' support (see paragraph 9).

11. **Thematic coverage finds itself constrained by 'systemic' factors, most notably Council of Europe capacity constraints in the Field Offices**: Stakeholders considered in-country presence to be an important factor in terms of thematic coverage. It was argued that partners and donor organisations / implementing organisations often 'assess' Council of Europe's capacity to provide support in a specific thematic area in the light of capacities identified with Council of Europe's in-country presence (referred to as Field Offices (FO) in the remainder of this report).[13] Comparing the in-country presence of the Council of Europe with that of the European Union (EU) and others, e.g. the Organisation for Security and Cooperation in Europe (OSCE), Council of Europe's capacity was considered modest. For example, whilst recognising differences in the mandates of the different organisations, the absence of 'permanent' staff with expertise in the five thematic areas or any experience with FoE at all in the FOs was noted apart from staff who are mostly temporary and often bound to specific projects. This limited the extent to which the Council of Europe was perceived to be a relevant interlocutor in a specific thematic area. Moreover, and very much related to this point, stakeholders noted the time-bound nature of cooperation activities, with continuity strongly dependent on the availability of extra-budgetary resources.

2.1.2. To what extent is Council of Europe support addressing partner needs?

12. Existing 'data' on FoE, most notably European Court of Human Rights cases and alerts on the Platform to promote the protection of journalism and safety of journalists underline needs:

- Data on new cases brought before the European Court of Human Rights (Court) underline needs. In the period under evaluation (2014-2018) the number of new cases related to Article 10 has experienced some fluctuation, increasing from 28 cases in 2013 to 49 cases in 2014, then decreasing to 29 in 2015 and 2016, increasing again to 47 in 2017, and likely to increase further in 2018, considering that there were 47 new cases at the time of writing this report.[14]

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[11] Council of Europe (2015) Council of Europe Programme and Budget – 2016-2017
[12] Council of Europe (2018) State of Democracy, Human Rights and the Rule of Law, Role of institutions, Threats to institutions, Report by the Secretary General of the Council of Europe, 2018. Note that the 2015 and 2016 reports refer to 'Protection from arbitrary application of law' instead of 'Legal guarantees for freedom of expression'. See Council of Europe (2016) State of Democracy, Human Rights and the Rule of Law, A security imperative for Europe, Report by the Secretary General of the Council of Europe, 2016; Council of Europe (2015) State of Democracy, Human Rights and the Rule of Law, A shared responsibility for democratic security in Europe, Report by the Secretary General of the Council of Europe, 2015.
[13] The Council of Europe website reports the existence of 'Council of Europe Offices and Programme Offices' in 14 countries, and 'Other Offices' in Pristina, Tunis and Rabat. See https://www.coe.int/en/web/programmes/external-offices (accessed 2 October 2018).
[14] Data provided by the Department for Execution of Judgments on 8 October 2018. It should be recalled that this data does not portray the 'actual' situation in Europe at real time when these cases are received but rather a time-delayed picture given that cases need to pass through the national systems of member States before reaching the Court in Strasbourg.

- Platform alerts validate needs: Data from the 'Platform to promote the protection of journalism and safety of journalists' (Platform) also points to needs. Figure 1 below shows alerts per country for the years 2015-2018.

13. **The Council of Europe reacts to the most prominent 'incidents' of relevance to FoE, albeit at times in a discreet manner**: Stakeholder feedback confirmed Council of Europe's immediate reaction to 'prominent' violations of / threats to FoE. In this context, interventions by the Secretary General and the Commissioner were noted. In the same vein, stakeholders perceived Council of Europe interventions to be of a comparatively 'discreet' nature, suffering at times limited visibility, with unsystematic follow-up, and condemnations termed in language considered too 'diplomatic'.[15] At the same time, it was recognised that depending on context, more 'vociferous' interventions by the Council of Europe might not advance the cause of FoE.

14. **Committee work has in-built flexibility to ensure adaptation to changing partner needs:** The Steering Committee on Media and Information Society (CDMSI), which steers some of the Council of Europe's work and sets standards in the fields of FoE, media, and internet governance, operates on the basis of biennial 'Terms of Reference'. Whilst it might be in the nature of the ToR to be less receptive to ad-hoc changes of needs, there is usually some flexibility to accommodate emerging needs, e.g. by issuing Draft Declarations (note the recent example of the Declaration on financial stability of quality journalism in the digital age). Furthermore, the ToR are forward-looking as demonstrated by the current work on how to debunk the fake news phenomenon by strengthening quality journalism and media literacy[16] as well as addressing new challenges such as manipulative powers of algorithmic processes and human rights implications of artificial intelligence. It should also be noted that new partnerships are being established, for example with the business sector, in order to tackle current and future challenges related to FoE.

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[15] For example, a stakeholder in Serbia reported a case of the FO not being able to secure headquarters authorisation in good time for a joint statement promoted by the EU and OSCE.

[16] See, for example, the report Council of Europe (2017): "Information Disorder: Toward an interdisciplinary framework for research and policy making."

Figure 1 – Platform alerts in 2015-2018[17]

Country	2015	2016	2017	2018
Turkey	35	48	12	13
Russian Federation	9	11	21	9
Ukraine	6	9	13	14
Azerbaijan	10	5	16	
France	7	7	5	5
Serbia	5	3	4	7
Italy	2	3	4	9
Greece	2	5	5	5
Belgium	5	5	2	1
Bosnia and Herzegovina		1	5	7
Spain	3	3	4	3
The former Yugoslav Rep..	4	4	2	2
Poland	1	5	3	2
Croatia	1	3	4	2
Germany	1	2	5	2
Albania	1	4	3	1
Bulgaria	1	1	4	2
Montenegro	2	1	1	4
United Kingdom	1	1	3	2
Armenia	2	1	2	1
Slovenia	1	3		2
Slovak Republic		1	1	3
Cyprus		1	1	2
Hungary		1	3	
Romania		2	1	1
Denmark	1		1	1
Georgia	1	2		
Czech Republic			1	1
Latvia		1		1
Malta			2	
Netherlands		1		1
Austria				1
Estonia			1	
Finland	1			
Iceland			1	
Luxembourg	1			
Republic of Moldova	1			
Switzerland		1		
Grand Total	104	135	130	104

15. **Cooperation activities clearly address needs**: Stakeholders considered cooperation activities in the area of FoE to clearly address needs, noting several positive features contributing to relevance and demonstrating Council of Europe added value and comparative advantage. These factors include the quality of Council of Europe expertise,[18] and the role of the FOs in terms of enhancing the 'design' of Council of Europe interventions.[19] Stakeholders also pointed to areas of possible improvement, for example, more extensive <u>ex-ante needs assessments; more systematic beneficiary / partner and stakeholder mapping and attention to the selection of participants in cooperation activities</u>; <u>joint activities for different types of partners</u>, e.g. more <u>joint activities between government and Civil Society Organisations</u> (CSOs); more systematic and long-term institutional capacity development; ensuring that regional activities consider country-specific differences. However, it was recognised that all this is affected by resource constraints, e.g. the Council of Europe might lack capacity to implement more resource-intensive projects in the countries where cooperation activity exists (note also that current cooperation activity covers under 20% of all Council of Europe member States).

16. **Needs can be met by facilitating access to Council of Europe 'outputs' in different languages**: The area of FoE benefits from limited cooperation activity in the traditional sense.[20] This underlines the importance of facilitating access to Council of Europe 'outputs' on FoE beyond the framework of cooperation activities. Stakeholders specifically referred to the Court's case law in the field (in this context the term 'output' is used to refer to the Court's judgments / decisions), relevant standards, studies, as well as capacity development materials, and asked for these to be made available in the local language. The importance of access to 'quality' translations was underlined by reference to experiences with selective or 'interpretive' translations by actors with a political agenda. The Court has <u>very limited resources for the translation of judgments into languages other than the two official Council of Europe languages of English and French</u>,[21] however, these limitations are somewhat mitigated by <u>cooperation arrangements with relevant actors in some member States who assume the responsibility for translating the judgments</u>.[22] In this context it is also worth noting the Court's dissemination efforts via the 'Superior Courts Network'.[23] Figure 2 shows data on documents available from the Court's data base 'Human Rights Documentation' (HUDOC) related to Article 10 per language.

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[18] Stakeholders also noted a few more isolated areas for improvement, e.g. ensuring that 'international' experts are well briefed on local context in advance to missions, the use of experts from the region, etc.

[19] In this context stakeholders found the FOs' role to be constrained by limited resources, and different 'interpretations' of the role of the FOs in terms of assisting Council of Europe interventions beyond cooperation activity directly located in the FOs.
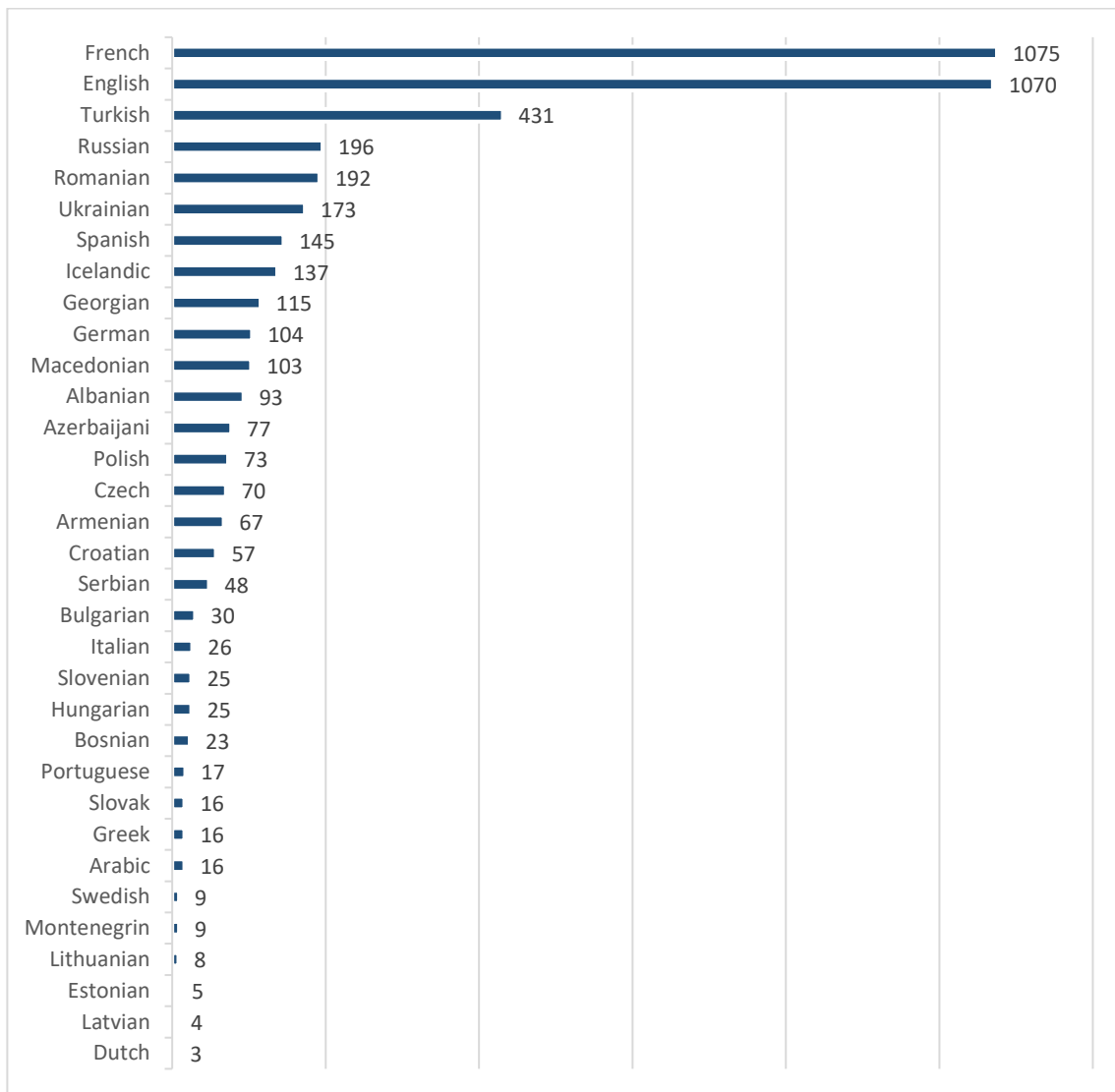
[20] For example, the webpages of DG I on FoE report four projects: (1) 'Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe' (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia); (2) 'Strengthening Freedom of Media and Establishing a Public Broadcasting System in Ukraine'; (3) 'Promoting gender equality and media freedom in Azerbaijan'; (4) 'Promoting media freedom and pluralism in the Republic of Moldova'. See https://www.coe.int/en/web/freedom-expression/on-going-projects. The Media Division counts more cooperation projects than many other actors in the Council of Europe that are involved in cooperation. On the other hand, there are also substantially larger 'portfolios' e.g. for the area of 'criminal law cooperation', the 16 ongoing cooperation projects cover 13 countries, including two European Union member States; see https://www.coe.int/en/web/criminal-law-coop/ongoing-projects.

[21] For example, the Court noted that it had no budget allocations for translations into non-official languages in 2018.

[22] The Court cooperates with member State authorities and CSOs for translations to be made available on the Court's database of judgments and legal summaries 'HUDOC'; these translations are uploaded on HUDOC, however, with a disclaimer, since the Court has no resources to verify the 'quality' of the translations (see https://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC/translations#n1357202551837_pointer). There are also national initiatives; for example, in Poland an agreement between the Ministry of Foreign Affairs and the Commissioner ensures coordination on the translation work of judgments by these two organisations.
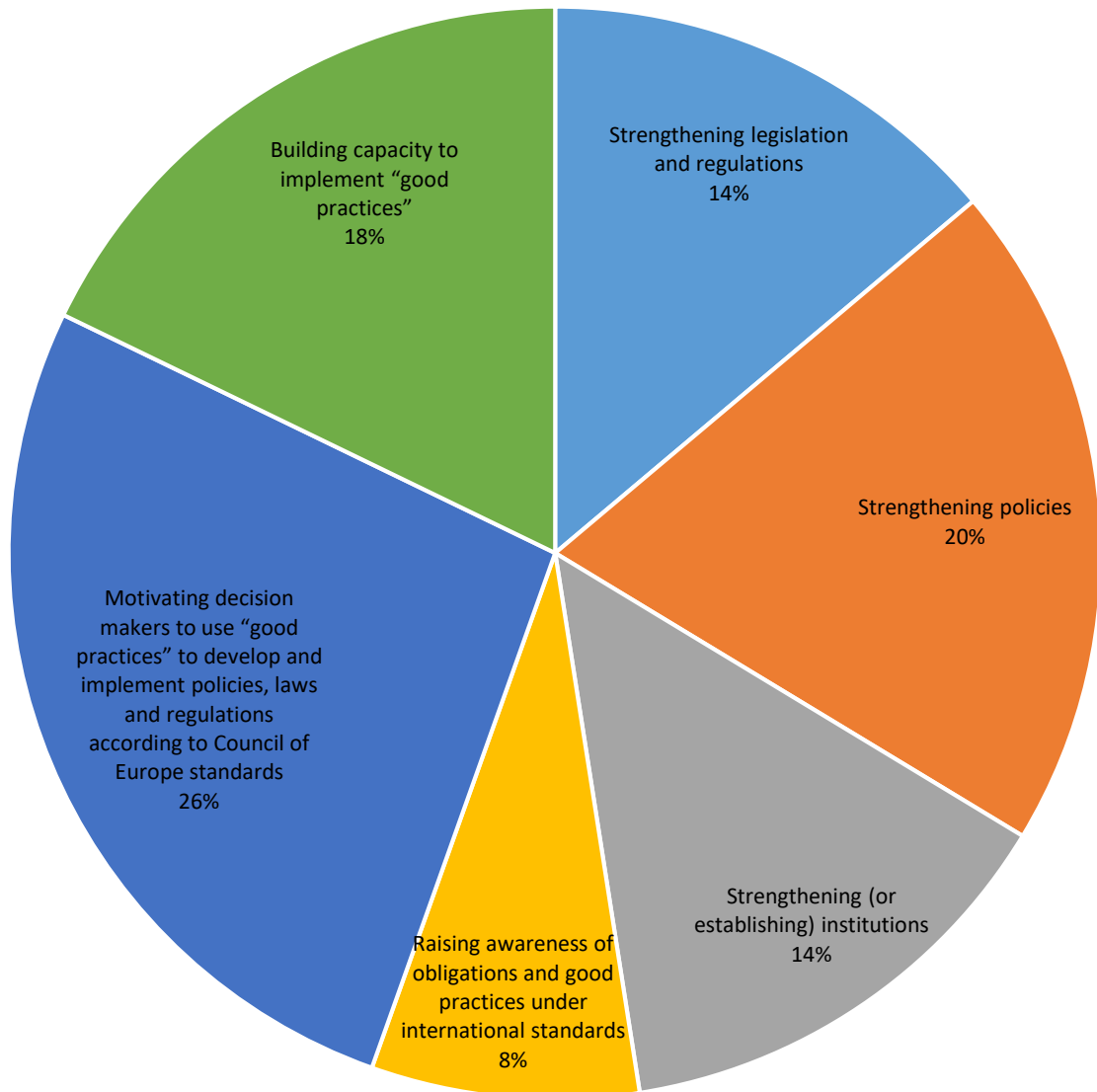
[23] https://www.echr.coe.int/Pages/home.aspx?p=court/network&c

Figure 2 - Article 10 translations[24]

Language	Count
French	1075
English	1070
Turkish	431
Russian	196
Romanian	192
Ukrainian	173
Spanish	145
Icelandic	137
Georgian	115
German	104
Macedonian	103
Albanian	93
Azerbaijani	77
Polish	73
Czech	70
Armenian	67
Croatian	57
Serbian	48
Bulgarian	30
Italian	26
Slovenian	25
Hungarian	25
Bosnian	23
Portuguese	17
Slovak	16
Greek	16
Arabic	16
Swedish	9
Montenegrin	9
Lithuanian	8
Estonian	5
Latvian	4
Dutch	3

17. Finally, interviewees in the six case study countries were also asked to complete a structured questionnaire, including a question on their views on gaps in Council of Europe support: '*In your view, the main gap in the Council of Europe's support is in the area of (please select one):*'. The following figure shows the results (a total of 66 interviewees answered the question), indicating the most pronounced perceived gap to relate to '*Motivating decision makers to use "good practices" to develop and implement policies, laws and regulations according to Council of Europe standards*' (27% of respondents consider this a gap). This suggests that Council of Europe interventions are well aligned with needs, considering that much of the work in the area of FoE can be related to the identified gaps. However, it should be noted that this data is only considered as 'supporting' evidence since the questionnaire was not systematically completed by all interviewees.

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[24] Search on HUDOC on 3 October 2018 for all documents referring to Article 10 per language.

Figure 3 – Structured interview question on gaps (% of respondents)

Pie chart segments:
- Strengthening legislation and regulations 14%
- Strengthening policies 20%
- Strengthening (or establishing) institutions 14%
- Raising awareness of obligations and good practices under international standards 8%
- Motivating decision makers to use "good practices" to develop and implement policies, laws and regulations according to Council of Europe standards 26%
- Building capacity to implement "good practices" 18%

2.2. EFFECTIVENESS

Summary - effectiveness

Council of Europe's standard setting is considered effective as indicated by member State engagement with the Council of Europe to address identified shortcomings, but also other actors', most notably Ombudsperson offices' and CSOs', 'use' of Council of Europe standards, or support for Council of Europe standards voiced by other European / international organisations. Stakeholder feedback pointed to the Court as the most prominent defender of standards, and the corresponding efforts on the execution of judgments.

The Council of Europe is 'encouraging compliance' effectively, most notably via the Platform and via cooperation activities. However, stakeholder feedback suggested room for improvement with regard to visibility and political pressure to ensure genuine follow-up, whilst acknowledging the difficulties of engaging with authorities representing member States that experience backsliding on FoE. Council of Europe's systematic involvement of CSOs was considered an important enabling factor, whilst Council of Europe resource / capacity constraints and lack of political will on the side of some member State authorities were identified as the main obstacles.

Stakeholder feedback failed to provide conclusive evidence on a specific contribution to gender equality. Notwithstanding, needs in terms of awareness raising were noted and so were Council of Europe efforts to ensure gender-sensitive outputs and outcomes.

2.2.1. To what extent has Council of Europe's standard setting brought about tangible improvements in FoE in Council of Europe partner countries? In this context, what enables effectiveness / what are obstacles to effectiveness?

18. **Council of Europe's standard setting is considered effective**: Feedback by the Secretariat of the CDMSI clarified the linkage between the work of the CDMSI and subsequent cooperation activities: 'the CDMSI with the help of specialised expert committees drafts the standards in the field of freedom of expression, media and internet, which are then adopted by the (…) CM in the form of recommendations. After adoption of the recommendations, CDMSI engages in the implementation, as demonstrated in its terms of reference, where the implementation angle was strengthened in 2016 to better reflect and support the strategic triangle of the Council of Europe (…) Cooperation activities are largely based on the recommendations and are thus an important instrument for their implementation in Council of Europe member States. Furthermore recommendations could serve as blueprints for legislation beyond Council of Europe member States as they are freely accessible'.

As noted above in the context of discussing the absence of a strategy on FoE, there are no 'targets' in terms of the extent of improvements, and it would be difficult and expensive to define and collect data for such targets (i.e. targets would need to be country and theme-specific). Moreover, considering current backsliding in some Council of Europe member States, as reported by the Council of Europe itself,[25] effectiveness could be questioned. However, stakeholders reported effectiveness to manifest itself in different ways, often in the form of incremental improvements, and in some cases, possibly in the form of constraining the extent of backsliding:

- Stakeholders confirm that relevant member State actors tend to 'respect' the standards, most notably in the context of legislation and jurisdiction. Respect is also evidenced by member State authorities engaging with the Council of Europe to respond to concerns, e.g. by seeking legal advice to ensure compliance.

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[25] See, for example, Council of Europe (2018) State of Democracy, Human Rights and the Rue of Law, Role of institutions, Threats to institutions, Report by the Secretary General of the Council of Europe, 2018.

- Standards also facilitate the work of 'national champions' of FoE, such as ombudsperson offices and CSOs, that use Council of Europe standards as 'reference points' to assess the 'quality' of FoE in their country and advocate for improvements.

- The Court's case-law is informed, inspired and shaped by the standards arising from the Committee of Ministers' recommendations and declarations in the area of freedom of expression, access to information and data protection. Based on feedback received from the Secretariat of the CDMSI, the Court cited one or several standard-setting instruments in 20 out of 27 Grand Chamber landmark judgments delivered in the last decade on those issues and in a number of cases relied on those standards in its reasoning.

- Finally, other European and international organisations refer to Council of Europe standards, often to substantiate demands for improvements. In this context, stakeholders highlighted the role of the EU, making extensive use of Council of Europe standards / recommendations to support its engagement with some of Council of Europe member States in the context of EU accession negotiations and other partnership arrangements, but also in the context of the more recent 'Article 7 procedure' affecting Hungary and Poland. Similarly, the OSCE, for example the Representative on Freedom of the Media, but also local offices, are referring to Council of Europe standards with regard to FoE, e.g. the Court and its judgments / decisions.

19. **Some of Council of Europe actors are considered prominent defenders of standards**:[26] Stakeholder feedback and desk research allows a differentiated picture of the role of different Council of Europe actors to be drawn.

- Stakeholders underlined the effectiveness of the Court's judgments / decisions in terms of bringing about tangible improvements of systemic and / or individual nature. Note in this context that since proceedings in front of the Court can stretch over many years, effectiveness is not strictly related to the period considered under this evaluation (2014-2018). Effectiveness is enabled, inter alia, by Council of Europe engagement (e.g. via the CM) with the member States on the execution of judgments. Table 1 below shows the outcomes of this engagement for cases reported on by the CM in its annual reports (2014-2017) on the 'supervision of the execution of judgments and decisions of the European Court of Human Rights'.[27] Looking only at the 'system'-level outcomes (i.e. not considering individual measures), it is worth noting that for the 31 cases reported, on 18 occasions, the CM's engagement led to outcomes in terms of executive action, i.e. government taking action to address identified shortcomings; on eight occasions, draft legislation was prepared; and on 18 occasions, the legal / regulatory framework was actually changed to address deficiencies. Further enabling factors include (at times not directly focusing on FoE): direct exchanges between the Court and relevant member State actors, most notably the Government Agents;[28] exchanges with CSOs such as the bi-annual meetings organised by the Registry;[29] access to Court judgments / decisions in local languages. Obstacles to effectiveness include: limited resources to facilitate access to Court judgments / decisions in local languages; and limited resources to allow for direct exchanges / exposure of relevant member State actors and CSOs to the Court (in this context, some stakeholders noted that some member State actors at times portray the Court as 'foreign interference', ignoring membership status).

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[26] This finding could also be considererd to fall in the sphere of 'encouraging compliance', however, since most of the Council of Europe work in this area relates to the Court and the corresponding support provided by the CM, the finding is discussed under the category of 'standards'.
[27] https://www.coe.int/az/web/execution/annual-reports
[28] The Registry organises bi-annual meetings and shorter annual meetings.
[29] The bi-annual events attract around 60 CSO representatives; the CSOs set the agenda by preparing questions, mostly related to procedure; the Court cannot cover travel costs but CSOs can seek financial support from the Open Society Foundations' Justice Initiative. Recent meetings have focused on issues such as 'Clearing the backlog', 'Strict application of Rule 47', 'Single judge procedure', 'Rule 39, interim measures', 'No significant disadvantage', 'Repetitive cases', 'application of the WECL doctrine' 'Pilot judgments', 'Prioritisation', 'Dealing with confidential documents', 'Other novel issues that the Rules Committee is considering' (2016).

- Stakeholders also considered the Commissioner to be effective in terms of protecting / promoting FoE, specifically commending the direct nature of the Commissioner's engagement, e.g. via country visits and corresponding exchanges with member State authorities. In this context, the Commissioner's exchanges with the CM were also noted, e.g. in the form of the presentation of activities to the CM every three months. This was reported to facilitate the integration of 'new' issues in the Terms of Reference of relevant intergovernmental committees. Stakeholders did not note specific examples of a Commissioner's intervention directly leading to a change. Indeed, when stakeholders referred to the Commissioner being effective, this was understood in the sense of pressure being put on the concerned member State authorities. Causality might be difficult to establish here as it is unlikely that any change can be directly related to the intervention of one single actor; it is more likely that change occurs because several different actors, including the Commissioner, coincide in condemning a violation.

Table 1 – CM annual reports – outcomes of supervision[30]

YEAR	MEMBER STATE	CASE(S)	Final Judgment (year)	SYSTEM MEASURES TAKEN BY MEMBER STATE		
				Executive action	Draft legislation	Legislative / regulatory change
2017	Azerbaijan	Application No. 35877/04, Application No. 40984/07	2009, 2010	yes	yes	
2017	Bulgaria	Application No. 6987/07	2015			yes
2017	Bulgaria	Application No. 35365/12	2016	yes		yes
2017	Germany	Application No. 28274/08	2011	yes		
2017	Hungary	Application No. 20261/12	2016			
2017	Italy	Application No. 38433/09	2012	yes		yes
2017	Romania	Application No. 40238/02	2013	yes		yes
2017	Russia	Application No. 29492/05	2009	yes		
2017	Turkey	Application No. 3111/10	2013			yes
2017	Turkey	Application No. 27520/07	2012			yes
2017	Turkey	Application No. 22678/93 and 43453/04	1998, 2010			yes
2017	Turkey	Application No. 38270/11	2014	yes		
2017	Ukraine	Application No. 34056/02	2006	yes		yes
2016	Azerbaijan	Application Nos. 35877/04 and 40984/07	2009, 2010	yes	yes	yes
2016	Iceland	Application No. 46443/09	2012	yes	yes	
2016	Moldova	Application No. 36398/08	2013			

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[30] Source: author on the basis of the CM annual reports for 2014, 2015, 2016 and 2017. https://www.coe.int/az/web/execution/annual-reports. 'System' measures refers to measures that aim to bring about systemic change, e.g. a change in legislation, as opposed to 'individual' measures, that 'only' affect the individual(s) concerned by the specific case. 'Executive action' refers to government interventions that cannot be associated with (draft) legislation / regulatory change.

YEAR	MEMBER STATE	CASE(S)	Final Judgment (year)	SYSTEM MEASURES TAKEN BY MEMBER STATE		
2016	Montenegro	Application No. 41158/09	2012	yes		yes
2016	Montenegro	Application No. 5995/06	2011	yes		yes
2016	Romania	Application No. 40238/02	2013	yes	yes	yes
2016	Turkey	Application No. 3111/10	2013	yes		yes
2016	Turkey	Application Nos. 22678/93, 43453/04	1998, 2010	yes	yes	yes
2015	Azerbaijan	Application Nos. 35877/04 and 40984/07	2009, 2010			
2015	Romania	Application No. 40328/02	2013		yes	
2015	Romania	Application No. 75300/01	2010			yes
2015	Turkey	Application No. 3111/10	2013			
2015	Turkey	Application Nos. 22678/93, 43453/04, 14526/07	1998, 2010, 2010	yes		yes
2014	Azerbaijan	Application Nos. 35877/04 and 40984/07	2009, 2010	yes	yes	
2014	Italy	Application No. 38433/09	2012			
2014	Romania	Application No. 40328/02	2013		yes	
2014	Turkey	Application No. 3111/10	2013			yes
2014	Turkey	Application Nos. 22678/93, 43453/04, 14526/07	1998, 2010, 2010	yes		yes

- Finally, stakeholders also referred to a series of other Council of Europe actors. However, a more 'mixed' picture presents itself here in terms of perceived effectiveness, explained by different mandates, ways of interaction, resources, direct relevance to FoE etc. In this vein, stakeholders noted CM recommendations; the work of the Venice Commission (acting upon member State invitation); interventions by the Secretary General of the Council of Europe, and the perceived limited recourse to direct 'naming and shaming', e.g. in the annual reports on the 'State of Democracy, Human Rights and the Rule of Law in Europe'.[31] There was only limited feedback on the work of the Parliamentary Assembly of the Council of Europe (PACE). However, the role of the PACE Committee on Culture, Science, Education and Media in terms of promoting the 'Platform to promote the protection of journalism and safety of journalists' was commended. Drawing on the Secretary General annual reports, the Table 2 below provides an overview of country-specific references across the five thematic areas, and identifying the institutional 'source' of the reference, e.g. the Commissioner, Platform etc. The table shows that over the period 2015-2018 most country-specific references relate to the thematic area of 'Safety of journalists and others performing public watchdog functions' (26 country-specific references), followed by 'Media independence' (20 references), 'Legal guarantees for freedom of expression / Protection from arbitrary application of law' (17 references), 'Media pluralism and diversity' (10 references), and finally, 'Freedom of expression on the Internet' (8 references). The Commissioner is identified as source for 46 country-specific references; the Platform for 27 references; and the PACE for 5 references. Azerbaijan and Turkey count most country-specific references (9 each), followed by Hungary (7), Poland (6), the Russian Federation, the United Kingdom and the Ukraine (all 5). The table should not be understood as representing a comprehensive stock-taking of all relevant Council of Europe activities; rather the annual reports appear to emphasise the most salient interventions.

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[31] A review of the annual reports since 2014 shows that indeed, in 2014, the chapter on FoE failed to name individual countries (the report refers to 'Lack of freedom of expression and media freedom in 8 member States' without further detail, p. 7). This practice was changed as of 2015.

Table 2 – Secretary General annual report references to specific cases[32]

Member State	Legal guarantees for FoE / Arbitrary application of law	Safety of journalists and others performing public watchdog functions	Media independence	Media pluralism and diversity	FoE on the Internet	Total number of references
Albania	2018/P					1
Azerbaijan	2017/P, 2017/Commissioner, 2015/Commissioner	2018/Commissioner, 2016/Commissioner, 2015/PACE	2018/P, 2016/Commissioner		2018/Commissioner	9
Bosnia and Herzegovina	2018/Commissioner	2015/Commissioner	2018/P	2016/O		4
Bulgaria		2015/Commissioner	2016/Commissioner	2016/Commissioner		3
Croatia		2017/Commissioner	2017/P, 2017/Commissioner			3
France			2015/Commissioner		2018/Commissioner	2
FYROM	2017/P, 2015/Commissioner	2016/Commissioner				3
Germany					2018/P	1
Greece			2015/Commissioner	2018/Commissioner		2
Hungary		2018/P	2017/P, 2016/Commissioner, 2015/Commissioner	2018/P, 2016/Commissioner, 2015/Commissioner		7
Italy	2018/P	2015/Commissioner				2
Iceland	2018/P					1
Latvia	2018/Commissioner					1
Luxembourg	2018/P					1
Malta		2018/P				1

[32] P=Platform, Commissioner=Commissioner for Human Rights, O=Observations of the general elections, H= Honouring of obligations and commitments, PACE=Parliamentary Assembly. Source: Secretary General annual reports 2015-2018

Member State	Legal guarantees for FoE / Arbitrary application of law	Safety of journalists and others performing public watchdog functions	Media independence	Media pluralism and diversity	FoE on the Internet	Total number of references
Moldova				2016/H		1
Montenegro	2017/P	2015/Commissioner				2
Poland		2018/P, 2017/Commissioner, 2016/Commissioner	2017/Commissioner, 2016/Commissioner		2018/Commissioner	6
Romania			2018/P, 2017/P, 2015/Commissioner			3
Russian Federation	2017/P	2015/PACE		2016/PACE	2018/HRC, 2017/P	5
Slovak Republic		2018/P	2018/P			2
Spain		2015/Commissioner				1
The Netherlands		2016/Commissioner				1
Turkey	2017/P, 2017/Commissioner, 2015/Commissioner	2015/PACE, 2015/Commissioner	2018/Commissioner	2016/Commissioner, 2014/O	2018/Commissioner	9
United Kingdom	2018/P	2017/P, 2017/Commissioner, 2016/Commissioner	2015/Commissioner			5
Ukraine		2017/P, 2015/PACE, 2015/Commissioner	2018/P		2018/Commissioner	5
Total number of references	17	26	20	10	8	

20. **The Council of Europe is 'encouraging compliance' effectively, however, there is room for improvement with regard to visibility**: Stakeholders provided much positive feedback on different 'mechanisms' deployed by different Council of Europe actors to encourage compliance with standards. Two 'mechanisms' stand out, namely the 'Platform to promote the protection of journalism and safety of journalists' (referred to as Platform in the remainder of this report),[33] and Council of Europe's cooperation activities.

- As with many aspects of Council of Europe's work on FoE, the Platform itself would merit a specific targeted evaluation. Stakeholders across the Council of Europe and in the case study countries considered the Platform a useful tool to draw attention to violations of / threats to FoE, and engage with the relevant actors to address these. Notwithstanding, several opinions were voiced, that visibility of the platform should be improved.[34] The Platform provides direct access on its website to a series of charts on the alerts (counting a total of 474 alerts since 2015, accessed on 3 October 2018), e.g. by category, per partner, follow-up, source of threat, level of alert, and country. An 'advanced search' function allows a wide range of searches, combining the different 'characteristics' of an alert. However, the Platform website does not directly show more complex overviews or 'trends', that would be likely to enhance visibility, e.g. an overview of all member States, showing alerts where the source of the threat is the state, but where the state has failed to reply (see Figure 4 below); or trends in terms of increases of alerts over the years (see Figure 5 below). Stakeholders also wondered whether the Platform could be oriented towards prevention, e.g. by registering journalists under threat with related arrangements for police protection, however, this might also increase the risk for journalists. Moreover, stakeholders supported tasking the FOs and encouraging national champions of FoE such as ombudsperson offices and CSOs with the promotion of the platform given that its overall visibility could be improved. Stakeholders also discussed different aspects relating to the operation of the Platform, e.g. allowing CSOs to communicate alerts directly to the Council of Europe (not only via the Platform partners; however, experience with a similar EU-operated tool suggests that the filtering via the Platform Partners prevents 'flooding' and dilution of focus and possibly also duplication of alerts on the same case); establishing a structured and more continuous follow-up mechanism; establishing coordination arrangements with other actors for joint follow-up etc. Finally, stakeholder feedback suggested a need to review the visibility of follow-up by some of Council of Europe actors.

- Figure 4 below presents an attempt to show how the Platform data could be presented with stronger 'impact'. The figure directs the viewer to a series of member States that stand out for not responding to alerts despite the state being identified as the source of the threat / violation. Of course, this figure aims to convey a 'negative' message, i.e. member State failure to respond to alerts; it would also be possible to show 'positive' outcomes, e.g. the same figure showing member State replies to Platform alerts.

- Figure 5 below presents a further attempt by the evaluator to show how the Platform data could be presented with stronger 'impact' on the webpage. The figure focuses the viewer on the member States that experience a 'deterioration' in terms of the number of alerts over the years 2015-2018,

[33] See the website of the Platform: https://www.coe.int/en/web/media-freedom/the-platform
[34] In this context, Council of Europe stakeholders noted recent initiatives and plans to strengthen the visibility of the platform. This included exposing the CM more frequently to the Platform (via CM Rapporteur Groups), inviting the Platform Partners to report on an annual basis, a more targeted use of social media, etc. Moreover, it was considered that this might contribute substantially to knowledge about the Platform amongst the member States that have no or few alerts and therefore do not know about the Platform, and do not engage in initiatives to promote FoE or condemn violations / threats, simply because they lack relevant knowledge. There are also plans for the Directorate of Communications to help increasing visibility of the Platform by engaging with national 'champions of FoE'. Note that the Platform does not allow for direct downloading of data.

with alerts calculated in terms of population size. This does not mean that the countries at the top of the figure count the highest numbers of alerts – indeed some of the countries with consistently high numbers of alerts find themselves at the middle / bottom end – but that the countries that experience a deterioration merit attention because of the, at times dramatic, increase of alerts.

Figure 4 – Platform alerts with no member State reply[35]

Source of threat	State reply	Country	2015	2016	2017	2018
State	False	Albania		1		
		Armenia	1			1
		Austria				1
		Azerbaijan	1	5	15	
		Belgium	2	3	1	1
		Bosnia and Herzegovina		1	2	3
		Bulgaria			1	1
		Croatia			1	
		Cyprus				1
		Czech Republic			1	1
		Denmark				1
		Finland	1			
		France		2		1
		Germany	1		1	1
		Greece		1	1	1
		Hungary			1	
		Italy				5
		Montenegro				1
		Poland			1	
		Romania		1		
		Russian Federation	9	5	11	6
		Serbia				2
		Spain		2	1	1
		The former Yugoslav Rep..	1	1		
		Turkey	5	42	11	11
		Ukraine			1	2
		United Kingdom			1	1

[35] Alerts where the state is identified as source of the threat / violation and where the state has not responded (state reply = 'false'). Source: author on the basis of data facilitated by the Council of Europe on 4 October 2018.

Figure 5 – Increase of alerts per capita in 2015-2018 (%)[36]

Bosnia and Herzegovina	603%
Italy	361%
Hungary	201%
Slovak Republic	199%
Greece	143%
Ukraine	139%
Bulgaria	104%
Croatia	102%
Georgia	100%
Poland	100%
Germany	99%
Slovenia	98%
Montenegro	98%
Cyprus	97%
United Kingdom	95%
Azerbaijan	57%
Serbia	13%
Latvia	2%
Spain	0%
Russian Federation	0%
Austria	0%
Switzerland	0%
Finland	0%
Republic of Moldova	0%
Estonia	0%
Luxembourg	0%
Malta	0%
Iceland	0%
Czech Republic	0%
Netherlands	0%
Denmark	-1%
Albania	-2%
The former Yugoslav Rep..	-15%
France	-27%
Romania	-50%
Armenia	-50%
Turkey	-65%
Belgium	-80%

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[36] This figure shows the increase in number of alerts per capita and country over the period 2015-2018. Note the increase is calculated as: (alerts last year-alerts first year)/alerts first year x 100), and, since not all countries present alerts recorded for the four years, the formula defines: Number of alerts per capita, for the last year recording alerts; Number of alerts per capita, for the first year recording alerts. Source: author on the basis of data facilitated by the Council of Europe on 4 October 2018.

- Stakeholders reported substantial outcomes under recent and ongoing cooperation activities. Outcome categories included increased awareness / enhanced understanding of issues relevant to FoE; enhanced dialogue between relevant stakeholders, including between government and CSOs, and between public and private sector actors; enhanced individual and institutional capacities; more compliant regulation / legislation; enhanced policy and strategy frameworks. In this context, it is worth noting the role of the Council of Europe Office of the Directorate General of Programmes (ODGP), which disseminates cooperation outcomes at the European and international level. For example, ODGP regularly meets with European Commission representatives to discuss progress with cooperation activities supported with European Union funding, and thus contributes to the consideration by the EU of cooperation outcomes in the context of EU accession negotiations.[37] Notwithstanding, the effectiveness of cooperation activities, it was also noted that cooperation can be donor-driven, responding to external funding opportunities rather than being driven by Council of Europe strategic priorities.

- Finally, the following figures present feedback from the structured interview questions. This included the question: '*In your view, the Council of Europe in your country has been most effective in (please select one):*' The following figure shows the answers (a total of 82 interviewees answered the question), indicating that the Council of Europe was most effective with regard to '*Strengthening legislation and regulations*' (24% of respondents), followed by '*Raising awareness of obligations and good practices under international standards*' (22%). Moreover, interviewees were asked to 'rate' effectiveness per thematic area: 'If thinking about different thematic areas of freedom of expression, in my country, the Council of Europe has contributed to improving (if any)' (73 interviewees answered this question). The thematic areas of 'Media pluralism and diversity', 'Media independence and transparency' and 'Legal guarantees for FoE' are rated very positively with just over 50% of respondents considering the Council of Europe to have made a strong contribution.

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[37] There are annual meetings between ODGP and the European Commission's Directorate General in charge of accession negotiations (DG NEAR) to help the European Commission prepare the annual reports on progress with accession. ODGP also organises regular meetings with EU Delegations.

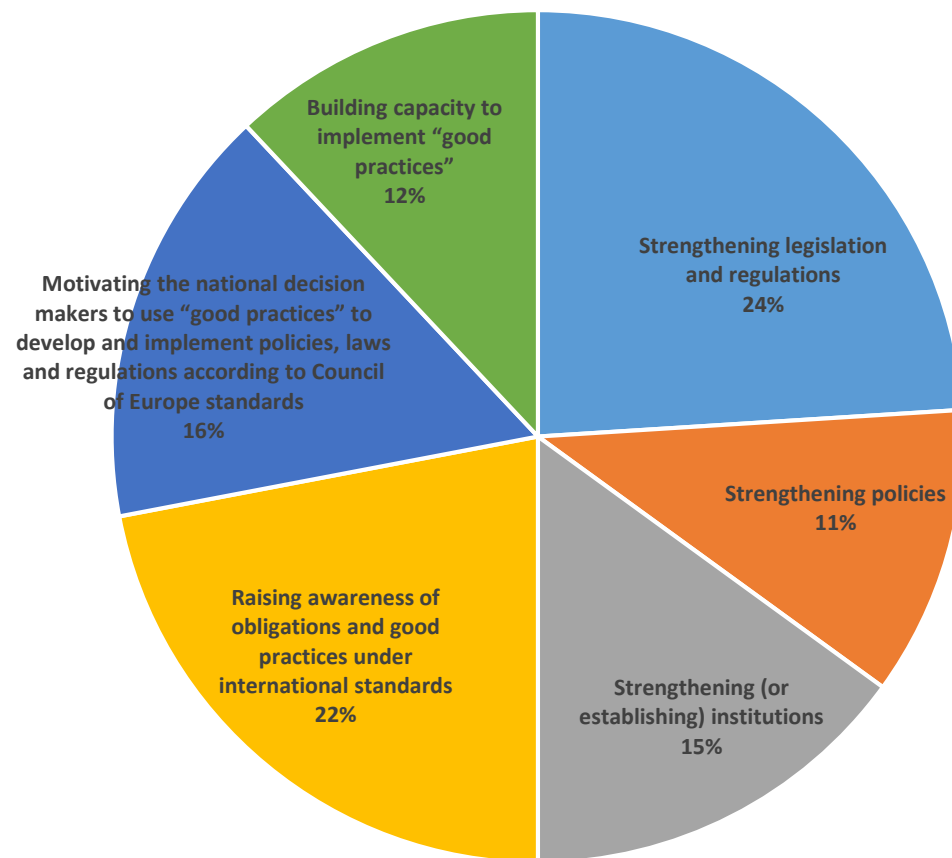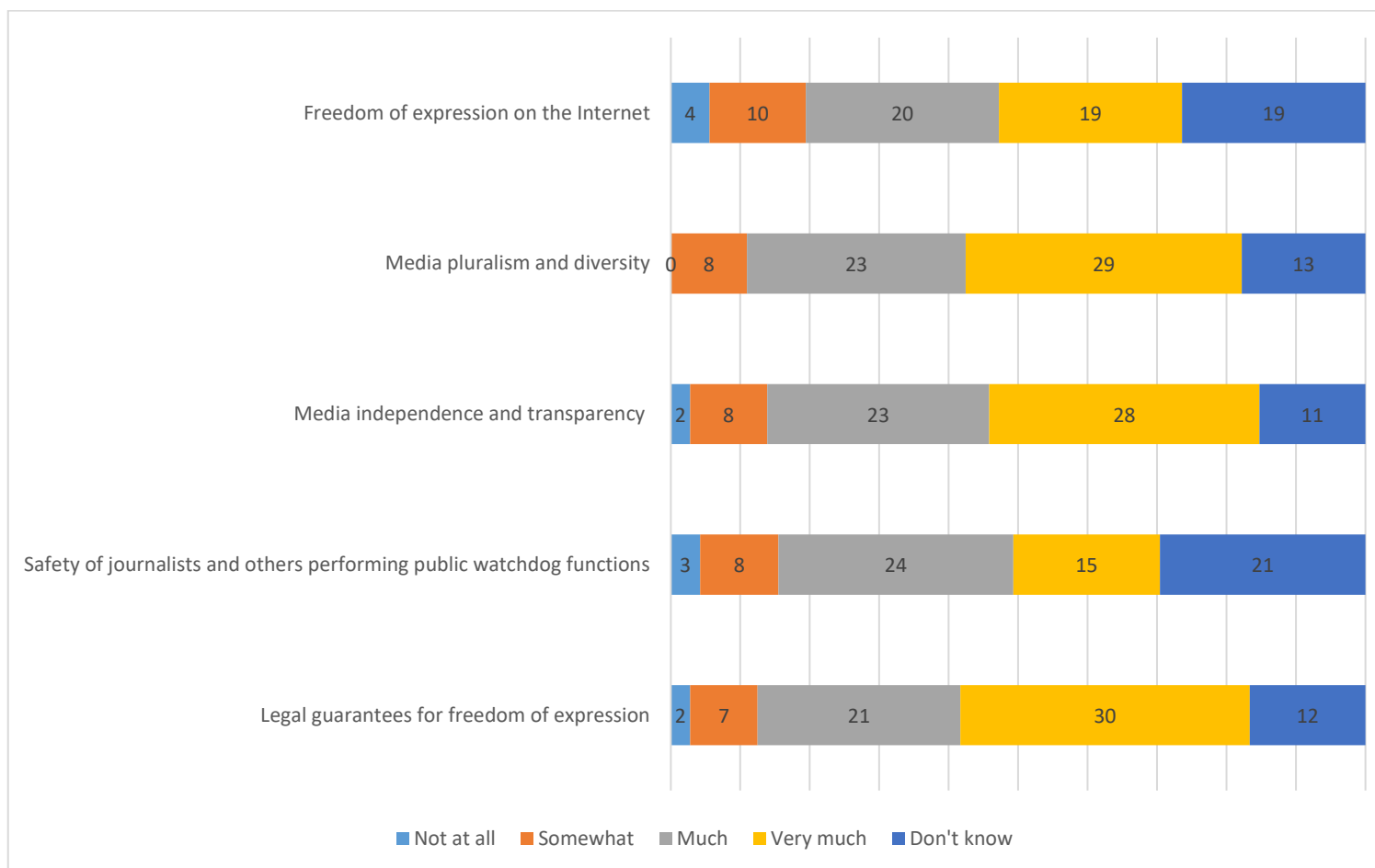**Figure 6 – Structured interview question on effectiveness per type of outcome (% of respondents)**

Building capacity to implement "good practices" 12%

Strengthening legislation and regulations 24%

Motivating the national decision makers to use "good practices" to develop and implement policies, laws and regulations according to Council of Europe standards 16%

Strengthening policies 11%

Raising awareness of obligations and good practices under international standards 22%

Strengthening (or establishing) institutions 15%

Figure 7 – Structured interview question on effectiveness per theme (% of respondents)

Theme	Not at all	Somewhat	Much	Very much	Don't know
Freedom of expression on the Internet	4	10	20	19	19
Media pluralism and diversity	0	8	23	29	13
Media independence and transparency	2	8	23	28	11
Safety of journalists and others performing public watchdog functions	3	8	24	15	21
Legal guarantees for freedom of expression	2	7	21	30	12

21. **Political pressure is perceived as weak**: Feedback from the six country case studies suggests that the Council of Europe, with the notable exception of the Commissioner, is not perceived to exert sufficient pressure on governments to follow-up on identified violations of / threats to FoE. Interviews with stakeholders in Strasbourg responded to this by emphasising the absence of a formal monitoring mechanism. Whilst the Platform was noted as coming somewhat close to a formal monitoring mechanism, it does not organise regular country-specific (peer) reviews like a monitoring mechanism does, nor does it require a member State to engage in a structured follow-up exchange. It raises awareness on serious concerns about media freedom and the safety of journalists but does not have the preventative function of a monitoring mechanism, which systematically and regularly analyses the legal provisions, institutions and policies in place to protect freedom of expression. Stakeholders also suggested that much of the political work might, with good reason, be less visible to stakeholders on the ground. Several aspects need to be noted:

- CSOs and, at times, the national ombudsperson offices in the six country case studies considered the political weight of the Council of Europe to be comparatively weak. The 'tools' of other actors were considered more effective, for example, the EU's and other actors' pressure in the context of EU accession negotiations or other partnership arrangements, and the 'Article 7' procedure applied by the EU in Hungary and Poland. However, the same stakeholders were often not aware of the EU and other actors' use of Council of Europe insights to inform interventions such as the Article 7 procedure.[38]

- Whilst recognising the non-political mandate of the FOs, feedback from the six country case studies also supported more visibility of the FOs. Unlike some of the other actors' representations in the member States, most notably the EU Delegations (EUD), the head of the FO was considered less visible.

- Notwithstanding, the role of the Commissioner was highly appreciated, and in this case the lack of political weight / visibility was not considered to apply.

- Feedback from interviews in Strasbourg draws a more nuanced picture. Acknowledging the more discreet political voice of the Secretary General, it is noted that much of the effort to promote FoE is somewhat less visible. Examples include direct informal exchanges between the Secretary General and relevant member State representatives, as well as feeding relevant information to other actors, e.g. PACE exchanging information with Members of the European Parliament.[39] It is argued that more direct intervention might alienate the concerned actors, risking closing channels of communication. In this context, stakeholders also acknowledged Council of Europe's 'dependency' on member State contributions. Finally, the differences in the mandates of the Secretary General and the Commissioner were noted.

22. **Enabling factors and obstacles**: Moving on from the discussion of the political nature of Council of Europe interventions, stakeholders noted a series of enabling factors, but also obstacles with regard to Council of Europe efforts in terms of 'Encouraging compliance':

- Looking first at enabling factors, stakeholders commended the availability of different Council of Europe actors to provide support, often in a pro-active way.[40] Moreover, and as also discussed in this

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[38] Commenting on the draft final report, a member of the Reference Group pointed out that the European Union's work on the Article 7 procedure 'is based on the 2015 Venice Commission opinion on Hungary's media laws, which was very critical of the (then proposed) amendments. The Venice Commission's opinion, however, was based on a number of Committee of Ministers' recommendations, such as Recommendation No. R (97) 20 on hate speech, Recommendation CM/Rec(2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment, Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, Recommendation No. R(2000)7 on the right of journalists not to disclose their sources, and Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, to name a few.'

[39] With regard to PACE it was noted that Interpol reacted to the 2016 Fabritius report on the abuse of Interpol resources ('Red Notices') to arrest journalists (see http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6616&lang=2); currently a motion by PACE member Frank Schwabe is under preparation to condemn the declaration of a Ukrainian journalist living in Poland as persona non grata by the Polish authorities (see https://www.ft.com/content/1d341a96-b80b-11e8-bbc3-ccd7de085ffe).
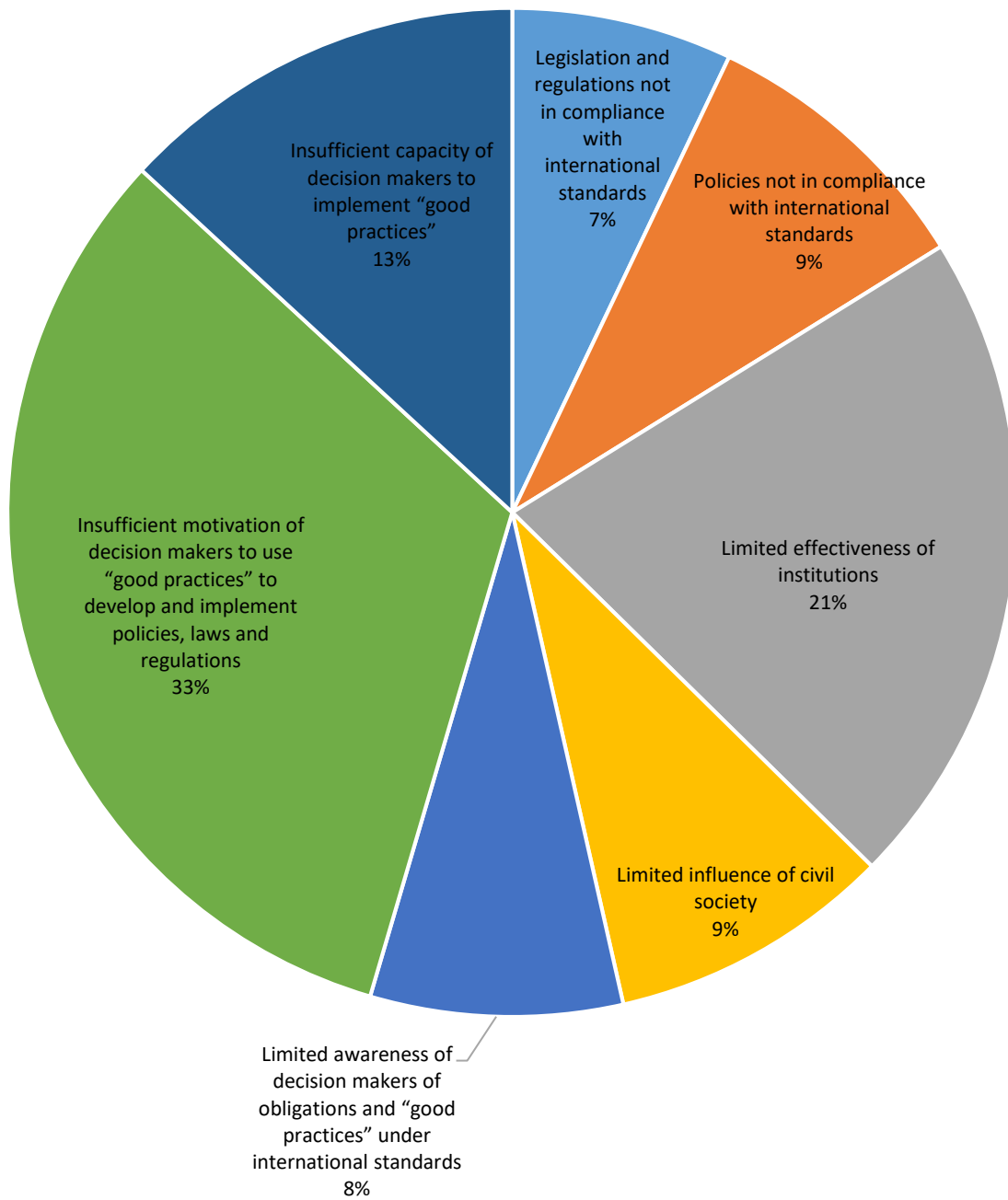
[40] For example, stakeholders noted their appreciation of the Commissioner reaching out to relevant actors in the Member States. This includes the designation of specific staff to specific countries, with often daily interaction (the Commissioner counts with the support of 16 advisers, each of which is assigned some four 'similar' countries.

report's section on 'Added value', the quality of Council of Europe expertise (at headquarters or mobilised through cooperation projects) was considered an important enabling factor. The increasingly systematic involvement of CSOs in cooperation activities as partners and multipliers was also considered an instrumental factor.

- Turning to obstacles, in the context of discussing cooperation, it was noted that Council of Europe support depended on the 'beneficiary' requesting support, with requests less likely from countries experiencing backsliding. In the same context, and whilst not understood as cooperation in the 'strict sense', it was noted that some member States did not request the Venice Commission's support on reviewing legal reform initiatives despite an obvious need.

- In more general terms, stakeholders also pointed to serious resource constraints undermining effectiveness. This was considered to affect all Council of Europe actors: most notably the portfolio of cooperation activities of Directorate General of Human Rights and Rule of Law and Directorate General of Democracy (limited continuity of cooperation, turnover of staff / staff with 'precarious' contractual arrangements, limited visibility of outputs and outcomes).[41] In this context, Council of Europe and member State stakeholders noted concerns over the DGs' capacity to 'absorb' new cooperation activities. Other actors are also affected, namely the CDMSI (translation of CDMSI recommendations), the Court (e.g. translation of judgments, bi-annual meetings), and the Commissioner (need to cover many themes across 47 member States in the face of backsliding). PACE noted resource constraints affecting the extent to which it can follow up on incidents of violations / threats (e.g. collecting background information in the countries concerned). Finally, resource / capacity constraints also affect Council of Europe's partners in the member States. National champions of FoE such as national ombudsperson offices were reported to be in the first line of government budget cuts in countries experiencing backsliding on FoE.

- Related to the above point on Council of Europe resource constraints, stakeholders in the six case study countries also considered limited thematic expertise in the FOs to constrain effectiveness. The FOs have limited permanent 'in-house' thematic expertise. In the absence of specific cooperation activities, the FOs can't respond to opportunities for cooperation and are not perceived as relevant interlocutors.

- Stakeholders also noted the lack of political will of member State actors to address deficiencies in the area of FoE as one of the main limitations. Examples included delayed legislation, failure to apply existing legislation, impunity of violations of FoE, etc. This was often explained by limited understanding / awareness of key concepts of FoE. Stakeholder feedback also pointed to the need for external motivating factors such as EU accession requirements to trigger political will. Finally, interviewees in the six case study countries were asked to complete a structured interview question on obstacles: '*In your view, the main obstacle in promoting and protecting freedom of expression lie in (please select one):*' The following figure shows the answers (a total of 75 interviewees answered the question), indicating the factor of '*Insufficient motivation of decision makers to use "good practices" to develop and implement policies, laws and regulations*' as the main obstacle (32% of respondents considered this to be the main obstacle). Interestingly, only 7% of respondents considered the main obstacle to relate to '*Legislation and regulations not in compliance with international standards*'.

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[41] This refers to the number of staff on nine-month contracts, competitions resulting in contracts limited to five years, project contracts etc.

Figure 8 – Structured interview question on obstacles (% of respondents)

Legislation and regulations not in compliance with international standards
7%

Policies not in compliance with international standards
9%

Limited effectiveness of institutions
21%

Limited influence of civil society
9%

Limited awareness of decision makers of obligations and "good practices" under international standards
8%

Insufficient motivation of decision makers to use "good practices" to develop and implement policies, laws and regulations
33%

Insufficient capacity of decision makers to implement "good practices"
13%

23. **Limited gender-relevance but need for awareness raising**: Most stakeholder feedback indicated a perception of limited relevance of gender issues in the context of FoE, with violations of FoE / threats to FoE not affecting men and women in different ways. However, feedback also acknowledged a need for further education / awareness raising on gender issues, and the Council of Europe was considered to have improved its consideration of gender issues in its cooperation activities, e.g. in UA, the FO is employing a 'gender advisor', and this was considered to have made a strong contribution to gender-sensitive outputs. Whilst case study interviewees neither directly referred to the CM Recommendation 2013/1 on gender equality and media (and the corresponding handbook on implementation) nor the DG I study on gender equality in media coverage of elections, feedback confirmed the existence of a specific need for awareness raising in this area.[42] Finally, Council of Europe feedback on the draft final report emphasised that gender equality is relevant in relation to most of the thematic areas. Regarding safety of journalists and freedom of expression on the Internet for example, 'Female journalists and other female media actors face specific gender-related dangers, including sexist, misogynist and degrading abuse; threats; intimidation; harassment and sexual aggression and violence. These violations are increasingly taking place online. There is a need for urgent, resolute and systemic responses'.[43] In the same way gender equality should be an integral part of media pluralism and diversity, in view of the underrepresentation of women both in important aspects of the profession (i.e. decision-making and media ownership) and in media content.[44]

2.3. EFFICIENCY

2.3.1. To what extent is Council of Europe's standard setting internally and externally coherent?

> **Summary - efficiency**
>
> Despite the fact that the Council of Europe lacks an overarching strategic framework on FoE, stakeholders did not identify cases of incoherence. The Council of Europe deploys different tools to ensure internal coherence, e.g. the Task Force on FoE. External coherence benefits from dialogue with relevant European and internal organisations. However, at times this finds itself limited by Council of Europe resource constraints, with the Council of Europe perceived as not always efficiently seconding other actors' condemnations of violations of FoE.

24. **Stakeholders did not identify any cases of incoherence**: The section on relevance has already noted the absence of an overarching forward-looking strategic framework on FoE covering all five thematic areas and involving all relevant actors in the Council of Europe. Notwithstanding, there is evidence of relevant actors working towards internal and external coherence on standards.

   • Concerning internal coherence, stakeholders reported that there are different tools for ensuring coherence: Stakeholders in Strasbourg noted the 'Task Force on Freedom of Expression' (and the related bi-monthly newsletter) within the Council of Europe Secretariat and other coordination mechanisms, e.g. the 'Inter-secretariat Task Force on Internet Governance and Information Society'.[45] It should be noted, however, that feedback on the Task Force on FoE was not consistently positive; some stakeholders considered the Platform a more agile tool to support coordination through disseminating information on threats and Council of Europe responses. Other stakeholders

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[42] See https://www.coe.int/en/web/freedom-expression/gender-and-media
[43] Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.
[44] In 2015, women made up 25 % of the people in the news and 18% of experts quoted in media in Europe, according to the Global Media Monitoring Report: http://cdn.agilitycms.com/who-makes-the-news/Imported/reports_2015/regional/Europe.pdf
[45] See https://www.coe.int/en/web/freedom-expression/internet-governance#{%2237750232%22:[0]}

voiced concerns over limited coordination between DG I and DG II, illustrating this with the example of cooperation work on Article 10 failing to integrate the dimension of abuse of FoE such as hate speech (Article 17 on the prohibition of abuse of rights).[46]

- Turning to external coherence, the case studies produced only limited insights into the 'practice' of ensuring external coherence between the standard-setting of the Council of Europe and standards of other organisations. Feedback pointed to efforts to maintain dialogue with other European and international organisations (most notably the EU, OSCE and UNESCO). Some of the feedback noted resource constraints affecting the extent of Council of Europe 'outreach' at the international level, e.g. limited opportunities for participating in relevant United Nations events, to engage in exchanges on FoE and to promote Council of Europe's work.

2.3.2. To what extent is Council of Europe's work on 'Encouraging compliance' internally and externally coherent?

Internal coherence

25. **The Council of Europe coordinates internally**: Different coordination mechanisms involving relevant Council of Europe entities are in place, e.g. the above noted Task Forces, departmental strategies etc.[47] Incoming Platform alerts are passed on to relevant Council of Europe bodies. Moreover, ODGP is ensuring coordination across all cooperation activities, e.g. between projects 'directly' targeting FoE and more indirect support such as projects developing the capacity of the judiciary. DGs I and II also noted coordination with the Commissioner in preparation of country visits. The CDMSI coordinates its work on developing standards with other Council of Europe actors, most notably by interacting with the Commissioner and the Court. Looking at coordination within specific Council of Europe entities, feedback pointed to good practices with potential for disseminating these across the Council of Europe. For example, the office of the Commissioner organises annual retreats for its staff to reflect on strategy, inter alia, giving input for the selection of the nine or ten countries to be visited.[48] Similarly, DG I reported regular department-level meetings to reflect on strategy.

26. **However, at the same time, stakeholders identified room for improvement:** Notwithstanding the above, stakeholder feedback suggests that many of the efforts leading to actual coordination depend on the initiative of individual staff members rather than on a systematic approach. Referring specifically to cooperation activities aiming to improve regulation / legislation, stakeholders considered the Council of Europe to often 'stop mid-way', i.e. working with technical experts in ministries to contribute to good draft laws but not having much influence on what happens in parliament. In this context, a more targeted engagement of PACE was suggested as being helpful. The case studies confirmed adequate coordination between the FOs and HQ, with some stakeholders suggesting room for improvement with regard to "internal bureaucracy" (ODGP feedback on this point suggests that the process of 'decentralisation' is ongoing). Moreover, stakeholders noted synergies between different Council of Europe cooperation activities; the only barrier being limited resources / time schedules sometimes not allowing for synergies to materialise. Looking specifically at the Platform, stakeholders asked why this tool was located within DG II, considering that DG I concentrates most of the work on FoE (supporting standards via Committees, cooperation on FoE etc.). It was suggested that coordination might benefit from the Platform being located in DG I and thus closer to the other work on FoE. However, this view was not substantiated with concrete examples of the location in DG II causing inefficiencies / undermining effectiveness. On the other hand, it was also noted that DG I houses several monitoring mechanisms, and that locating the Platform in DG I might trigger the perception among member States that the Platform is developing into a formal monitoring mechanism. At the same time, it was considered that this might be desirable, considering current backsliding on FoE. Reflections on a strategic framework for the organisation's work

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[46] See for example, Belkacem v. Belgium, application 34367/14).
[47] For example the Information Society Department has a 'Strategic Operating Plan 2015-2020'.
[48] The geographic focus could be considered good practice, however, geographic focusing in the Council of Europe is always likely to be somewhat constrained by the need to cater for 47 member States.

in the field may help clarify where the Platform should sit on an organisational level or communicate on the reasons for its position. These reflections might also elucidate whether a more 'classical' monitoring mechanism might be required.

External coherence

27. **Adequate coordination is in place, however, with resource constraints and room for speeding up reactions**: Stakeholder feedback on external coherence was generally very positive, highlighting the efficiency of operational relations between the Council of Europe (often via the FOs), cooperation partners and donors / other implementing organisations (with frequent references to the EU and OSCE),[49] but also private sector actors e.g. note the 'Council of Europe cooperation framework with internet companies and representative associations'.[50] Notwithstanding, stakeholders also provided examples of limitations:

- Stakeholders noted limitations to relevant actors speaking with 'one voice', generally considering the Council of Europe to be comparatively discreet, and failing to swiftly second other actors' condemnations of threats to / violations of FoE. The latter point was suggested by some stakeholders as being the result of internal coordination processes and / or the limited political mandate of FOs. Stakeholders considered that there might be potential for more coordination / interaction between the Platform and similar tools operated by other organisations, e.g. tools operated by the Platform's partners. Incidentally, whilst acknowledging constraints, the Reference Group meeting on 26 November 2018 pointed to good examples of 'coordinated' responses, e.g. on migration or on the death penalty.

- Stakeholders also noted resource constraints affecting coordination. For example, FO feedback suggested that coordination is constrained by the fact that the FOs lack staff to deal with FoE outside specific cooperation activities. However, in the absence of staff specifically having responsibilities for dealing with FoE, other organisations appear to consider that the Council of Europe has no role on FoE, and thus fail to coordinate with the Council of Europe. In more general terms, the FOs were considered by member State and CSO stakeholders in the case study countries noted to have resources that were already very stretched, and this was considered to limit their availability to feed relevant information to HQ, and / or to liaise with Council of Europe cooperation activities not directly located in the FOs (e.g. the national campaign officers working under the DG II-coordinated campaign to fight hate speech). Finally, resource constraints also limited external visibility, i.e. the Council of Europe disposes of <u>limited resources to promote outputs / outcomes at relevant European and international events</u>.[51] In the same vein, stakeholders noted 'competition' between donors / implementing organisations as being a factor to constrain coordination.

2.3.3. To what extent are Council of Europe's standard setting, and the work on 'Encouraging compliance' coherent between each other?

28. **A strong orientation towards standards ensures coherence**: Stakeholder feedback suggested that coherence is facilitated by the orientation of all of the Council of Europe's cooperation work towards the standards. Moreover, there are examples of operational arrangements and / or tools between relevant Council of Europe actors to promote coherence between standard setting and 'Encouraging compliance', e.g. the above-noted Task Force on FoE; the location of standard-related work and cooperation in the

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[49] For example, the Platform also collects responses by the EU and OSCE to relevant alerts.
[50] https://www.coe.int/en/web/freedom-expression/exchange-of-letters
[51] For example, stakeholders noted limited visibility of the Council of Europe at the recent UN Human Rights Council 38th session in Geneva (18 June – 6 July 2018). Stakeholders also saw potential for more visibility in relation to a recent media sector inquiry in Montenegro (see https://www.coe.int/en/web/freedom-expression/-/public-presentation-of-the-media-sector-inquiry-in-montengro).

same Department;[52] cooperation arrangements between different bodies, e.g. between the Court's Registry and specific cooperation initiatives etc.[53]

2.4. ADDED VALUE

> **Summary – added value**
>
> The two actors most frequently referred to with regard to added value were the Court and the Commissioner for Human Rights.
>
> Council of Europe standard setting was considered to add substantial value, only constrained by a perceived lack of political engagement by member States.
>
> Cooperation activities also distinguish themselves by strong added value, with stakeholders emphasising Council of Europe's technical and methodological expertise; the comprehensive nature of Council of Europe support; responsiveness to (changing) needs; the 'mobilising force' of the Council of Europe, bringing all relevant actors together; and the presence of Field Offices.

2.4.1. How does Council of Europe's standard setting add value vis-à-vis other actors?

29. **Council of Europe standard setting was considered to add substantial value, only constrained by a perceived lack of political engagement by member States**. Stakeholders suggested that the Council of Europe as the 'holder' of standards enjoyed strong credibility, comparing this with other actors that only offer support in the form of cooperation. The Court was the institution that most stakeholders referred to when discussing added value in relation to standards. Stakeholders also referred to the Council of Europe providing integrated support in the form of standards and 'encouraging compliance'. Council of Europe initiatives related to specific standards often experience subsequent engagement / support by other donors / implementing organisations. Moreover, the credibility of the Council of Europe was considered to transcend down to the level of its cooperation partners: being able to refer to an input by the Council of Europe lends additional weight to outputs. However, some stakeholders also considered that the lack of outspoken criticism leads to the perception of a reduced engagement of some Council of Europe actors. This was noted particularly with regard to the Secretary General but was not considered to apply to the Commissioner for Human Rights. Notwithstanding, feedback on this point was somewhat inconclusive, since other stakeholders emphasised the political weight of the Council of Europe, considering this to strengthen relevant activities. This perception should also be considered in the context of the more nuanced picture established from the results of interviews in Strasbourg (e.g. informal and less visible contacts) as detailed in paragraph 21 above.

2.4.2. How does Council of Europe's work on 'Encouraging compliance' add value vis-à-vis other actors?

30. **Cooperation activities also distinguish themselves by strong added value**: Despite the somewhat reduced portfolio of cooperation activity in the area of FoE, stakeholders easily identified a series of characteristics to support their perception of the strong added value of cooperation activity:

- First and foremost, the quality of Council of Europe's 'technical' and methodological expertise was considered a strong added value. Technical expertise often referred to legal expertise, ability to draw on experience from all over Europe, and knowledge of relevant local context and thorough

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[52] The 'Information Society Department' supports the work of Committees providing inputs to standards, e.g. the Steering Committee on Media and Information Society', and also houses cooperation activities. See https://www.coe.int/en/web/freedom-expression/home and https://rm.coe.int/organigram-dgi-2018/16808b870a.
[53] The Registry cooperates with Directorate General Human Rights and Rule of Law on the translation of judgments in the framework of specific cooperation projects.

preparation prior to expert deployment.[54] Methodological expertise related mostly to innovative approaches to capacity development (e.g. use of interactive approaches to capacity building such as role play).

- The Council of Europe was considered to add value via the comprehensive nature of support, ranging from first exposure of partners to standards, all the way down to the actual operationalisation of standards. Similarly, support speaks to the different dimensions of FoE, with the Council of Europe deploying expertise in its three core areas of human rights, democracy and rule of law.

- Moreover, whilst stakeholders also voiced concerns over rigid project frameworks, in general terms, the Council of Europe was commended for its responsiveness to adjust support to partner needs, or simply more general accessibility. However, responsiveness is more limited in countries that have no or only a small Council of Europe Field Office (such as Montenegro).

- Stakeholders also highlighted the 'mobilising' force of Council of Europe cooperation activities, i.e. relevant government, CSO and private sector actors engaging in cooperation because of the presence of the Council of Europe. In this context, the Council of Europe's involvement of CSOs was considered important.

- Finally, stakeholders considered the Council of Europe to add value via its FOs, pointing to efficient support throughout all stages of planning and delivering cooperation activities.

2.5. SUSTAINABILITY

Summary - sustainability

Stakeholder feedback suggests an adequate approach towards ensuring sustainability, e.g. via the systematic involvement of CSOs as multipliers, or by designing cooperation activities with a view to sustainability. However, Council of Europe resource constraints, and often the absence of political will, limit sustainability.

2.5.1. To what extent can Council of Europe's cooperation activity be considered sustainable? In this context, what enables sustainability / what are obstacles to sustainability?

31. **Stakeholder feedback suggests an adequate approach towards ensuring sustainability, however, resource constraints and often the absence of political will limit sustainability**: Just as with other dimensions of Council of Europe's cooperation work, stakeholders commented positively on Council of Europe efforts to ensure sustainability. Notwithstanding, these efforts often find themselves frustrated by resource constraints and lack of political will:

- Looking first at the factors contributing to sustainability, Council of Europe cooperation activity is reported as being successful in terms of developing ownership by relevant cooperation partners. Stakeholders also considered the increasingly systematic involvement of CSOs in the development of standards and cooperation activities to contribute to sustainability since CSOs often acted as multipliers or followed up on outcomes with relevant advocacy work.[55] Moreover, cooperation was often designed with a view to sustainability, e.g. via the integration of training of trainers, the integration of new training curricula into existing training in member States.

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[54] In this context, Council of Europe's deployment of experts 'from the region' was commended. Deploying experts from the region where cooperation activity is taking place implies familiarity with context and traditions.

[55] In the context of engaging with CSOs, stakeholders also noted areas for improvement, recommending a more inclusive approach to cooperating with civil society actors representing different points of view. They recommended that more resources are dedicated to preparing meetings with CSOs, noting the example of a senior-level Council of Europe country visit, which in their view was rendered meaningless by failing to ensure separate meetings with 'pro-government' and independent NGOs.

Commenting during the evaluation process, a member of the Reference Group pointed to the 'multistakeholder approach embraced by CDMSI notably reflected by numerous NGOs (CSOs) enjoying observer status with CDMSI. This observer status gives civil society access to all information, enabling them to share information and participate at plenary sessions taking part in the discussions.'

- However, stakeholders also noted a series of constraints. Most importantly, stakeholders noted the increasing politicisation of the media sector and lack of political will to sustain outcomes. In some countries initial enthusiasm over FoE, usually in the context of democratic transition' has made place for government abuse, curtailing FoE with a view to consolidating political power; in some cases, justifying this with the need to rally around a national cause; with critical voices branded as 'traitors' or unpatriotic. Moreover, countries emerging from, or in the process of democratic transition / consolidation experience serious capacity and corresponding absorption constraints. Furthermore, actors relevant to FoE, such as media outlets threatened by the move from print to online media, often experience resource constraints to sustain outcomes. State actors on the other hand often fail to sustain cooperation outcomes because of staff turnover. Cooperation activities often lacked explicit 'exit strategies' making arrangements for follow-up to maintain contacts between cooperation partners and relevant Council of Europe representatives, avoiding that projects simply come to an end without any prospects for a continuation of the exchanges. Finally, stakeholders saw potential for more <u>systematic dissemination of outputs and outcomes, e.g. by ensuring that relevant documentation on capacity development is made available not only on the corresponding 'project' website but on other relevant Council of Europe webpages</u>. For example, the Council of Europe webpage on FoE[56] has specific pages on publications and reports. Stakeholders expressed a wish that there should be a separate page on 'tools' to collect relevant outputs from cooperation activities, e.g. training curricula, innovative methods for capacity development, etc.

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[56] https://www.coe.int/en/web/freedom-expression/home.

3. CONCLUSIONS AND RECOMMENDATIONS

This section presents conclusions and recommendations, organised around the themes of **FoE strategic framework, leadership and coordination and visibility**; **FoE resources**; and **other issues**, not specifically related to FoE.

3.1. FOE STRATEGY AND VISIBILITY

32. **Develop a strategic framework on FoE**: This evaluation found that whilst there are different strategy initiatives, an overarching forward-looking strategic framework on FoE, involving all relevant actors, and covering all five thematic areas is missing.[57] For example, there are currently no explicit 'targets' for the coverage of the five thematic areas in terms of the 'intensity' of the coverage, or volume of resources to be dedicated to each of the five areas, or intended outcomes. In the same context, stakeholders wondered about the desirability of a stronger focus on priority areas in countries for which backsliding on FoE is being reported. Stakeholders did not consider any of the Council of Europe work irrelevant, but rather suggested the need for a prioritisation. It is therefore recommended to develop a strategic framework on FoE, involving all relevant actors in the Council of Europe. The framework could focus on the following elements: an overall vision for FoE; thematic priorities; the roles and resources of the different Council of Europe actors; strengthening the visibility and effectiveness of the Platform; mobilising other national, European and international actors. The development of a strategic framework can draw on existing Council of Europe experiences with strategy development.[58] Moreover, the Council of Europe's Project Management Methodology, whilst not directly focusing on strategy development, can be considered a useful resource in terms of presenting expectations with regard to strategic elements, on which specific Council of Europe interventions are to be based (Council of Europe, 2016, Project Management Methodology Handbook). The strategic framework would require periodic review to ensure continuous alignments between Council of Europe efforts and specific country needs. Finally, it is recommended to consider the replication of existing strategy development initiatives, e.g. the Commissioner' annual retreats for its staff to reflect on strategy.

33. **Enhance leadership and coordination**: This report found the Council of Europe to engage in a variety of relevant initiatives to protect and promote FoE. However, there is a sense of potential for further strengthening leadership and coordination across different thematic areas, types of intervention, and mobilising all relevant Council of Europe actors towards common objectives (as set out in a strategic framework as recommended above). It is therefore recommended that the Council of Europe, in the context of developing the strategic framework, considers creating a designated role to ensure leadership and coordination on FoE. This could take the form of a 'Special Representative' or 'Special Adviser' of the Secretary General on FoE, taking inspiration from similar (past) experiences for the Ukraine, migration and refugees, and Roma issues. Indeed, previous and current experiences with this function suggest the effectiveness of the function when specifically salient issues emerge, i.e. backsliding on FoE. Establishing a specific role at headquarters would, to some extent, also address the issue of resource constraints (e.g. the Special Representative of the Secretary General on migration and refugees has mobilised financial support from seven member States and has six staff members to support him).

34. **Increase the visibility of the Platform:** This evaluation also found the Platform to effectively 'encourage compliance', however, there is room for improvement with regard to visibility. Stakeholders across the Council of Europe and in the case study countries considered the Platform a useful tool to draw attention to violations of / threats to FoE, and engage with the relevant actors to address these. Notwithstanding, several recommendations were voiced, aiming to enhance the visibility of the platform. The Platform

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[57] i.e. 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'.

[58] Examples include the Council of Europe Disability Strategy 2017-2023, the Council of Europe Gender Equality Strategy 2018-2023, the Internet Governance Council of Europe Strategy 2016-2019, or the Council of Europe Strategy for the Rights of the Child 2016-2021. These strategies have in common that they identify a problem, set priorities and targets, and detail how to achieve them. The latter is about resources but also tools, and here the Platform would be a key tool.

provides direct access to a series of charts on the alerts and an 'advanced search' function allows a wide range of searches, combining the different 'characteristics' of an alert. However, the Platform does not directly show more complex overviews or 'trends', that would be likely to enhance visibility. Moreover, stakeholders supported tasking the FOs and encouraging national champions of FoE with raising awareness about the Platform among journalists.

3.2. FOE RESOURCES

35. **Strengthen partner and Council of Europe Field Office capacities**: Turning to resources dedicated to FoE, this evaluation found effectiveness and efficiency at times to be constrained by limited partner and Council of Europe resources. CSOs and national ombudsperson offices are considered prominent defenders of standards, however, they suffer from resource constraints / government budget cuts. It is therefore recommended to prioritise capacity development for these stakeholders to mitigate as far as possible for their budget cuts; e.g. systematic involvement in cooperation activities, annual instead of bi-annual meetings for CSOs at the Court etc. This would need to be tailored to the specific country needs, with attention being paid to avoid any substitution of national support for these actors. Turning to Council of Europe FO capacities, this evaluation found in-country presence to be an important factor in terms of thematic coverage. Stakeholders argued that partners and donor organisations / implementing organisations often 'assess' Council of Europe's capacity to provide support in a specific thematic area in the light of capacities identified with the Council of Europe's FOs. Comparing the in-country presence of the Council of Europe with that of the EU and others, Council of Europe's capacity was considered modest. For example, the absence of permanent staff with expertise in the five thematic areas, or more simply the absence of staff with any expertise at all in FoE was noted. This limited the extent to which the Council of Europe was perceived to be a relevant interlocutor in a specific thematic area. Strengthening of Field Offices should of course be tailored to country needs (and not to the detriment of the role of staff at headquarters).

36. Ultimate decisions about resourcing should be taken in the context of the strategic framework to be developed and how it fits in with the overall budgetary context of the Organisation.

37. **Facilitate access to Council of Europe 'outputs' in different languages, most notably the Court's case law**: This evaluation also found the area of FoE to benefit of limited cooperation activity in the traditional sense. It is therefore recommended to facilitate access to Council of Europe 'outputs' on FoE beyond the framework of cooperation activities. For example, stakeholders specifically referred to the CDMSI recommendations, the Court's judgments / decisions, relevant standards, studies, capacity development materials, and asked for this to be made available in the local language. Access to 'quality' translations was underlined by experiences with selective or 'interpretive' translations by actors with a specific political agenda. The Court has very limited resources for the translation of judgments into languages other than the two official languages of English and French. Moreover, resources are required for ensuring dissemination and visibility of these outputs (e.g. via partners in the member States).

3.3. OTHER ISSUES - NOT SPECIFIC TO FOE

38. **Ensure systematic deployment of relevant project development methodologies**: This evaluation found cooperation activities to clearly address needs, with stakeholders noting several positive features contributing to relevance and distinguishing the Council of Europe. However, stakeholders also pointed to possible areas of improvement, such as ensuring the systematic deployment of relevant project development methodologies, for example, more extensive ex-ante needs assessments; more systematic beneficiary / partner and stakeholder mapping and attention to the selection of participants in cooperation activities; more systematic mainstreaming of gender.

39. **Enhance coordination with other actors, most notably the EU and OSCE**: Stakeholders noted limitations to relevant actors speaking with 'one voice', generally considering the Council of Europe to be comparatively discreet, and failing to swiftly second other actors' condemnations of threats to / violations of FoE. The latter point was explained with internal coordination processes and / or the limited political mandate of FOs. It is therefore recommended that the Council of Europe considers allocating

adequate resources to **facilitate engagement with other actors**, e.g. via staff participation in selected European / international events to promote outputs / outcomes.

40. **Systematic dissemination of cooperation outputs and outcomes**: Finally, stakeholders saw potential for more systematic dissemination of cooperation outputs and outcomes, through ensuring that relevant documentation on capacity development is made available not only on the corresponding 'project' website but on other relevant Council of Europe webpages. For example, the Council of Europe webpage on FoE has specific pages on publications and reports. A separate page on 'tools' could collect relevant outputs from cooperation activities, e.g. training curricula, innovative methods for capacity development, etc.

ANNEX 1 - DOCUMENTATION

Annex 1 lists relevant documentation.

PACE - Parliamentary Assembly

- Recommendations and resolutions adopted by the Parliamentary Assembly of the Council of Europe in the field of media and information society (2016)
- PACE - Recommendation 2036 (2014) - Revision of the European Convention on Transfrontier Television
- PACE - Recommendation 2041 (2014) - Improving user protection and security in cyberspace
- PACE - Recommendation 2061 (2015) - Terrorist attacks in Paris together for a democratic response
- PACE - Recommendation 2062 (2015) - Protection of the safety of journalists and of media freedom in Europe
- PACE - Recommendation 2067 (2015) - Mass surveillance
- PACE - Recommendation 2073 (2015) - Improving the protection of whistle-blowers
- PACE - Recommendation 2074 (2015) - Increasing transparency of media ownership
- PACE - Recommendation 2075 (2015) - Media responsibility and ethics in a changing media environment
- PACE - Recommendation 2077 (2015) - Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet
- PACE - Recommendation 2085 (2016) - Strengthening the protection and role of human rights defenders in Council of Europe member States
- PACE - Recommendation 2089 (2016) - Intellectual property rights in the digital era
- PACE - Recommendation 2097 (2017) - Attacks against journalists and media freedom in Europe
- PACE - Recommendation 2098 (2017) - Ending cyberdiscrimination and online hate
- PACE - Recommendation 2106 (2017) - Parliamentary scrutiny over corruption parliamentary co-operation with the investigative media
- PACE - Recommendation 2111 (2017) - Political influence over independent media and journalists
- PACE - Resolution 1978 (2014) - Revision of the European Convention on Transfrontier Television
- PACE - Resolution 1986 (2014) - Improving user protection and security in cyberspace
- PACE - Resolution 2001 (2014) - Violence in and through the media
- PACE - Resolution 2031 (2015) - Terrorist attacks in Paris together for a democratic response
- PACE - Resolution 2035 (2015) - Protection of the safety of journalists and of media freedom in Europe
- PACE - Resolution 2045 (2015) - Mass surveillance
- PACE - Resolution 2060 (2015) - Improving the protection of whistle-blowers
- PACE - Resolution 2065 (2015) - Increasing transparency of media ownership
- PACE - Resolution 2066 (2015) - Media responsibility and ethics in a changing media environment
- PACE - Resolution 2070 (2015) - Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet
- PACE - Resolution 2095 (2016) - Strengthening the protection and role of human rights defenders in Council of Europe member States
- PACE - Resolution 2110 (2016) - Intellectual property rights in the digital era
- PACE - Resolution 2141 (2017) - Attacks against journalists and media freedom in Europe
- PACE - Resolution 2144 (2017) - Ending cyberdiscrimination and online hate
- PACE - Resolution 2171 (2017) - Parliamentary scrutiny over corruption parliamentary co-operation with the investigative media
- PACE - Resolution 2179 (2017) - Political influence over independent media and journalists

- State of Democracy, Human Rights and the Rule of Law - An analysis of democracy, human rights and the rule of law in Europe, based on the findings of the Council of Europe monitoring mechanisms and bodies (2016)
- State of Democracy, Human Rights and the Rule of Law - An analysis of democracy, human rights and the rule of law in Europe, based on the findings of the Council of Europe monitoring mechanisms and bodies (2017)
- European Ministerial Conferences on Mass Media Policy and Council of Europe Conferences of Ministers responsible for Media and New Communication Services (2016)
- GUIDE TO HUMAN RIGHTS FOR INTERNET USERS - Recommendation CM/Rec(2014)6 and explanatory memorandum
- Recommendations and declarations of the Committee of Ministers of the Council of Europe in the field of media and information society (2016)
- Recommendation CM/Rec(2015)6 of the Committee of Ministers to member States on the free, transboundary flow of information on the Internet
- Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality
- Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors
- Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom
- Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries
- Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership
- CONFERENCE REPORT FREEDOM OF EXPRESSION: STILL A PRECONDITION FOR DEMOCRACY? (2015)
- Conference Report 'Freedom of Expression Online: Evolving European jurisprudence and standard-setting activities in the digital age', 28 April 2017

CDDH - Steering Committee for Human Rights

- Freedom of expression and links with other human rights: https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/human-rights-development-cddh/freedom-expression
- CDDH(2017)R87 Analysis of the relevant jurisprudence of the European Court of Human Rights and other Council of Europe instruments to provide additional guidance on how to reconcile freedom of expression with other rights and freedoms, 13 July 2017 https://rm.coe.int/1680762b00
- CDDH-EXP(2017)01 DRAFTING GROUP ON FREEDOM OF EXPRESSION AND LINKS TO OTHER HUMAN RIGHTS, 7 February 2017 https://rm.coe.int/168073448c

CDMSI - Steering Committee on Media and Information Society

- Steering Committee on Media and Information Society https://www.coe.int/en/web/freedom-expression/cdmsi
- Sub-Committees

MSI-AUT - Committee of experts on Human Rights Dimensions of automated data processing and different forms of artificial intelligence

- Committee of experts on Human Rights Dimensions of automated data processing and different forms of artificial intelligence https://www.coe.int/en/web/freedom-expression/msi-aut

MSI-JOQ - Committee of experts on quality journalism in the digital age

- Committee of experts on quality journalism in the digital age
  https://www.coe.int/en/web/freedom-expression/msi-joq

Former Sub-Committees:

MSI-MED - Committee of experts on Media Pluralism and Transparency of Media Ownership

- Committee of experts on Media Pluralism and Transparency of Media Ownership
  https://www.coe.int/en/web/freedom-expression/committee-of-experts-on-media-pluralism-and-transparency-of-media-ownership-msi-med-

MSI-NET - Committee of experts on Internet Intermediaries

- Committee of experts on Internet Intermediaries https://www.coe.int/en/web/freedom-expression/committee-of-experts-on-internet-intermediaries-msi-net-
- Algorithms and Human Rights (2018) https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5

MSI-JO - Committee of experts on protection of journalism and safety of journalists

- Committee of experts on protection of journalism and safety of journalists
  https://www.coe.int/en/web/freedom-expression/msi-jo

MSI-INT - Committee of experts on cross-border flow of Internet traffic

- Committee of experts on cross-border flow of Internet traffic
  https://www.coe.int/en/web/freedom-expression/msi-int

Commissioner - Commissioner for Human Rights

- Annual activity report 2017 (25/01/2018)

Country work

- Report following the visit to Bosnia and Herzegovina (CommDH(2017)28)
- Memorandum following the mission to Kosovo (CommDH(2017)9)
- Memorandum on freedom of expression and media freedom in Turkey (CommDH(2017)5)
- Report following the visit to Croatia (CommDH(2016)31)
- Report following the visit to Poland (CommDH(2016)23)
- Report on the visit to San Marino (CommDH(2015)22)
- Report following the visit to Serbia (CommDH(2015)14)
- Report following the visit to Bulgaria (CommDH(2015)12)
- Report on the visit to Hungary (CommDH(2014)21)

Thematic work

- Publication Human Rights in Europe: from crisis to renewal? (2018)
- Human Rights Comment: Arbitrary Internet blocking jeopardises freedom of expression (2017)
- Human Rights Comment: Public service broadcasting under threat in Europe (2017)
- Issue Paper: The rule of law on the Internet and in the wider digital world (2014)

Third party interventions

- Intervention before the European Court of Human Rights in cases concerning the freedom of expression and right to liberty and security of parliamentarians in Turkey (CommDH(2017)33)
- Intervention before the European Court of Human Rights in cases concerning the detention of journalists and freedom of expression in Turkey (CommDH(2017)29)

- Intervention before the European Court of Human Rights on the case of Khadija Ismayilova v. Azerbaijan (CommDH(2016)6)
- Intervention before the European Court of Human Rights on the case of Hilal Mammadov v. Azerbaijan (CommDH(2015)5)

Opinion articles

- Europe's duty to protect journalists (26/04/2018)
- Stopping the deterioration of press freedom (04/01/2015)

Congress of Local and Regional Authorities

- Recommendation 364 (2014) The role of regional media as a tool for building participatory democracy https://rm.coe.int/1680718b6c
- CPL(13)9PART2 EXPLANATORY MEMORANDUM : Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons https://search.coe.int/Pages/result_details.aspx?ObjectId=0900001680719668

ECHR - European Court of Human Rights

- ECHR Factsheet Hate Speech https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf
- ECHR Factsheet Reputation https://www.echr.coe.int/Documents/FS_Reputation_ENG.pdf
- ECHR Internet case-law of the European Court of Human Rights (2015) https://www.echr.coe.int/documents/research_report_internet_eng.pdf

European Commission against Racism and Intolerance (ECRI)

- ECRI GPR No. 15 on combating Hate Speech https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf
- ECRI GPR No. 6 Combating the dissemination of racist, xenophobic and antisemitic material via the Internet https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N6/Recommendation_6_en.asp
- Examples of ECRI country specific findings from "Compilation of ECRI Country Recommendations of the 5th monitoring cycle".

Secretary General

- SG/Inf(2014)2 Proposals for follow-up: Thematic debate: « Safety of journalists – Further steps for the better implementation of human rights standards », 20 January 2014 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c6b0f
- SG/Inf(2014)37 Internet-based Platform to promote the protection of journalism and safety of journalists, 10 October 2014 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c5ceb
- SG/Inf(2014)44 Thematic debate on "Ensuring freedom of expression on the Internet", 1 December 2014 https://search.coe.int/Pages/result_details.aspx?ObjectId=09000016805c599f

DG I - Directorate General Human Rights and Rule of Law

- Joint Projects
  - o Strengthening the Capacity of the Turkish Judiciary on Freedom of Expression https://www.coe.int/en/web/ankara/eu-coe-joint-project-on-strengthening-the-capacity-of-the-turkish-judiciary-on-freedom-of-expression
    - Project summary https://rm.coe.int/16806f1e2b
    - Factsheet: https://rm.coe.int/1680701802

- Follow-Up Survey 24.02.2017 https://rm.coe.int/16807080a1
- Thematic Brochure https://rm.coe.int/16806fe335
- Special Issue Freedom of Expression, Journal of Justice Academy of Turkey No. 25 https://rm.coe.int/16807211a7

Information Society Department

- Leaflet Media Freedom https://rm.coe.int/leaflet-media-freedom-en/1680735c26
- Internet Standard Setting: Filtering, blocking and take-down of illegal content on the Internet https://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet
- MEDIA-COOP(2014)004 Accomplished and on-going projects in the field of media and freedom of expression From 30 September 2012 to 26 September 2014 https://rm.coe.int/16805a5f72
- MEDIA-COOP(2017)01 On-going and submitted projects in the field of media and freedom of expression online and offline From 1 January 2017 to 30 April 2017 https://rm.coe.int/1680707a85
- MEDIA-COOP(2017)02 On-going and submitted projects in the field of media and freedom of expression online and offline From 1 May 2017 to 30 September 2017 https://rm.coe.int/168075b9d8
- MEDIA-COOP(2018)01 On-going and submitted projects in the field of media and freedom of expression online and offline From 1 January 2018 to 30 April 2018 https://rm.coe.int/1680794df9
- Projects
  - Partnership for Good Governance https://www.coe.int/en/web/freedom-expression/partnership-for-good-governance
  - Promoting freedom of expression and access to information in Ukraine https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-and-access-to-information-in-ukraine
  - Promoting freedom of expression in Morocco https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-in-morocco1
  - Promoting freedom of expression in South-East Europe (JUFREX) https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-in-south-east-europe
  - Promoting freedom of expression in Tunisia https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-in-tunisia
  - Promoting gender equality and media freedom in Azerbaijan https://www.coe.int/en/web/freedom-expression/promoting-gender-equality-and-media-freedom-in-azerbaijan
  - Promoting media freedom and pluralism in the Republic of Moldova https://www.coe.int/en/web/freedom-expression/promoting-media-freedom-and-pluralism-in-the-republic-of-moldova
  - Completed projects https://www.coe.int/en/web/freedom-expression/completed-projects

Platform for Freedom of Expression

- Platform Protection and safety of journalists https://www.coe.int/en/web/media-freedom/home
- SG/Inf(2014)37 Internet-based Platform to promote the protection of journalism and safety of journalists, 10 October 2014 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c5ceb
- CM(2014)142 final Setting-up of a Freedom of Expression Platform to promote the protection of journalism and safety of journalists, 12 November 2014 https://rm.coe.int/16804bd5b3
  - CMNotes/1212/5.1 Setting-up of a Freedom of Expression Platform to promote the protection of journalism and safety of journalists, 17 November 2014 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c4fa7

- Memorandum of Understanding on the setting-up of an Internet-based Freedom of Expression Platform to promote the protection of journalism and safety of journalists, 4 December 2014 https://rm.coe.int/16804915c1
- Factsheet on Broadcasting Media https://rm.coe.int/factsheet-on-broadcasting-media-final-rev1august2017/1680735d80
- Factsheet on Freedom of Expression and Anti-Terror Legislation https://rm.coe.int/factsheet-on-anti-terror-legislation-final-rev1august2017/1680735d7f
- Factsheet on Freedom of Expression and Freedom of Religion https://rm.coe.int/factsheet-on-freedom-of-expression-and-freedom-of-religion-15september/1680748443
- Factsheet on Freedom of Expression and Hate Speech https://rm.coe.int/factsheet-on-freedom-of-expression-and-hate-speech-15september2017/1680748444
- Factsheet on FREEDOM OF EXPRESSION AND THE BROADCASTING MEDIA https://rm.coe.int/1680631e3c
- Factsheet on Freedom of Expression Internet and New Technologies https://rm.coe.int/factsheet-on-freedom-of-expression-internet-and-new-technologies-11aug/1680738366
- Factsheet on the Protection of Journalistic Sources https://rm.coe.int/factsheet-on-the-protection-of-journalistic-sources-may2017/16807178d7
- Factsheet on POSITIVE OBLIGATIONS OF MEMBER STATES TO PROTECT JOURNALISTS AND THE FREEDOM OF EXPRESSION https://rm.coe.int/16807178d6

European Audiovisual Observatory

- IRIS Special 2017-2: Journalism and Media Privilege https://rm.coe.int/journalism-and-media-privilege-pdf/1680787381
- IRIS Themes Freedom of Expression and the Media: Standard-setting by the Council of Europe Vol. I Committee of Ministers (2011) https://rm.coe.int/16807834c2
- IRIS Themes Freedom of Expression and the Media: Standard-setting by the Council of Europe Vol. II Parliamentary Assembly (2011) https://rm.coe.int/16807834c5
- IRIS Themes FREEDOM OF EXPRESSION the Media and Journalists Vol. III Case-law of the European Court of Human Rights (2016) https://rm.coe.int/iris-themes-vol-iii-2016-edition-en-final-pdf/16807834d1

DG II - Directorate General of Democracy - Youth Department of the Council of Europe

- Hate Speech Watch http://www.nohatespeechmovement.org/campaign
- OVERCOMING HATE SPEECH AND EXTREMISM TOGETHER (2017) https://rm.coe.int/168078f0b1
- STARTING POINTS FOR COMBATING HATE SPEECH ONLINE (2014) https://edoc.coe.int/en/human-rights-education/6478-starting-points-for-combating-hate-speech-online.html

Council of Europe Publications

- Handbook: Protecting the Right to Freedom of Expression under the European Convention on Human Rights (2017) https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814
- Media Regulatory Authorities and Hate Speech (2017) https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5
- FREEDOM OF EXPRESSION AND DEFAMATION (2016) https://rm.coe.int/16806ac95b
- JOURNALISM AT RISK: Threats, challenges and perspectives (2015) https://rm.coe.int/1680706afe
- ELSA Final Report FREDOM OF EXPRESSION AND PROTECTION OF JOURNALISTIC SOURCES (2016) https://rm.coe.int/1680697a4c

ANNEX 2 - CONSULTATIONS

Annex 2 lists the stakeholders consulted in chronological order.

Name	Organisation	Date
Oleksandr Bukhtatyi, Head	Media Communications Department, Presidential Administration, UA	22 May 2018
Tetiana Lebedeva, Chair	Supervisory Board of public broadcaster, member of the Commission on Journalists Ethics, Honorary Chair of the Independent Association of Broadcasters, UA	22 May 2018
Igor Kulias, independent expert	UA	25 May 2018
Vita Volodovska	Centre for Democracy and Rule of Law, UA	25 May 2018
Maksym Dvorovyi, Assistant	Victoria Siumar, Chair of the Parliamentary Committee on Freedom of Speech and Information Policy and lawyer of the CSO "Center for Democracy and Rule of Law", UA	25 May 2018
Mårten Ehnberg, Head	Council of Europe Office, UA	29 May 2018
Galyna Smirnova, team member Tetiana Shamrai, team member	Council of Europe Project 'Strengthening Freedom of the Media and Establishing a Public Broadcasting System in Ukraine'	29 May 2018
Siuzanna Mnatsakanian, Project Officer	PGG Project 'Freedom of Media in Ukraine', UA	29 May 2018
Oksana Romaniuk, Executive Director	CSO 'Institute of Mass Information' / 'Reporters Without Borders', UA	29 May 2018
Nataliya Ligacheva, Head	CSO 'Detector.media', UA	29 May 2018
Lyudmyla Opryshko, media lawyer	CSO 'Human Rights' Platform', UA	29 May 2018
Valentyn Koval, Tamara Kravchenko, Anna Mazarska	National Television and Radio Broadcasting Council, UA	30 May 2018
Oleg Nalyvaiko, Chair	State Committee on TV and Radio, UA	30 May 2018
Dariya Slyzkonis, Head of Department	Access to public information, CSO 'EIDOS', UA	30 May 2018
Zurab Alasania, Inna Grebeniuk, Olena Removska	Public Joint Stock Company 'National Public Broadcasting Company of Ukraine', UA	30 May 2018
Viktoria Siumar, Chair	Parliamentary Committee on Freedom of Speech and Information Policy, UA	30 May 2018
Valeria Lutkovska, former Ombudsman Iryna Kushnir	Ombudsman on access to public information, UA	30 May 2018
Colombe de Mercey, Dobromir Hristov	Delegation of the European Union, UA	31 May 2018

Name	Organisation	Date
Olena Lytvynenko, Deputy Head	Council of Europe Office, UA	31 May 2018
Katja Tiilikainen, Gender Advisor	Council of Europe Office, UA	31 May 2018
Viktoria Kononchuk	Department of observance of the right to information and right to petition of Ukrainian Parliamentary Commissioner for Human Rights, Ombudsman Office, UA	31 May 2018
Iryna Suslova, MP	Parliamentary Committee on Human Rights, National Minorities and Interethnic Relations and Chair of subcommittee on gender equality and non-discrimination, UA	31 May 2018
Tomilenko Sergiy Head	National Association of Journalists of Ukraine, founder and head of the information agency Procherk.info in Cherkasy, UA	11 June 2018
Artem Bidenko, Secretary of State	Ministry of Information Policy, UA	12 June 2018
Ms Nata Dzvelishvili, Executive Director	Georgian Charter of Journalistic Ethics, GE	18 June 2018
Zviad Koridze, Media Expert	GE	18 June 2018
Natia Kapanadze, Director	Ajara TV of the Public Broadcaster, GE	18 June 2018
Ucha Seturi, Chairperson	Association of Small and Medium Size ISPs, GE	19 June 2018
Nino Lomjaria	Public Ombudsman, GE	19 June 2018
Niko Tatulashvili, Head	Department on International Relations and Communications, Ombudsman's Office, GE	19 June 2018
Tinatin Berdzenishvili, Media and Communications Director	Georgian Public Broadcaster, GE	19 June 2018
Tamar Mikadze, Press and Information Officer	Political and Press Section, Delegation of the European Union, GE	20 June 2018
Mamuka Andguladze, Project Manager	Transparency International, former Council of Europe project officer, GE	20 June 2018
Marika Sulaberidze, Head	International Relations and Project Management Office, Georgian National Communications Commission, GE	21 June 2018
Ani Nozadze, Chairperson	Department on International Relations, Office of the Personal Data Protection Inspector, GE	21 June 2018
Ucha Nanuashvili	former Public Defender, currently head of the NGO Human Rights Center, GE	21 June 2018
Ivane Makharadze, Head	Audiovisual Media Services Regulation Department, Georgian National Communications Commission, GE	21 June 2018
Christian Urse, Head	Council of Europe Office in Tbilisi, GE	22 June 2018
M. Nouri LAJMI, President, M. Fathi Baaboura, Assistant	Haute Autorité indépendante de la Communication Audiovisuelle, TN	25 June 2018

Name	Organisation	Date
M. Nejib MOKNI, Project manager, Ikram ben Sassi, Programme Assistant, Sylvie Coudray, Chef de section	UNESCO Project office, TN	25 June 2018
M. Naoufel JAMMALI, President, Commission des droits et libertés et des relations extérieures, Ali Djait, Conseiller l'unité des relations extérieurs chargé des relations avec APCE Assemblée Parlementaires du Conseil de la Europe, Nadia Zouaoui, Bureau de presse, Faten Rahmouni, Première Conseillère du président de la Commission des droits et libertés et des relations extérieures	Assemblée des représentants du peuple, TN	25 June 2018
M. Said Ben Kraiem, Director M. Sami, Coordinateur groupe de partenaires techniques et financiers, media pilote par le CAPJC	Centre Africain de Perfectionnement des Journalistes et Communicateurs, TN	25 June 2018
M. William Massolin, Chef du bureau, Amira Riahi, Membre de l'équipe Médias	Council of Europe office, TN	25 June 2018
Larbi Chouikha, expert	Vigilance, TN	26 June 2018
Faouzia Ghiloufi, Board member of the National Union of Tunisian journalists	Syndicat national des journalistes tunisiens, TN	26 June 2018
Ferdaous BEN SASSI, Project manager Adam Styp-Rekowski, DRI Country director	Democracy reporting international, TN	26 June 2018
Bruno Montariol, Responsable des programmes	European Union Delegation, TN	26 June 2018

Ramzi Heni, Conseiller au niveau du ministère et Magistrat Administratif	Ministère de la Relation avec les Instances Constitutionnelles, et de la Société Civile et des Droits de l'Homme, TN	26 June 2018
Maja Stojanovic, Senior Project Officer	Council of Europe JUFREX, ME / RS	2 and 16 July 2018
Ivor Sutalo, Junior Professional	European Union Delegation, ME	2 July 2018
Sinisa Gazivoda, Lawyer, Mila Radulovic, Secretary General	Bar Association Association of Professional Journalists, ME	2 July 2018
Angela Longo, Head	Council of Europe Office in Podgorica, ME	2 July 2018
Nikola Markovic, President	Commission for investigation of attacks on journalists, ME	2 July 2018
Zeljko Rutovic, Director Marija Vlaovic, Adviser for Administrative Issues Filip Obadovic, Adviser	Media, Ministry of Culture, ME	3 July 2018
Vanja Calovic, Executive Director	Network for Affirmation of the NGO Sector, ME	3 July 2018
Tea Gorjanc Prelević, Executive Director	Human Rights Action, ME	3 July 2018
Senka Danilovic, President Milos Soskic, State Prosecutor Masa Adzic, JUFREX Coordinator	Steering Committee, Centre for Training in Judiciary State Prosecution Department of In-Service Training, ME	3 July 2018
Marijana Camovic, President	Trade Union of Media, ME	3 July 2018
Miras Radovic, Judge Dusanka Radovic, Judge Bosko Basovic, Adviser Tijana Badnar, Adviser	Supreme Court, ME	3 July 2018
Nassredine Louati, expert	TN	4 July 2018
Jean-François Furnémont, expert	TN	4 July 2018
Stevan Dojcinovic, Journalist	Crime and Corruption Network (KRIK)	4 July 2018
Nenad Vujic, Director, Ms. Zorana Delibasic, Judge Ksenija Dajanovic, Deputy Higher prosecutor Novi Sad Alexander Kostic, Project Coordinator (JUFREX Project)	Judicial Academy of Republic of Serbia	4 July 2018

Aleksandra TOMIĆ, Head of PACE Delegation Jelena Sudimac, Secretary of Serbian Delegation to PACE	National Parliament	4 July 2018
Gordana Novakovic, Secretary General	Press Council	4 July 2018
Milan Todorovic, Senior Legal Advisor Jelena Kolo, Associate for public and international relations	Regulatory authority for Electronic media (REM)	4 July 2018
Tim Cartwright	Head of Council of Europe Office	4 July 2018
Nedim Sejdinovic, President	NDNV - Independent journalists association of Vojvodina	5 July 2018
Slavisa Lekic, President	NUNS (Independent Association of Journalists of Serbia – IJAS)	5 July 2018
Veran Matić, CEO and Chairman	Commission for Investigating Killings of Journalists, B92 Broadcasting Company, RS	5 July 2018
Svetlana Djukic, Manager of media programmes	EUD Belgrade	5 July 2018
Branko Cecen, Director	Centre for investigative journalism	5 July 2018
Kristina Todorovic, Lawyer	YUCOM Lawyers committee for human rights	5 July 2018
Milos Stojkovic, Media lawyer / expert	Zivkovic Samardzic law firm	5 July 2018
Ljiljana Smajlovic, President of the Court of honour	UNS – Journalists association of Serbia	6 July 2018
Stanojla Mandic, Deputy Commissioner	Commissioner for information of public importance and personal data protection	6 July 2018
Jelena Surculija Milojevic, Media Law Expert	Faculty of Political Science	6 July 2018
Ilir Gasi, Director	Slavko Curuvija Foundation	6 July 2018
Vukasin Obradovic, Founder of Vranjske novine and former head of the Serbian journalists' association	Vranjske novine	6 July 2018
Goran Djurovic, Director	Media Centre, ME	9 July 2018
Witold Kołodziejski, President Halina Rostek, Deputy Director, Department of Strategy	National Broadcasting Council	17 September 2018

Andrzej Krajewski,	past expert with the National Broadcasting Council	17 September 2018
Krzysztof Bobiński,	Association of European Journalist's (AEJ) Representative Poland/ Platform for Protection of Journalists	17 September 2018
Annabelle Chapman	Foreign correspondent in Poland, writing for The Economist	17 September 2018
Grzegorz Nawrocki, Journalist		17 September 2018
Karol Zgódka, Head of Media Law Unit, Department of Intellectual Property and Media Magda Jagiełłowicz, chief expert on media law	Ministerstwo Kultury i Dziedzictwa	18 September 2018
Dominika Bychawska-Siniarska	Member of the Board, project coordinator Helsinki Foundation for Human Rights	18 September 2018
Hanna Machińska, Deputy Commissioner for Human Rights/Deputy Commissioner in charge of international relations Miroslaw Wróblewski, Director, Constitutional, International and European Law Department	Commissioner for Human Rights	19 September 2018
Elise CORNU, Head of Division	Legal Affairs and Human Rights, Secretariat of the Committee of Ministers, Council of Europe	24 September 2018
Frederic DOLT, Adviser	Private office of the Secretary General and the Deputy Secretary General, Council of Europe	24 September 2018
Isil GACHET, Director Anne WEBER, Adviser	Office of the Commissioner for Human Rights, Council of Europe	24 September 2018
Pilar MORALES, Head of Department	ODGP, Council of Europe	24 September 2018
Patrick PENNINCKX, Head of Department	Information Society Department, Council of Europe	25 September 2018
Matjaz GRUDEN, Director Mr Adrian EVTUHOVICI, Head of Division	Directorate of democratic participation, Council of Europe Platform for Protection of Journalists, Council of Europe	25 September 2018
Shahin ABBASOV –	DGI, Media co-operation Unit, Council of Europe	25 September 2018
Silvia GRUNDMANN, Head of Division	Media and Internet Division, Council of Europe	25 September 2018
Guenter SCHIRMER, Head of Department	Department of Legal Affairs and Human Rights, PACE	26 September 2018

Kathrin MERKLE, Head of Division	Division Culture and cultural heritage, Council of Europe	26 September 2018
Onur ANDREOTTI	Registry of the European Court of Human Rights	27 September 2018
Menno ETTEMA, Programme Manager	Anti- Discrimination Department 'No Hate Speech and Cooperation Unit', Council of Europe	2 October 2018
Carmen MORTE GOMEZ, Head of Division	Case-Law Information and Publications Division, Directorate of the Jurisconsult, Registry of the European Court of Human Rights	3 October 2018
Rachel Kondak	Registry of the European Court of Human Rights	4 October 2018

ANNEX 3 – EXTRACTS FROM THE INCEPTION REPORT

1. EVALUATION OBJECTIVES, SCOPE AND METHODOLOGY

1.1. EVALUATION OBJECTIVES

The Terms of Reference define two evaluation objectives:
- to assess the relevance, effectiveness, efficiency, sustainability and added value of Council of Europe's support to member States in the area of FoE and identify lessons from past experience;
- to issue actionable recommendations on how to make improvements under each criteria or set of issues that have been identified during the evaluation.

Considering these evaluation objectives, we understand that the evaluation is to be both 'summative' and 'formative':
- Summative evaluation: The summative view aims to assess the performance of Council of Europe support on FoE by reviewing outcomes against expectations. The focus is on understanding what has been achieved and why? In this context it is important to note that the evaluation will adopt a 'holistic' approach to Council of Europe's work on FoE, e.g. support is not limited to specific cooperation activities, but also includes Council of Europe's work surrounding standard setting, the case law of the European Court of Human Rights (ECtHR) etc.
- Formative evaluation: The formative perspective aims to enhance performance with a view to the future, most notably the design and delivery of future Council of Europe support. Here, the focus is on developing pragmatic recommendations to help the stakeholders to improve future interventions.

The scoping interviews allowed additional input on the evaluation objectives to be gathered. This validated, but also helped to refine the approach to this evaluation, originally set out in the ToR and the evaluator's proposal. More specifically, the scoping interviews pointed to the following areas of interest to be explored by the evaluation, most notably in the context of discussing 'enabling factors' that explain effectiveness and sustainability (see section 3 on the evaluation questions):
- Coping with lack of political will / exerting political pressure via the Committee of Ministers (CM) or by instrumentalising actors that can deploy conditionalities (referring to the European Commission in the specific context of European Union accession) – this is related to the fact that much of Council of Europe's work in the area of FoE can be considered 'soft law', requiring genuine member State political will for 'compliance';
- Harnessing / streamlining the work of different Council of Europe bodies engaged in the protection and promotion of FoE, thus ensuring complementarity and impact;
- Engaging with civil society to support the effectiveness and sustainability of interventions on FoE;
- Responding more rapidly to threats to FoE;
- Dissemination, visibility and use of Council of Europe 'intelligence' on FoE;
- Deploying technology for Council of Europe's internal cooperation / coordination;
- Coping with resource limitations, constraining thematic scope and cooperation / coordination, both internally and externally;
- Finally feedback on a draft version of this report also recommended exploring linkages between the work of the Council of Europe on FoE and the work on other human rights.

For the points made by the Reference Group, Annex 3 can be consulted.

1.2. EVALUATION SCOPE

The evaluation will cover Council of Europe activities aiming to protect or promote FoE. Without any claim to exhaustiveness, the ToR specifically notes 'types' of intervention, i.e. 'standard setting, technical cooperation and the platform for the protection of journalism and safety of journalists' and five thematic areas 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'. Moreover, the ToR specify the period of evaluation as covering the years 2014 to 2018.

1.3. 1.3 EVALUATION METHODOLOGY

This section presents the proposed methodology, comprising the general approach to the evaluation and considerations on the main evaluation tools.

The ToR propose the use of a mixed-methods[59] and gender-sensitive approach. The following pages show how this approach will be operationalised. Beyond the approach proposed in the ToR (evaluation questions structured around the standard evaluation criteria) we propose to complement this by deploying the method of outcome harvesting.[60]

In terms of analysis, new institutionalism, with its focus on explaining changes in practices and narratives, and deploying methods such as case studies will support the evaluation.[61] Whilst this is largely qualitative in nature, we will remain mindful of complementing the qualitative perspective with a quantitative perspective, aiming inter alia, to present the wider context in which Council of Europe interventions are being developed. The quantitative perspective will be developed by drawing on survey data (to be confirmed), by making use of monitoring data collected in the framework of the specific interventions under evaluation (there will be four country case studies), or by recourse to quantitative data on FoE collected at country level by the Council of Europe,[62] and by organisations such as the Organisation for Security and Cooperation in Europe (OSCE), the Office for Democratic Institutions and Human Rights (ODIHR), the European Union's Fundamental Rights Agency (FRA) and others.[63] Possible difficulties over attributing 'quantitative developments' to Council of Europe interventions will be addressed by the 'dual' qualitative / quantitative approach.

With regard to the evaluation tools we propose the following:

- **Desk research**: we propose to review a wide range of documentation produced by the Council of Europe and relevant third parties. Desk research focuses on the review of existing documentation with a view to identifying initial answers to the evaluation questions (see annexes). Indeed, desk research aims to establish a first factual and rather quantitative basis for answering the questions

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[59] The ToR explain this as follows: 'Mixed-method approach is the use of a combination of quantitative and qualitative methods to enhance the validity of findings and their consequent contribution to the recommendations on potential improvements.'

[60] Outcome Harvesting collects ("harvests") evidence of what has changed ("outcomes") and, then, working backwards, determines whether and how an intervention has contributed to these changes. Outcome Harvesting has proven to be especially useful in complex situations when it is not possible to define concretely most of what an intervention aims to achieve, or even, what specific actions will be taken over a multi-year period.
http://www.betterevaluation.org/en/plan/approach/outcome_harvesting

[61] Lowndes, V. and Roberts, M. (2013) *Why Institutions Matter* (Basingstoke: Palgrave Macmillan)

[62] For example, the Indicator Framework on Culture and Democracy (37 countries; FoE is one precise indicator under the Democracy chapter) and the Compendium (43 countries, mostly chapter 4 on current issues and chapter 5 on legal provisions)

[63] For example, Office for Democratic Institutions and Human Rights, Human Rights Guidelines on Freedom of Expression, Online and Offline; Office of the United Nations High Commissioner for Human Rights, Indicators for 'The right to freedom of opinion and expression'; United Nations Educational, Scientific and Cultural Organization (UNESCO), Freedom of Expression Indicators; Freedom House, Freedom in the World survey.

(e.g. on the basis of project monitoring data, substantiating the achievement of expected project outcomes). The initial answers on the basis of quantitative data will subsequently be further substantiated with qualitative information from stakeholder consultations. The desk research will allow to complete the **mapping of Council of Europe entities** which cover the topic of FoE in a transversal manner (see figure 1 below for an initial mapping of the relevant Council of Europe entities, to be further developed and completed in the course of the evaluation). Desk research will also support the assessment of **Council of Europe cooperation with other relevant organisations**, e.g. OSCE, ODIHR, UNESCO, United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, etc.

- **Structured and semi-structured interviews**: Interviews will be conducted with Council of Europe stakeholders based in Strasbourg (40-50 interviews) and in the context of the four country missions (20-30 per country). Moreover, selected key stakeholders and experts in countries that are not covered through a case study, representatives of other (international) organisations and civil society organisations will also be interviewed (10-15 interviews). 'Responsive interviewing' will be a key to gathering meaningful data, in particular when interviewing stakeholders on politically sensitive issues.[64] The ToR include a list of the main stakeholder groups to be interviewed (Council of Europe staff, cooperation partners, international actors such as the OSCE and others that are knowledgable in terms of developments in the area of FoE and the work of the Council of Europe). We understand that this is not an exhaustive list, and that additional stakeholders (e.g. representatives of the European Union institutions) may be identified during the evaluation. We envisage that the majority of interviews will be face to face, and where this is not possible we will carry out telephone interviews. The interview framework / questions will be developed before the on-site missions, and DIO will be invited to comment on the interview guides.

- **Case studies**: The ToR proposed four 'country-based case studies', namely Georgia, Serbia Tunisia and Ukraine. According to the ToR, 'These countries were selected on the basis of the following criteria: volume of activities conducted in the countries between 2014 and 2018; geographic diversity of the sample; feasibility of data collection; consultations with stakeholders'. The ToR suggest that the Council of Europe is proposing a focus on 'feasible' cases,[65] and this can be considered a valid approach, considering resource / time constraints and the need to generate knowledge, more likely to occur when focusing on feasible cases. In the framework of the country case studies, desk research and interviews will first enquire into the main changes / developments in the five thematic areas of 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet' and then investigate to what extent the Council of Europe might have contributed to identified changes; following this 'top down' enquiry, interviews will focus on specific Council of Europe interventions and verify 'performance' against the different evaluation criteria. Reference Group discussions pointed to the need to review the selection of country case studies, e.g. to consider including at least one EU member state, and the Reference Group expressed support for including Montenegro, Poland,[66] Tunisia, and the Ukraine.

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[64] Rubin and Rubin define 'Responsive interviewing' as 'picking people to talk to who are knowledgeable, listening to what they have to say, and asking new questions based on the answers they provide'. This is set in a critique of a more positivist approach. In this context the authors note the advantages of quanlitative tools in addressing certain research questions: 'When context and richness are important, when you need to know what something feels like or how it works from the inside, when you are looking at something unusual or unique, naturalistic research tools are more appropriate' (p. 3). See Rubin H. J. and Rubin I. S. (1995) 'Listening, hearing, and sharing', in Rubin H. J. and Rubin I. S. (eds), *Qualitative interviewing: the art of hearing data*, 2-11

[65] Yin, R. K. (1981) 'The case study as a Serious Research Strategy' in *Knowledge: Creation, Diffusion, Utilization*, Vol. 3, 97-114

[66] This case still requires confirmation based on the assessment of its feasibility.

- **Survey**: The ToR envisaged a survey to journalists from all member States which can be administered through cooperation with the NGOs – partners of the platform either through their website or their database of journalists. The survey would be operated using the online tool 'Survey Monkey'. The Council of Europe would be invited to comment on the draft questions. To maximise the number of responses, the survey whould consist of a limited number of clear and concise questions. Recent experience with similar Council of Europe surveys indicates that an introductory email from the Council of Europe to the target group(s) is likely to enhance the quantity and quality of responses. Considering issues over feasibility (operating the survey requires cooperation by relevant NGO partners of the platform) and the representative nature of the target group (journalists), at this stage it is considered to drop the survey and allocate the corresponding resources to interviewing (with a specific focus on international organisations / experts working on FoE). Note also that quantitative data will be collected via a structured questionnaire.

2. THEORY OF CHANGE

This section presents a first draft of the theory of change underlying Council of Europe's interventions for the protection and promotion of FoE. Given the wide range and complexity of Council of Europe interventions on FoE, at this stage the theory of change aims more at a first illustration; a more comprehensive picture may be drawn at a later stage in the evaluation process.

The theory of change speaks to some extent to Council of Europe's dynamic triangle of standards, monitoring and cooperation, with the important caveat of the absence of an 'official monitoring body' for FoE. Rather Council of Europe activity 'in lieu of monitoring' relates more to a combination of: (a) the **insights on the situation with regard to FoE** as generated by the work, inter alia, of the Council of Europe's 'Platform to promote the protection of journalism and safety of journalists', the Council of Europe's Commissioner for Human Rights, the European Court of Human Rights etc.; (b) **related responses**,[67] e.g. political leverage in the form of follow-up on the above noted insights by the CM, the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights or the Secretary General; and (c) cooperation activities. To avoid confusion with 'standard' Council of Europe monitoring, this theory of change uses the term 'Encouraging compliance'.

Indeed, many of Council of Europe initiatives related to 'Encouraging compliance' explicitly refer to developing insights and / or supporting responses by relevant actors. For example, the Platform: 'shall enable the Council of Europe bodies and institutions **to be alerted on time**, in a more systematic way and to **take timely and coordinated action when necessary**. It shall help the Organisation **identify trends and propose adequate policy responses** in the field of media freedom' (highlighting by the author).[68]

The theory of change also speaks to standard intervention logic, leading from the identification of needs via inputs, outputs and outcomes to impact in terms of an enhanced situation with FoE. The arrow shapes at each level (inputs, outputs and outcomes) note different types of inputs, outputs and outcomes.

The following two figures show the 'outputs' of Council of Europe work on FoE that have been considered to design the theory of change (figure 1), and then the complete theory of change (figure 2).

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[67] Feedback received on the draft inception report suggests that responses remain 'fragmenary' in the absence of a dedicated monitoring mechanism.

[68] https://www.coe.int/en/web/media-freedom/the-platform (last accessed on 1 May 2018). Feedback received on the draft inception report reiterates limitations in the absence of dedicated monitoring: 'The Platform itself is limited in its scope to "serious threats to freedom of expression" as understood and considered by media professionals. It does not, however, include a vast range of interferences that are either not "serious" enough threats or concern ordinary citizens. Our standard-setting work for the most part concerns all interferences, but we have very limited means of monitoring compliance with most of our standards'.

Figure 1 – The output level

Standards
- Art. 10 of the European Convention on Human Rights and related case law
- Committee of Ministers' Recommendations in conjunction with Steering Committee on Media and Information Society (standard setting, advice, information on adopted standards, events etc.)
- Parliamentary Assembly Recommendations / Resolutions
- Other relevant standard setting activity e.g. European Commission against Racism and Intolerance

Encouraging compliance
- Committee of Ministers
- Parliamentary Assembly
- Commissioner for Human Rights (Observations, Memoranda, Country Monitoring etc.)
- Secretary General (country visits, speeches, press releases etc.)
- Platform to promote the protection of journalism and safety of journalists (alerts, information)
- Venice Commission
- European Audiovisual Observatory (legal analysis, information, events)
- Directorate General I and II (research, publications, events, cooperation projects)

Figure 2 – Theory of change

Freedom of expression

Outcomes

Standards
- member States / other countries implement standards on FoE

+

Encouraging compliance
- member States / other countries comply with standards on FoE
- member States / other countries acquire capacities to protect & promote FoE

Outputs

Standards
- Conventions
- Recommendations and guidelines etc.

+

Encouraging compliance
- CoE and partners communicate / generate insights into compliance with standards
- CoE follows up on insights
- Capacity and normative development for partners, incl. CSOs (law, training, exposure to practices, awareness etc.)

Inputs

Standards
- CoE normative & thematic expertise (drafting, supporting information, exchange of information)

+

Encouraging compliance
- CoE country visits to understand performance
- Stakeholder platforms
- Data collection
- CoE cooperation (CoE expertise in capacity and normative development, awareness raising, material support etc.)

Coordination & exchanges with relevant organisations generate support and synergies

Needs / Requests for assistance

3. EVALUATION QUESTIONS

This section includes a set of evaluation questions, drawing on feedback from the scoping meetings and the review of documentation on Council of Europe's support to the protection and promotion of FoE.

In line with the theory of change, the evaluation questions will assess each of the five evaluation criteria (relevance, effectiveness, efficiency, added value and sustainability) separately vis-à-vis the protection and promotion of FoE via, respectively, standard setting and 'Encouraging compliance'.

The evaluation questions will be used in interviews with stakeholders in Strasbourg, in the context of field missions to Georgia, Poland[69], Serbia / Montenegro, Tunisia, and Ukraine, and in the context of interviews looking at other countries and at cooperation / coordination with other relevant international actors.

The stakeholders include:

- Selected Council of Europe staff representing entities involved in work related to freedom of expression (i.e. entities mentioned in the theory of change;

- In countries selected for case studies: a) cooperation partners; b) representatives of civil society; c) representatives of other international organisations active in the area of freedom of expression; d) representatives of donors; e) experts of the sector, representatives of academia and or professional associations;

- Selected international experts and representatives of international non-governmental organisations and/or professional associations.

The following table shows the evaluation questions. For each evaluation question the table notes the questions as drafted in the ToR, proposed sub-questions, measures / indicators and the proposed approach to data collection (desk research and interviews).

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[69] This case still requires confirmation based on the assessment of its feasibility

Table 1 - Evaluation questions[70]

Evaluation criteria	*Question (ToR) / sub-questions*	**Measures / indicators**	Desk research		Interviews				Survey
			Council of Europe	**External**	**Council of Europe**	**Member State / partner**	**CSOs/Experts**	**Other organisations**	
	(1) To what extent do the Council of Europe interventions address needs?								
Relevance	(1.1) To what extent is Council of Europe support covering the five thematic areas of 'Legal guarantees for freedom of expression; Safety of journalists and others performing public watchdog functions; Media independence; Media pluralism and diversity; and Freedom of expression on the Internet'?	• Council of Europe and other actors' reporting confirms alignment between Council of Europe interventions and the five thematic areas[71] • Partner interview feedback confirms alignment between Council of Europe interventions and the five thematic areas	🗐	🗐	🗐	🗐	🗐	🗐	🗐
	(1.2) To what extent is Council of Europe support addressing partner needs?	• Council of Europe and other actors' reporting confirms alignment between Council of Europe interventions and partner needs • Partner interview feedback confirms alignment between Council of Europe interventions and partner needs	🗐	🗐	🗐	🗐	🗐	🗐	🗐

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[70] The table shows the original evaluation questions as stated in the Terms of Reference in **bold italic font**. Underneath the original questions, the evaluator has developed sub-questions.

[71] 'Other actors' refers to relevant third parties such as European (e.g. European Commission) and international organisations (e.g. Office of the United Nations High Commissioner for Human Rights, ODIHR etc.) and civil society organisations working FoE.

Evaluation criteria	Question (ToR) / sub-questions	Measures / indicators	Desk research		Interviews				Survey
			Council of Europe	External	Council of Europe	Member State / partner	CSOs/Experts	Other organisations	
Effectiveness	*(2) To what extent do the interventions of the Council of Europe effectively strengthen the FoE in Council of Europe beneficiary states?*								
	(2.1) To what extent has Council of Europe's <u>standard setting</u> brought about tangible improvements in FoE in Council of Europe partner countries? In this context, what enables effectiveness? / what are obstacles to effectiveness?	• Council of Europe and other actors' reporting confirms enhanced alignment between partner country and Council of Europe standards[72] • Partner interview feedback confirms enhanced understanding of relevant standards • Partner interview feedback confirms enhanced capacities to operationalise relevant standards	🗐	🗐	🗐	🗐	🗐	🗐	🗐
	(2.2) To what extent has Council of Europe's work on '<u>Encouraging compliance</u>' identified issues relevant to FoE in Council of Europe partner countries / brought about tangible improvements in FoE in Council of Europe partner countries? In this context, what enables effectiveness? / what are obstacles to effectiveness?	• Other actors' interview feedback confirms identification of relevant issues (or Council of Europe interventions do not overlook issues of relevance to existing standards) • Council of Europe and other actors' reporting confirms enhanced institutional / operational capacities • Evidence of right holders' improved knowledge / duty bearers' enhanced understanding and practice of protecting and promoting FoE	🗐		🗐	🗐	🗐	🗐	🗐

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[72] 'Other actors' refers to relevant third parties such as European (e.g. European Commission reporting on European Union accession) and international organisations (e.g. Office of the United Nations High Commissioner for Human Rights, ODIHR etc.) and civil society organisations working FoE.

| Evaluation criteria	*Question (ToR)* / sub-questions	Measures / indicators	Desk research		Interviews				Survey
			Council of Europe	External	Council of Europe	Member State / partner	CSOs/Experts	Other organisations	
	(2.3) To what extent has Council of Europe's work on 'Encouraging compliance' generated adequate responses? In this context, what enables effectiveness? / what are obstacles to effectiveness? (consider responses of all actors mentioned under "encouraging compliance")	• Other actors' interview feedback confirms adequate responses to identified issues	📄		📄	📄	📄	📄	📄
	(2.4) To what extent can the outcomes of Council of Europe interventions be considered gender-sensitive and to what extent have the outcomes of Council of Europe interventions contributed to gender equality?	• Evidence of outcomes equally benefiting women and men / considering specific (different) needs of women and men • Evidence of enhanced gender equality (e.g. changes in the normative framework to ensure gender equality and related statistics)			📄	📄	📄		

Efficiency	(3) *To what extent are the different interventions of the Council of Europe coherent and coordinated with each other?*										
	(3.1) To what extent is Council of Europe's <u>standard setting</u> internally and externally coherent?	• Council of Europe interview feedback confirms internal coherence (cooperation/ coordination to promote synergies) • Partner / other actors' interview feedback confirms complementarity between Council of Europe and other actors' standard setting (no overlap / overlaps explained by different perspectives etc.)[73] • Synergies achieved/negative results of lack of coordination/cooperation			🗐		🗐			
	(3.2) To what extent is Council of Europe's work on <u>'Encouraging compliance'</u> internally and externally coherent?	• Council of Europe interview feedback confirms internal coherence (cooperation/ coordination to promote synergies) • Other actors' interview feedback confirms complementarity between Council of Europe and other actors' (no overlap / overlaps explained by different perspectives etc.) • Synergies achieved/negative results of lack of coordination/cooperation			🗐		🗐			
	(3.3) To what extent are Council of Europe's standard setting, and the work on 'Encouraging compliance' coherent between each other?	• Stakeholders confirm synergies between the different elements			🗐		🗐			

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[73] Concerning the issue of 'overlap' see footnote 11 above.

Added Value	*(4) **What is the added value of Council of Europe's interventions on FoE and how does it compare with other actors in the field?***										
	(4.1) How does Council of Europe's <u>standard setting</u> add value vis-à-vis other actors?	• Stakeholders confirm Council of Europe's 'deployment' of its comparative strengths (e.g. expertise, mobilisation of relevant Council of Europe bodies, access to experience from all Council of Europe member States, responsiveness to needs, political neutrality etc.), Synergies with the work of other actors[74]			🗐		🗐		🗐	🗐	
	(4.2) How does Council of Europe's work on <u>'Encouraging compliance'</u> add value vis-à-vis other actors?	• Stakeholders confirm Council of Europe's 'deployment' of its comparative strengths (e.g. expertise, mobilisation of relevant Council of Europe bodies, access to experience from Council of Europe member States, participatory approach to capacity development, responsiveness to needs, political neutrality etc.), Synergies with the work of other actors			🗐		🗐		🗐	🗐	🗐
Sustainability	*(5) **To what extent can the changes generated by the Council of Europe in terms of FoE be expected to be sustainable?***										
	(5.1) To what extent can Council of Europe's cooperation activity be considered sustainable? In this context, what enables sustainability? / what are obstacles to sustainability?	• Council of Europe and partner interview feedback confirms changes in the partners' normative / institutional / capacity framework to sustain outcomes of cooperation • Other actors' interview feedback confirms changes in the partners' normative / institutional / capacity framework to sustain outcomes of cooperation			🗐		🗐		🗐		

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[74] Feedback on the draft inception report by a representative of the Secretariat of the Steering Committee on Media and Information Society (CDMSI) recommends to 'identify whether there is a comparable standard setting of any other actors' and to 'compare the legal strength of such standard setting and its content to obtain objectively reliable results'.
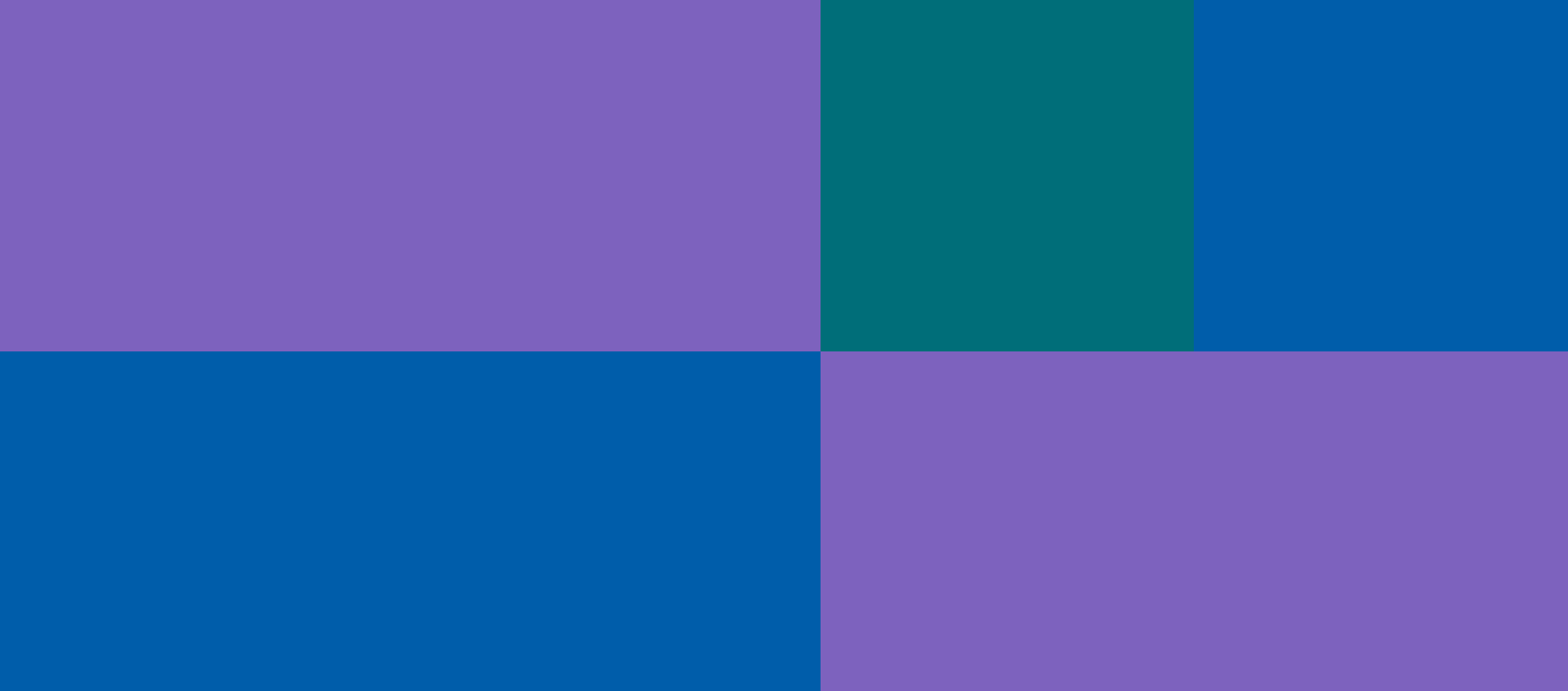
www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member States, 28 of which are members of the European Union. All Council of Europe member States have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member States.

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