Questionnaire on Priority areas for the implementation of Recommendation CM/Rec(2016)4 on the Protection of Journalism and Safety of Journalists and other Media Actors

In April 2016 the Committee of Ministers of the Council of Europe adopted a **Recommendation** CM/Rec(2016)4 **on the protection of journalism and safety of journalists and other media actors**, condemning the alarming and unacceptable level of threats to journalists and media actors in Europe and providing specific Guidelines to member statesto act in the areas of prevention, protection, prosecution, promotion of information, education and awareness rising.

The study **Journalists under pressure** issued in April 2017 documented extended physical attacks, acts of intimidation, judicial harassment, imprisonment, muzzling legislation, smear campaigns and abuse of financial levers in the 47 Member States of the Council of Europe.

Recent murders of journalists in Council of Europe states, including the killings of Daphne Caruana Galizia, Dmitri Popkov, Saeed Karimian and Pavel Sheremet, also demonstrate the urgent need for redoubled action for the prevention, protection and prosecution of such killings.

The Council of Europe is continuously working on the implementation of CM/Rec(2016)4 by supporting national authorities through cooperation assistance activities and by providing responses to challenges to media freedom and safety of journalists. The time is ripe, however, to devise a more strategic and systematic implementation of the Recommendation. Given the exhaustive nature of the recommendation, the implementation strategy will be applied in a few priority areas as a first step. ***Journalists, journalist associations and civil society are therefore invited to examine the topics/areas that should be given priority implementation at this stage, by rating each of the indicators below from 1 to 10 (1 being the lowest in urgency and 10 being the highest)***.

Some of the topics listed under the different pillars may be closely related to one another and require that they be addressed in a coordinated manner (e.g. threats of violence/impunity for crimes against journalists, or overly restrictive defamation laws/insufficient protection from vexatious use of laws to intimidate journalists). When this is the case, the respondent may assign the same rating to these related topics and indicate in the comment box that they should be addressed together. Likewise, where relevant, ***the respondents are invited to provide comments outlining in more detail concrete risks or their most troubling elements and/or comments indicating concrete measures to minimise such risks***.

[I. Pillar on Prevention – Legislative framework protecting journalism and journalists 2](#_Toc505001759)

[II. Pillar on Protection through Law Enforcement Machinery and Redress Mechanisms 3](#_Toc505001760)

[III. Pillar on Prosecution 5](#_Toc505001761)

[IV. Pillar on Promotion of information, education and awareness-raising 6](#_Toc505001762)

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# I. Pillar on Prevention – Legislative framework protecting journalism and journalists

## Indicators

| **Specific risks** | **Measures to avert/remedy risks** | **Rating of priority (from 1 – 10) and comments if any** |
| --- | --- | --- |
| Absence of criminal and civil law provisions for the protection of physical and moral integrity of a person | A comprehensive legal framework guaranteeing state protection of the person’s integrity  Effective implementation of the legal framework  Periodic reviews by independent bodies | **Click to select priority value** |
| *Add comment if any:* |
| Absence of an enabling legal framework providing the following guarantees:   * Access to information; * Right to privacy and data protection; * Confidentiality and security of communications; * Protection of journalistic sources and whistle-blowers; * Effective protection of female journalists from gender-related risks; * Adequate labour and employment laws providing protection from arbitrary dismissal, reprisals, and undue pressure. | * A comprehensive legal framework offering the required guarantees for creating an enabling environment. * Effective implementation of the legal framework * Periodic reviews of the legal framework by independent bodies, to ensure that safeguards for the exercise of the right to freedom of expression are in place. | **Click to select priority value** |
| *Add comment if any:* |
| National security laws are overly protective of state interests, failing to strike an appropriate balance with freedom of expression | Inclusion of freedom of expression safeguards and safeguards against misuse and abuse. | **Click to select priority value** |
| *Add comment if any:* |
| Defamation laws are overly protective of reputational interests and have far-reaching sanctions. | * Inclusion of freedom of expression safeguards (truth/public-interest/fair comment defence) and safeguards against misuse and abuse of law. * Restraint in applying such legislation. | **Click to select priority value** |
| *Add comment if any:* |
| Journalists and other media actors are put under surveillance and their on-line activity is tracked. | * Procedural safeguards against misuse and abuse of surveillance (review by a judicial authority, due process and user notification). * Oversight mechanisms to ensure transparency and accountability. | **Click to select priority value** |
| *Add comment if any:* |
| Media is under the influence of the State | * Legal framework providing for the independence of the Media and an independent supervisory body. | **Click to select priority value** |
| *Add comment if any:* |
| PSM is under the influence of the State and/or insufficiently funded | * The legal framework governing PSM clearly stipulates their editorial independence and institutional autonomy from the government; and defines the competences of the supervisory bodies. * An appropriate, secure and transparent funding framework guarantying PSM the means necessary to accomplish their missions. | **Click to select priority value** |
| *Add comment if any:* |
| Excessive concentration of Media | * Legislation designed to counteract concentrations. * Media authorities invested with powers to act against mergers or other concentration operations that threaten media pluralism. | **Click to select priority value** |
| *Add comment if any:* |

# II. Pillar on Protection through Law Enforcement Machinery and Redress Mechanisms

## Indicators

| **Specific risks** | **Measures to avert/remedy risks** | **Rating of priority (from 1 – 10) and comments if any** |
| --- | --- | --- |
| Threats to life or physical/psychological integrity of journalists, whistle-blowers and other media actors | * Voluntary evacuation to a safe place * Police protection * Early-warning and rapid-response mechanisms such as hotlines or online platforms * Promotion of safety protocols vis-à-vis media organizations | **Click to select priority value** |
| *Add comment if any:* |
| Threats of violence | * Injunctive and precautionary forms of interim protection | **Click to select priority value** |
| *Add comment if any:* |
| Deprivation of liberty | Adequate procedural guarantees, including:   * the right to inform or to have informed a third party of their choice of their deprivation of liberty, their location and any transfers; * the rights of access to a lawyer; * the right of access to a medical doctor; * the right to challenge the lawfulness of the detention before a court of law. * Prompt presentation before a judge and right to a trial within a reasonable time. | **Click to select priority value** |
| *Add comment if any:* |
| Legislation and sanctions are applied in a discriminatory or arbitrary fashion against journalists and other media actors. | * Adequate procedural safeguards * Restraint in applying safeguards | **Click to select priority value** |
| *Add comment if any:* |
| Frivolous, malicious or vexatious use of law to intimidate and silence journalists and other media actors. | * Legislative and/or other measures to prevent the abuse of the judicial process | **Click to select priority value** |
| *Add comment if any:* |
| Hostility and undermining of journalists by public authorities | * State officials and public figures refrain from using threats and publicly condemn all instances of threats and violence against journalists and other media actors. * State officials and public figures refrain from coercing journalists into abandoning professional standards and disseminating propaganda. | **Click to select priority value** |
| *Add comment if any:* |
| Impunity - State authorities which are responsible for implementing obligations concerning the protection of journalists and other media actors are not aware of their obligations. | * Judges, prosecutors, LEAs (…) are trained on their obligations under international human rights and humanitarian law and of the important role played by journalists and other media actors in a democratic society and of gender-specific issues. | **Click to select priority value** |
| *Add comment if any:* |
| Administrative measures such as registration, accreditation and taxation schemes are used to harass journalists and other media actors. | * Avoid introducing such measures which can be used to harass journalists. | **Click to select priority value** |
| *Add comment if any:* |
| Law enforcement authorities (LEAs) hinder the work of journalists and other media actors, in particular, during public demonstrations and other events. | * Press or union cards, relevant accreditation and journalistic insignia should be accepted by State authorities as journalistic credentials. Where it is not possible to produce professional documentation, every possible effort is made by State authorities to ascertain their status. | **Click to select priority value** |
| *Add comment if any:* |
| Journalists are not sufficiently supported, informed or provided equitable work conditions by the media organisations they work for. | MS encourage media organisations to:   * adopt in-house guidelines and procedures for the deployment of journalists and other media actors on difficult or dangerous assignments (i.e. in conflict zones). Such deployment should be voluntary and informed. * provide journalists and other media actors with adequate information, including on the risks involved, training in matters of safety, digital security and privacy. * arrange for a comprehensive and equitable package of work conditions including life, health and travel insurance. * provide legal support and representation and trauma counselling on return from assignments | **Click to select priority value** |
| *Add comment if any:* |

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# III. Pillar on Prosecution

## Indicators

| **Specific risks** | **Measures to avert/remedy risks** | **Rating of priority (from 1 – 10) and comments if any.** |
| --- | --- | --- |
| Persons involved in killings of, attacks on and ill-treatment of journalists and other media actors are not brought to justice, leading to a culture of impunity. | Investigations must be effective (capable of leading to the establishment of the facts and the identification and, if appropriate, punishment of those responsible) and therefore respect the essential requirements of:   * adequacy: reasonable steps to secure evidence * independence: from those involved in the incident * thoroughness: thorough, objective and impartial analysis of all elements * promptness * public scrutiny/accessibility to the victims or their families   The above requirements are operationalized through the following factors:   * Specialised investigation units with expertise in international human rights; * An independent and impartial judiciary; * The safety of judges, prosecutors, lawyers and witnesses. * No time-barring for crimes involving ill-treatment by State agents. * Exceptional nature of amnesty/pardon. * Aggravated penalties for public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for the crimes. | **Click to select priority value** |
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|  |
| * Co-operation and exchange of information, expertise and best practices with other States when the crimes have a cross-border or online dimension. | **Click to select priority value** |
| *Add comment if any:* |
| * Special judicial or non-judicial inquiries/ inquiries by independent specialised bodies when investigations and prosecutions do not result in bringing to justice the perpetrators. | **Click to select priority value** |
| *Add comment if any:* |
| * Engagement of Member States on the protection of journalists and other media actors in all relevant regional and international forums and in their foreign policy and relations. | **Click to select priority value** |
| *Add comment if any:* |
| Insufficient remedies are available for journalists and other media actors and or their families | effective and appropriate remedies including:   * + legal redress,   + financial compensation,   + medical and psychological treatment, relocation and shelter   + the victim’s next of kin is involved in the procedure | **Click to select priority value** |
| *Add comment if any:* |

# IV. Pillar on Promotion of information, education and awareness-raising

## Indicators

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| --- | --- | --- |
| **Specific risks** | **Measures to avert/remedy risks** | **Rating of priority (from 1 – 10) and comments if any.** |
| Insufficient awareness about Recommendation CM/Rec(2016)4 and the matters it addresses | * Translation of CM/Rec(2016)4 into the national and minority languages of the country, dissemination and awareness raising about its content. | **Click to select priority value** |
| *Add comment if any:* |
| * CM/Rec(2016)4 and educational materials on this matter, including gender-specific issues are part and parcel of:   + training programmes in journalism schools and of continuing education for journalists,   + media and information literacy initiatives. | **Click to select priority value** |
| *Add comment if any:* |
| * Partnership with civil society and the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity. | **Click to select priority value** |
| *Add comment if any:* |